STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

COMMITTEE DAY

AGENDA

November 21, 2013
10:15 a.m.

Century House
997 New Loudon Road (Route 9)
Main Ball Room
Latham

I. COMMITTEE ON CODES, REGULATIONS AND LEGISLATION

Exhibit #1

Angel Gutiérrez, M.D., Chair

For Emergency Adoption

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

For Adoption

13-02 Amendment of Part 405 of Title 10 NYCRR- Hospital Pediatric Care

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

For Information

11-36 Amendment of Sections 700.2 and 717.3, Parts 793 and 794 of Title 10 NYCRR - Hospice Operational Rules

For Discussion

Part 405 of Title 10 NYCRR – Federal conditions of Participation Amendments

Building Codes

II. COMMITTEE ON ESTABLISHMENT AND PROJECT REVIEW

Jeffrey Kraut, Chair

A. Applications for Construction of Health Care Facilities

Acute Care Services - Construction **Exhibit # 2**

1. 132009 C Hospital for Special Surgery
(New York County)

2. 131326 C Memorial Hospital for Cancer and Allied Diseases
(New York County)

3. 132037 C Memorial Hospital for Cancer and Allied Diseases
(New York County)

4. 132077 C Memorial Hospital for Cancer and Allied Diseases
(Suffolk County)

Ambulatory Surgery Centers - Construction **Exhibit # 3**

1. 122206 C Griffiss Eye Surgery Center
(Oneida County)

Residential Health Care Facilities - Construction **Exhibit # 4**

	Number	**Applicant/Facility**
1.	122281 C	Meadowbrook Healthcare (Clinton County)

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

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

	Number	**Applicant/Facility**
1.	132195 E	Mount Sinai Hospitals Groups, Inc. (New York County)
2.	132204 E	Mohawk Valley Health System (Oneida County)

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

	Number	Applicant/Facility
1.	112086 B	1504 Richmond, LLC d/b/a Richmond Surgery Center (Richmond County)
2.	131069 E	Meadowbrook Endoscopy Center (Nassau County)
3.	131192 B	Abaco North, LLC d/b/a Manhattan Multi-Specialty Ambulatory Surgery Center (New York County)
4.	131296 B	Westmoreland ASC, LLC (Oneida County)
5	132108 B	Niagara ASC, LLC d/b/a Ambulatory Surgery Center of Niagara (Niagara County)

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

	Number	Applicant/Facility
1.	132011 B	Parkmed NYC, LLC (New York County)

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

	Number	Applicant/Facility
1.	132034 B	Brooklyn United Methodist Church Continuum Services (Kings County)
2.	132067 B	Elizabethtown Center, LLC (Essex County)

Hospice - Establish/Construct **Exhibit # 9**

	Number	Applicant/Facility
1.	132063 E	Hospice of New York (Queens County)

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

	Number	Applicant/Facility
1.	131086 E	Autumn View Health Care Facility, LLC (Erie County)
2.	131087 E	Brookhaven Health Care Facility, LLC (Suffolk County)
3.	131088 E	Garden Gate Health Care Facility (Erie County)
4.	131089 E	Harris Hill Nursing Facility, LLC (Erie County)
5.	131090 E	North Gate Health Care Facility (Niagara County)
6.	131091 E	Seneca Health Care Center (Erie County)
7.	131125 E	Ruby Care, LLC d/b/a Emerald North Nursing and Rehabilitation Center (Erie County)
8.	131156 E	Opal Care, LLC d/b/a Emerald South Rehabilitation and Care Center (Erie County)
9.	131264 E	South Shore Rehabilitation, LLC d/b/a South Shore Rehabilitation and Nursing Center (Nassau County)
10.	132071 E	Steuben Operations Associates, LLC d/b/a Steuben Center for Rehabilitation and Healthcare (Steuben County)
11.	132113 E	SGRNC LLC d/b/a King David Nursing and Rehabilitation Center (Kings County)

Certified Home Health Agencies – Establish/Construct **Exhibit # 11**

	Number	Applicant/Facility
1.	132048 E	HCS Certified Home Care New York, Inc. d/b/a Girling Health Care of New York (Kings County)

C. Certificates

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

Applicant

1. Addiction Research and Treatment Corporation

2. East Harlem Council for Human Services, Inc.

D. Home Health Agency Licensures

Home Health Agency Licensures **Exhibit # 13**

Number	Applicant/Facility
2143 L	Access to Home Care Services, Inc. (Cayuga, Onondaga, Cortland, Seneca, Tompkins, Oswego, and Jefferson Counties)
2048 L	ACME Home Care, Inc. (Bronx, Kings, New York, Richmond, and Queens Counties)
2022 L	Big Apple Homecare Agency, Inc. (Kings, Richmond, Queens, Bronx, New York and Westchester Counties)
2117 L	Boomer Services Plus, Inc. d/b/a Comfort Keepers #786 (Nassau, Suffolk and Queens Counties)
2091 L	Elmy's Special Services, Inc. (Bronx, Richmond, Kings, Queens, Nassau and New York Counties)
2094 L	EP Home Care, LLC (Kings County)

2086 L	Irene A. Manolias d/b/a Executive Home Health Care (Nassau and Suffolk Counties)
2035 L	First Step Services, Inc. (Westchester and Bronx Counties)
2023 L	Kings Homecare Agency, Inc. (Bronx, Kings, New York, Queens and Richmond Counties)
2054 L	Lagora Health Services, Inc. (Kings, Nassau, Queens, Bronx, New York and Richmond Counties)
2363 L	Livingston County Board of Supervisors d/b/a Livingston County Department of Health (Livingston County)
2041 L	NEC Care, Inc. d/b/a Home Instead Senior Care (Saratoga, Warren, and Washington Counties)
2109 L	Neighbors NY, Inc. (Warren, Washington, and Saratoga Counties)
2115 L	NYC Pro Home Care, Inc. (New York, Bronx, Kings, Richmond, Queens and Nassau Counties)
1917 L	Polo Care, Inc. (Bronx, Queens, Kings, Richmond, Nassau, and New York Counties)

2098 L	RAMA Associates, LLC d/b/a Home Helpers and Direct Link of Amsterdam (Albany, Saratoga, Fulton, Schenectady, Montgomery and Schoharie Counties)
2040 L	Simpson Solutions, LLC d/b/a All Care Living Assistance Services (Westchester, Rockland, Bronx, New York, Queens, Richmond and Kings Counties)
2111 L	Berardino and Pfisterer, Inc. d/b/a Oxford Home Care Services (Oneida, Otsego and Herkimer Counties)
2032 L	RJG Consultants, Inc. d/b/a Providence Home Care Services (New York, Bronx, Kings, Richmond, Queens and Nassau Counties)

III. COMMITTEE ON PUBLIC HEALTH

Dr. Jo Ivey Boufford, Chair

IV. COMMITTEE ON HEALTH PLANNING **Exhibit # 14**

Dr. John Rugge, Chair

Memo – 709.3 Evaluation

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

November 21, 2013

COMMITTEE ON CODES, REGULATIONS AND LEGISLATION

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SUMMARY OF EXPRESS TERMS

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

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

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

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

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

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

SUBPART 7-2

Children's Camps

(Statutory Authority: Public Health Law §§ 201, 225, 1390, 1394, 1395, 1399-a; L. 2012, ch. 501)

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

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

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

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

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

Section 7-2.24 is amended to read as follows:

Variance; waiver.

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

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

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

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

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

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

(2) *Department* shall mean the New York State Department of Health.

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

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

(i) Reporting.

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

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

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

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

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

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

(k) Disclosure of information

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

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

(l) Incident Management.

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

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

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

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

(ii) All evidence must be adequately protected and preserved.

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

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

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

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

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

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

(ii) Pursuant to paragraph (f) of subdivision one of section 490 of the Social Services Law and regulations of the Justice Center, a camp operator may seek an

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

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

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

Regulatory Impact Statement

Statutory Authority:

The Public Health and Health Planning Council is authorized by Section 225(4) of the Public Health Law (PHL) to establish, amend and repeal sanitary regulations to be known as the State Sanitary Code (SSC), subject to the approval of the Commissioner of Health. Article 13-B of the PHL sets forth sanitary and safety requirements for children's camps. PHL Sections 225 and 201(1)(m) authorize SSC regulation of the sanitary aspects of businesses and activities affecting public health including children's camps.

Legislative Objectives:

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

Needs and Benefits:

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

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

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

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

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

Compliance Costs:
Cost to Regulated Parties:

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

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

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

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

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

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

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

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

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

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

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

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

Cost to State and Local Government:

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

Cost to the Department of Health:

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

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

Local Government Mandates:

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

Paperwork:

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

Duplication:

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

Alternatives Considered:

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

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

Federal Standards:

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

Compliance Schedule:

The proposed amendments are to be effective upon filing with the Secretary of State.

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Regulatory Flexibility Analysis

for Small Business and Local Government

Types and Estimated Number of Small Businesses and Local Governments:

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

Compliance Requirements:

Reporting and Recordkeeping:

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

Other Affirmative Acts:

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

Professional Services:

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

Compliance Costs:

Cost to Regulated Parties:

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

Cost to State and Local Government:

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

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

Economic and Technological Feasibility:

There are no changes requiring the use of technology.

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

Minimizing Adverse Economic Impact:

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

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

Small Business Participation and Local Government Participation:

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

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

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

Reporting and Recordkeeping and Other Compliance Requirements:

Reporting and Recordkeeping:

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

Other Compliance Requirements:

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

Professional Services:

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

Compliance Costs:

Cost to Regulated Parties:

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

Economic and Technological Feasibility:

There are no changes requiring the use of technology.

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

Minimizing Adverse Economic Impact on Rural Area:

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

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

Rural Area Participation:

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

Job Impact Statement

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

Emergency Justification

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

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

pursuant to the State Administrative Procedures Act. The Department is authorized to promulgate these rules pursuant to sections 201 and 225 of the Public Health Law.

Promulgating the regulations on an emergency basis will ensure that campers with special needs promptly receive the coordinated protections to be provided to similar individuals cared for in other settings. Such protections include reduced risk of being cared for by staff with a history of inappropriate actions such as physical, psychological or sexual abuse towards persons with special needs. Perpetrators of such abuse often seek legitimate access to children so it is critical to camper safety that individuals who that have committed such acts are kept out of camps. The regulation provides an additional mechanism for camp operators to do so. The regulations also reduce the risk of incidents involving physical, psychological or sexual abuse towards persons with special needs by ensuring that such occurrences are fully and completely investigated, by ensuring that camp staff are more fully trained and aware of abuse and reporting obligations, allowing staff and volunteers to better identify inappropriate staff behavior and provide a mechanism for reporting injustice to this vulnerable population. Early detection and response are critical components for mitigating injury to an individual and will prevent a perpetrator from hurting additional children. Finally, prompt enactment of the proposed regulations will ensure that occurrences are fully investigated and evaluated by the camp, and that measures are taken to reduce the risk of re-occurrence in the future. Absent emergency adoption, these benefits and protections will not be available to campers

with special needs until the formal rulemaking process is complete, with the attendant loss of additional protections against abuse and neglect, including physical, psychological, and sexual abuse.

SUMMARY OF EXPRESS TERMS

This proposal will amend Part 405 (Hospitals – Minimum Standards), primarily with respect to pediatric provisions and also to update various provisions to reflect current practice. Hospitals, for the purposes of Part 405, pertain to general hospitals.

Proposed amendments to Section 405.1 (Introduction) specify that the requirements of Part 405 relating to patient care and services will apply to patients of all ages, including newborns, pediatric and geriatric patients.

Proposed amendments to Section 405.3 (Administration), which currently requires hospitals to provide to the State Education Department ("SED") a written report whenever enumerated professionals licensed by SED lose hospital employment or privileges for certain reasons, will require similar reporting to the Department of Health for certain individuals licensed by such Department.

Proposed amendments to Section 405.6 (Quality Assurance Program) will require hospital quality assurance processes to include a determination that the hospital is admitting only those patients for whom it has appropriate staff, resources and equipment and transferring those patients for whom the hospital does not have the capability to provide care, except under conditions of disasters or emergency surge that may require admissions to provide care to those patients.

A new subdivision (d) is added to Section 405.7 to require hospitals to post and provide a copy of a Parent's Bill of Rights, setting forth the rights of patients, parents of minors, legal guardians or other persons with decision-making authority to certain minimum protections required under other provisions of these regulations. In particular, the Parent's Bill of Rights would advise that patients may not be discharged from the hospital or the emergency room until any tests that could reasonably be expected to yield "critical value" results – results that suggest a life-threatening or otherwise significant condition such that it requires immediate medical attention – are reviewed by a physician, physician assistant (PA), and/or nurse practitioner (NP) and are communicated to the patient, his or her parents or other decision-makers as appropriate.

Proposed amendments to Section 405.9 (Admission/Discharge) specify that a hospital will be required to admit pediatric patients consistent with its ability to provide qualified staff, space and size appropriate equipment necessary for the unique needs of pediatric patients. If the hospital cannot meet these requirements, it will be required to develop criteria and policies and procedures for transfer of pediatric patients. This section also requires hospitals to develop policies and procedures permitting at least one parent/guardian to remain with a pediatric patient at all times, to the extent possible given the patient's health and safety. Proposed amendments will also require hospitals to develop and implement written policies and procedures pertaining to review and communication of laboratory and diagnostic test/service results to the patient and, if the patient is not legally capable of making decisions, the patient's parent, legal guardian, health care agent or health care surrogate, as appropriate and subject to all applicable

confidentiality laws and regulations. Such policies and procedures must ensure that no discharge will occur while the results of a test that reasonably could be expected to yield a "critical value" are pending so as to assure appropriate care is provided to the patient. Further, all communication with the patient, parent, legal guardian, etc. must be clear and understandable to the recipient. In addition, the hospital must ask the patient or the patient's representative for the name of the patient's primary care provider, if known, and forward lab results to such provider.

This proposal also updates Section 405.12 (Surgical Services), which currently requires hospitals to develop and implement effective written policies and procedures, to provide that such policies and procedures include the performance of surgical procedures, the maintenance of safety controls and the integration of such services with other related services of the hospital to protect the health and safety of the patients in accordance with generally accepted standards of medical practice and patient care. The amendments will also require hospitals to assure that the privileges of each practitioner performing surgery are commensurate with his or her training and experience. Precautions must be clearly identified in written policies and procedures specific to the surgical service and post anesthesia care unit ("PACU") including appropriate resuscitation, airway and monitoring equipment including a resuscitation cart with age and size appropriate medications, equipment and supplies.

Updates to Section 405.13 (Anesthesia Services), which currently require hospitals to develop and implement effective written policies and procedures on matters

such as the administration of anesthetics, the maintenance of safety controls and the integration of such services with other related services of the hospital. Under the amendments, such policies and procedures will have to be reviewed and updated at least biennially. In addition, hospitals will have to establish clinical competencies that are relevant to the care provided and, at a minimum, include instruction in safety precautions, equipment usage and inspections, infection control requirements and any patients' rights requirements pertaining to surgical/anesthesia consents. The amendments further provide that all equipment and services provided must be age and size appropriate.

Updates to Section 405.14 (Respiratory Care Services) will provide that orders for respiratory care services, in addition to specifying the type, frequency and duration of treatment, and as appropriate, the type and dose of medication, the type of diluent, and the oxygen concentration, must be consistent with generally accepted standards of care. The amendments further provide that all equipment and services provided must be age and size appropriate.

Updates to Section 405.15 (Radiologic and Nuclear Medicine Services) will specify that care must be provided in accordance with generally accepted standards of practice. The amendments will also require that policies and procedures regarding imaging studies for newborns and pediatric patients must include standards for clinical appropriateness, appropriate radiation dose and beam collimation, image quality and patient shielding. In addition, a policy and procedure must be developed to ensure that the practitioner's order for an imaging study is specific to the body part(s) that are to be

imaged. Quality improvement audits must verify that these policies and procedures are being followed and must include a review of the adequacy of diagnostic images and interpretations. Radiation safety principles must be adequate to ensure compliance with all generally accepted standards of practice as well as pertinent laws, rules and regulations. The amendments also provide that the chief of radiology, in conjunction with the radiation safety officer, must ensure that all practitioners who utilize ionizing radiation equipment within the hospital are properly trained in radiation safety procedures for patients of all ages.

The amendments to Section 405.15 also will update the megavoltage ("MEV") requirements for therapeutic radiology or radiation oncology services to provide that they utilize six or more MEV unit with a source-axis distance of 100 or more centimeters as the primary unit in a multi-unit radiation oncology service. In addition, as amended, the regulations will require each therapeutic radiology service to have full time New York State licensed radiation therapists sufficient to meet the needs of the service and also a New York State licensed radiation therapy physicist who will be involved in treatment, planning and dosimetry as well as calibrating the equipment. The amendments will also change a reference to an MEV unit so that it instead refers to a linear accelerator. A computed tomography ("CT") scanner must be available within the radiation therapy program that is equipped for radiation oncology treatment planning or arrangements must be made for access to a CT scanner on an as needed basis. Provisions must be made for access to a magnetic resonance imaging ("MRI") scanner for treatment planning purposes on an as needed basis.

Updates to Section 405.17 (Pharmaceutical Services) will require hospital pharmacy directors, in conjunction with designated members of the medical staff, to ensure that for patients of all ages, weight must be measured in kilograms and that resources relating to drug interactions, drug therapies, side effects, toxicology, dosage, indications for use, and routes of administration are available to the professional staff. Pediatric dosing resources must include age and size appropriate fluid and medication administration and dosing. Dosing must be weight based and not exceed adult maximum dosage, or in emergencies, length based, with appropriate references for pediatric dosing available. The amendments will further require the director to ensure that the pharmacy quality assurance program include monitoring and improvement activities to identify, measure, prevent and/or mitigate adverse drug events, adverse drug reactions and medication errors in accordance with generally accepted standards and practices in the field of medication safety and quality improvement. All drugs and biologicals must be controlled and distributed in accordance with written policies and procedures to maximize patient safety and quality of care.

Updates to Section 405.19 (Emergency Services) provisions will require at least one clinician on every shift to have the skills to assess and manage a critically ill or injured pediatric patient and be able to resuscitate a child. The director of the hospital's emergency service, attending physicians, supervising nurses, registered professional nurses ("RNs"), physician assistants ("PAs") and nurse practitioners ("NPs") must satisfactorily complete and be current in Pediatric Advanced Life Support ("PALS") or

have current training equivalent to PALS. Hospitals with less than 15,000 unscheduled emergency visits per year do not need to have the supervising or attending physician present, but such supervising or attending physician must be available within 30 minutes of "patient presentation" provided that at least one physician, NP, or PA is on duty in the emergency service 24 hours a day, seven days a week.

In addition, the amendments will require hospitals to develop and implement protocols specifying when supervising or attending physicians must be present. In no event shall a patient be discharged or transferred to another hospital, unless evaluated, initially managed, and treated as necessary by an appropriately privileged physician, PA or NP. Specifically, no discharge should occur while the results of a test that reasonably could be expected to yield a "critical value" are pending so as to assure appropriate care is provided. The amendments will also require hospitals to develop and implement written policies and procedures pertaining to review and communication of laboratory and diagnostic test/service results ordered for a patient receiving emergency services to the patient and, if the patient is not legally capable of making decisions, the patient's parent, legal guardian, health care agent or health care surrogate, as appropriate and subject to all applicable confidentiality laws and regulations. Further, policies and procedures must ensure that all communication with the patient, parent of a minor, legal guardian, etc. must be clear and understandable to the recipient. In addition, the hospital must ask the patient or the patient's representative for the name of the patient's primary care provider, if known, and lab results must be forwarded to such provider.

Section 405.20 (Outpatient Services) requires outpatient services, including ambulatory care services and extension clinics to be provided in a manner which safely and effectively meets the needs of all patients. Written policies must be in place for admission of patients whose postoperative status prevents discharge and necessitates inpatient admission to a hospital capable of providing the appropriate level of care.

Section 405.22 (Critical Care and Special Care Services) adds new provisions regarding Pediatric Intensive Care Unit (PICU) Services. A "PICU" is defined as a physically separate unit that provides intensive care to pediatric patients (infants, children and adolescents) who are critically ill or injured. It must be staffed by qualified practitioners competent to care for critically ill or injured pediatric patients. "Qualified practitioners" are practitioners functioning within his or her scope of practice according to State Education Law and who meets the hospital's criteria for competence, credentialing and privileging practitioners in the management of critically ill or injured pediatric patients. PICUs must be approved by the Department and the governing body must develop written policies and procedures for operation of the PICU in accordance with generally accepted standards of medical care for critically ill or injured pediatric patients. The PICU must have a minimum average annual pediatric patient number of 200/year. It must provide medical oversight for interhospital transfers of critically ill or injured patients during transfer to the receiving PICU.

The PICU must be directed by a board certified pediatric medical, surgical, anesthesiology or critical care/intensivist physician who must be responsible for the

organization and delivery of PICU care and has specialized training and demonstrated competence in pediatric critical care. Such physician in conjunction with the nursing leadership responsible for the PICU must participate in administrative aspects of the PICU. All hospitals with PICUs must have a physician, notwithstanding emergency department staffing, in-house 24 hours per day who is available to provide bedside care to patients in the PICU. PICU physician and nursing staff must successfully complete and be current in pediatric advanced life support (PALS) or have current training equivalent to PALS.

The hospital must have an organized quality performance improvement program for PICU services and include monitoring of volume and outcomes, morbidity and all case mortality review, regular multidisciplinary conferences including all health professionals involved in the care of PICU patients. Failure to meet one or more regulatory requirements or inactivity in a program for a period of 12 months or more may result in actions, including, but not limited to, withdrawal of approval to serve as a PICU. No PICU can discontinue operation without first obtaining written approval from the department and must give written notification, including a closure plan acceptable to other department at least 90 days prior to planned discontinuance of PICU services. A hospital must notify the department in writing within 7 days of any significant changes in its PICU services, including, but not limited to: (a) any temporary or permanent suspension of services or (b) difficulty meeting staffing or workload requirements.

Section 405.28 (Social Services) is updated to current standards that care be provided under the direction of a qualified social worker who is licensed and registered by the New York State Education Department to practice as a licensed master social worker (LMSW) or licensed clinical social worker (LCSW), with the scope of practice defined in Article 154 of the Education Law.

Pursuant to the authority vested in the Public Health and Health Planning Council and subject to the approval of the Commissioner of Health by paragraph (2) of section 2803 of the Public Health Law, Part 405 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:

Section 405.1 is amended to read as follows:

405.1 Introduction.

* * *

(e) The requirements of this Part relating to patient care and services shall apply to patients of all ages, including newborns, pediatric and geriatric patients.

Subdivision (e) of Section 405.3 is amended to read as follows:

405.3 Administration.

(e) *Other reporting requirements.*

* * *

(2) The hospital shall furnish to the Department of Education or the Department of Health for individuals licensed by the Department within 30 days of occurrence, a written report of any denial, withholding, curtailment, restriction, suspension or termination of

any membership or professional privileges in, employment by or any type of association with a hospital relating to an individual who is a health profession student serving in a clinical clerkship, an unlicensed health professional serving in a clinical fellowship or residency, or an unlicensed health professional practicing under a limited permit or a state licensee, such as an audiologist, [certified social worker,] licensed master social worker (LMSW), licensed clinical social worker (LCSW), dental hygienist, dentist, medical laboratory technologist, nurse, occupational therapist, ophthalmic dispenser, optometrist, pharmacist, physical therapist, podiatrist, psychologist, radiologic technologist, radiologist assistant, respiratory therapist, respiratory therapy technician or speech-language pathologist for reasons related in any way to any of the following reasons;

(i) Alleged mental or physical impairment, incompetence, malpractice, misconduct or endangerment of patient safety or welfare;

(ii) Voluntary or involuntary resignation or withdrawal of association, employment or privileges with the hospital to avoid imposition of disciplinary measure; and

(iii) The receipt of information concerning a conviction of a misdemeanor or felony. The report shall contain:

(a) The name and address of the individual;

(b) The profession and license number;

(c) The date of the hospital's action;

(d) A description of the action taken; and

(e) the reason for the hospital's action or the nature of the action or conduct which lead to the resignation or withdrawal and the date thereof.

* * *

Section 405.6 is amended to read as follows:

405.6 Quality assurance program.

The governing body shall establish and maintain a coordinated quality assurance program which integrates the review activities of all hospital services to enhance the quality of patient care and identify and prevent medical, dental and podiatric malpractice.

* * *

(b) The activities of the quality assurance committee shall involve all patient care services and shall include, as a minimum:

(1) review of the care provided by the medical and nursing staff and by other health care practitioners employed by or associated with the hospital[;]. Such review shall include a

determination that the hospital is admitting only those patients for whom it has appropriate staff, resources and equipment and transferring those patients for whom the hospital does not have the capability to provide care, except under conditions of disasters and/or emergency surge that may require admissions to provide care to those patients;

* * *

A new subdivision (d) is added to Section 405.7 to read as follows:

(d) Each hospital shall be required to post in a conspicuous place and provide a pediatric patient's parent or other medical decision maker with a copy of a Parent's Bill of Rights advising that, at a minimum and subject to laws and regulations governing confidentiality, that in connection with every hospital admission or emergency room visit:

(i) The hospital must ask each patient or the patient's representative for the name of his or her primary care provider, if known, and shall document such information in the patient's medical record.

(ii) The hospital may admit pediatric patients only to the extent consistent with their ability to provide qualified staff, space and size appropriate equipment necessary for the unique needs of pediatric patients.

(iii) To the extent possible given the patient's health and safety, the hospital shall allow at least one parent/guardian to remain with the patient at all times.

(iv) All test results completed during the patient's admission or emergency room visit will be reviewed by a physician, physician assistant or nurse practitioner who is familiar

with the patient's presenting condition.

(v) Patients may not be discharged from the hospital or the emergency room until any tests that could reasonably be expected to yield "critical value" results – results that suggest a life-threatening or otherwise significant condition such that it requires immediate medical attention – are reviewed by a physician, physician assistant (PA) and/or nurse practitioner (NP) and are communicated to the patient, his or her parents or other decision-makers, as appropriate.

(vi) Patients may not be discharged until they receive a written discharge plan, which will also be verbally communicated to patients, their parents or other medical decision-makers, which will identify critical value results of laboratory or other diagnostic tests ordered during the patient's stay and identify any other tests that have not yet been concluded.

(vii) The communication of critical value results and the discussion of the discharge plan must be accomplished in a manner that reasonably assures that the patient, their parents or other medical decision makers understand the health information provided in order to make appropriate health decisions.

(viii) Hospitals shall provide all lab results to the patient's primary care provider, if known.

(ix) A patient, his or her parent or other medical decision maker has the right to request information about the diagnosis, possible diagnoses that were considered and complications that could develop as well as information about any contact that was made with the patient's primary care provider.

(x) On discharge, the hospital must provide a patient, his or her parent or other

medical decision maker a phone number that the patient, his or her parent or other medical decision maker could call for advice in the event that complications or questions arise.

Subdivision (b) of Section 405.9 is amended to read as follows:

405.9 Admission/discharge.

(b) Admission.

* * *

(7) Pediatrics. (i) The hospital shall admit pediatric patients consistent with its ability to provide qualified staff, space and size appropriate equipment necessary for the unique needs of pediatric patients. The [facility] hospital shall establish a separate pediatric unit if the hospital regularly has 16 or more pediatric patients at one time or if pediatric patients cannot be adequately and safely cared for in other than separately certified pediatric beds. If a hospital cannot meet these requirements the hospital must develop criteria and policies and procedures for transfer of pediatric patients.

(ii) Hospitals maintaining certified pediatric beds shall assure that admission to those beds is limited to patients who have not yet reached their 21st birthday except in instances when there are no other available beds within the hospital. In such instances, the hospital shall afford priority admission to the pediatric bed to patients 20 years of age or younger.

(iii) Children under the age of 14 shall not be admitted to a room with patients 21 years of age or over except with the knowledge and agreement of the child's attending practitioner and parent or guardian and the concurrence of the other patients occupying the room and their attending practitioners.

[(iv) Infants shall not be kept in the same nursery or room with older children or with any adult patient unless their own healthy mothers occupy the same room and the concurrence of the other patients and their attending practitioners has been obtained.]

<u>(iv)</u> [(v)] In the event a separate pediatric unit is not available, arrangements for the admission of all children shall be made consistent with written policies and procedures to ensure the safety of each patient.

<u>(v) The hospital shall develop policies and procedures enabling parents/guardians to stay with pediatric patients. To the extent possible given the patient's health and safety, the hospital shall allow at least one parent/guardian to remain with the patient at all times.</u>

* * *

<u>(16) The hospital shall ask each patient for the name of his or her primary care provider,</u>

if known, on admission and shall document such information in the patient's medical record.

* * *

(f) Discharge.

* * *

(10) The hospital shall develop and implement written policies and procedures pertaining to the review and communication of laboratory and diagnostic test/service results ordered for a patient while admitted or receiving emergency services to the patient. If the patient lacks medical decision-making capacity, the communication shall be to the patient's medical decision-maker. The results shall also be provided to the patient's primary care provider, if known. Such policies and procedures shall be reviewed and updated as necessary and at a minimum shall include:

(i) a requirement that all laboratory and other diagnostic tests/service results be reviewed upon completion by a physician, physician assistant or nurse practitioner familiar with the patient's presenting condition;

(ii) a requirement that all laboratory and other diagnostic test services results be forwarded to the patient's primary provider, if known, after review by a physician, physician assistant or nurse practitioner;

(iii) provisions to include in the discharge plan information regarding the patient's completed and pending laboratory and other diagnostic test/service results, medications, diagnoses, and follow-up care and to

review such information with the patient or, if the patient is not legally capable of making decisions, the patient's parent, legal guardian or health care agent, or surrogate, as appropriate, subject to all applicable confidentiality laws and regulations;

(iv) a requirement that patients may not be discharged from the hospital or the emergency room until any tests that could reasonably be expected to yield "critical value" results – results that suggest a life-threatening or otherwise significant condition such that it requires immediate medical attention – are reviewed by a physician, physician assistant (PA) and/or nurse practitioner (NP);

(v) a requirement that before a patient is discharged, any critical laboratory test results are communicated to the patient or, if the patient is not legally capable of making decisions, the patient's parent, legal guardian or health care agent, or surrogate, as appropriate, subject to all applicable confidentiality laws and regulations;

(vi) a requirement that all information be presented to the patient or if the patient is not legally capable of making decisions, the patient's parent, legal guardian or health care agent, or surrogate, as appropriate, subject to all applicable confidentiality laws and regulations, in a manner that reasonably assures that the patient, their parents or other medical decision

makers understand the health information provided in order to make appropriate health decisions.

* * *

Section 405.12 is amended to read as follows:

405.12 Surgical services.

[If surgery is provided, the service shall be provided in a manner which protects the health and safety of the patients in accordance with generally accepted standards of medical practice.]

If surgical services are provided, the hospital shall develop and keep current and implement effective written policies and procedures regarding staff privileges consistent with provisions set forth in section 405.4 of this Part, the performance of surgical procedures, the maintenance of safety controls and the integration of such services with other related services of the hospital to protect the health and safety of the patients in accordance with generally accepted standards of medical practice and patient care. Such policies and procedures shall be reviewed and updated as necessary, but at a minimum biennially.

(a) *Organization and direction.* The surgical service shall be directed by a physician who shall be responsible for the clinical aspects of organization and delivery of all in-patient and ambulatory surgical services provided to hospital patients. That

physician or another individual qualified by training and experience shall direct administrative aspects of the service.

(1) The operating room shall be supervised by a registered professional nurse or physician who the hospital finds qualified by training and experience for this role.

(i) Nursing personnel shall be on duty in sufficient number for the surgical suite in accordance with the needs of patients and the complexity of services they are to receive.

(ii) A registered professional nurse qualified by the hospital and by training and experience in operating room nursing shall be preset as the circulating nurse in any and each separate operating room where surgery is being performed for the duration of the operative procedure. Nothing in this section precludes a circulating nurse from leaving the operating room as part of the operative procedure, leaving the operating room for short periods; or, in accordance with employee rules or regulations, being relieved during an operative procedure by another circulating nurse assigned to continue the operative procedure.

(iii) Licensed practical nurses and surgical technologists may perform scrub functions and may assist in circulating duties under the supervision of the circulating nurse who is present in the operating room for the duration of the procedure, in accordance with policies and procedures established by the medical staff and the nursing service and approved by the governing body.

(2) Surgical privileges shall be delineated for all practitioners performing surgery in accordance with the competencies of each practitioner as required by section 405.4 of this Part. The surgical service shall maintain a roster of practitioners specifying the surgical privileges of each practitioner. <u>The hospital shall assure that the privileges of the practitioner are commensurate with his or her training and experience,</u>

* * *

(6) Precautions shall be clearly identified in written policies and procedures specific to the department and <u>the post anesthesia care unit (PACU)</u> and include but are not limited to:

(i) safety regulations posted;

(ii) routine inspection and maintenance of equipment;

(iii) availability in the operating room suites <u>and PACU</u> of [a] <u>appropriate resuscitation, airway and monitoring equipment</u> [call-in system, cardiac monitor, resuscitator, defibrillator, aspirator,] <u>including a resuscitation cart with age and size appropriate medications, equipment and supplies,</u> [thoracotomy set and tracheotomy set]; and

(iv) control of traffic in and out of the operating room suites and accessory services to eliminate through traffic.

(b) *Operation and service delivery*. Policies governing surgical services shall be designed to assure the achievement and maintenance of generally accepted standards of medical

practice and patient care. The policies shall assure that service and equipment routinely available in the operating suite and PACU are age and size appropriate.

* * *

Section 405.13 is amended to read as follows:

405.13 Anesthesia services.

If anesthesia services are provided within a hospital, the hospital shall develop, implement and keep current effective written policies and procedures regarding staff privileges consistent with provisions set forth in section 405.4 of this Part, the administration of anesthetics, the maintenance of safety controls and the integration of such services with other related services of the hospital to protect the health and safety of the patients in accordance with generally accepted standards of medical practice and patient care. Such policies and procedures shall be reviewed and updated as necessary, but at a minimum biennially.

(a) *Organization and direction.* Anesthesia services shall be directed by a physician who has responsibility for the clinical aspects of organization and delivery of all anesthesia services provided by the hospital. That physician or another individual qualified by education and experience shall direct administrative aspects of the services.

(1) The director shall be responsible, in conjunction with the medical staff, for

recommending to the governing body privileges to those persons qualified to administer anesthetics, including the procedures each person is qualified to perform and the levels of required supervision as appropriate. Anesthesia shall be administered in accordance with their credentials, competencies and privileges by the following:

(i) anesthesiologists;

(ii) physicians granted anesthesia privileges;

(iii) dentists, oral surgeons, or podiatrists who are qualified to administer anesthesia under State law;

(iv) certified registered nurse anesthetists (CRNA's) under the supervision of an anesthesiologist who is immediately available as needed or under the supervision of the operating physician who has been found qualified by the governing body and the medical staff to supervise the administration of anesthetics and who has accepted responsibility for the supervision of the CRNA; or

(v) a student enrolled in a school of nurse anesthesia accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs may administer anesthesia as related to such course of study under the direct personal supervision of a certified registered nurse anesthetist or an anesthesiologist.

(2) Anesthesia service policies shall clearly outline requirements for orientation and continuing education programs for all staff, and staff compliance with such requirements shall be considered at the time of reappointment or performance evaluation. Such training, <u>clinical competencies</u> and continuing education programs shall be established that are relevant to care provided but must, at a minimum, include instruction in safety precautions, equipment usage and inspections, infection control requirements and any patients' rights requirements pertaining to surgical/anesthesia consents.

(3) The director shall, in conjunction with the medical staff, monitor the quality and appropriateness of anesthesia related patient care and ensure that identified problems are reported to the quality assurance committee and are resolved.

(b) Operation and service delivery. Policies governing anesthesia services shall be designed to ensure the achievement and maintenance of generally accepted standards of medical practice and patient care.

(1) All anesthesia machines shall be numbered and reports of all equipment inspections and routine maintenance shall be included in the anesthesia service records. Policies and procedures shall be developed and implemented regarding notification of equipment disorders/malfunctions to the director, to the manufacturer and, in accordance with section 405.8 of this Part, to the department.

(2) Written policies regarding anesthesia procedures shall be developed and implemented which shall clearly delineate pre-anesthesia and post-anesthesia responsibilities. These policies shall include, but not be limited to, the following elements:

(i) Pre-anesthesia physical evaluations shall be performed by an individual qualified to administer anesthesia and recorded within 48 hours, prior to surgery.

(ii) Routine checks shall be conducted by the anesthetist prior to every administration of anesthesia to ensure the readiness, availability, cleanliness, sterility when required, and working condition of all equipment used in the administration of anesthetic agents.

(iii) All anesthesia care shall be provided in accordance with generally accepted standards of practice and shall ensure the safety of the patient during the administration, conduct of and emergence from anesthesia. The following continuous monitoring is required during the administration of general and regional anesthetics. Such continuous monitoring is not required during the administration of anesthetics administered for analgesia or during the administration of local anesthetics unless medically indicated.

> (a) An anesthetist shall be continuously present in the operating room throughout the administration and the conduct of all general anesthetics, regional anesthetics, and monitored anesthesia care. If there is a documented hazard to the anesthetist which prevents the anesthetist from being

continuously present in the operating room, provision must be made for monitoring the patient.

(b) All patients must be attended by the anesthetist during the emergence from anesthesia until they are under the care of qualified post-anesthesia care staff or longer as necessary to meet the patient's needs.

(c) During all anesthetics, the heart sounds and breathing sounds of all patients shall be monitored through the use of a precordial or esophageal stethoscope. Such equipment or superior equipment shall be obtained and utilized by the hospital.

(d) During the administration and conduct of all anesthesia services the patient's oxygenation shall be continuously monitored to ensure adequate oxygen concentration in the inspired gas and the blood through the use of a pulse oximeter or superior equipment that is age and size appropriate. During every administration of general anesthesia using an anesthesia machine, the concentration of oxygen in the patient's breathing system shall be measured by an oxygen analyzer with a low oxygen concentration limit alarm.

(e) All patients' ventilation shall be continuously monitored during the conduct of anesthesia. During regional anesthesia, monitored anesthesia care and general anesthesia with a mask, the adequacy of ventilation shall be evaluated

through the continual observation of the patient's qualitative clinical signs. For every patient receiving general anesthesia with an endotracheal tube, the quantitative carbon dioxide content of expired gases shall be monitored through the use of endtidal carbon dioxide analysis or superior technology. In all cases where ventilation is controlled by a mechanical ventilator, there shall be in continuous use an alarm that is capable of detecting disconnection of any components of the breathing system.

(f) The patient's circulatory functions shall be continuously monitored during all anesthetics. This monitoring shall include the continuous display of the patient's electrocardiogram, from the beginning of anesthesia until preparation to leave the anesthetizing location, and the evaluation of the patient's blood pressure and heart rate at least every five minutes.

(g) During every administration of anesthesia, there shall be immediately available a means to continuously measure the patient's temperature.

<u>(iv) All equipment and services provided shall be age and size appropriate.</u>

[(iv)] (<u>v)</u> Intraoperative anesthesia records shall document all pertinent events that occur during the induction, maintenance, and emergence from anesthesia. These pertinent events shall include, but not be limited to, the following: intraoperative abnormalities or complications, blood pressure, pulse, dosage and duration of all anesthetic agents, dosage

and duration of other drugs and intravenous fluids, and the administration of blood and blood components. The record shall also document the general condition of the patient.

[(v)] (vi) With respect to inpatients a post-anesthetic follow-up evaluation and report by the individual who administered the anesthesia or by an individual qualified to administer anesthesia shall be written not less than three or more than 48 hours after surgery and shall note the presence or absence of anesthesia related abnormalities or complications, and shall evaluate the patient for proper anesthesia recovery and shall document the general condition of the patient.

[(vi)] (vii) With respect to outpatients, a post-anesthesia evaluation for proper anesthesia recovery performed in accordance with policies and procedures approved by the medical staff shall be documented for each patient prior to hospital discharge.

(3) Safety precautions shall be clearly identified in written policies and procedures specific to the department and include, but not be limited to:

(i) safety regulations posted;
(ii) routine inspection and maintenance of equipment;
(iii) use and maintenance of shockproof equipment;
(iv) proper grounding; and
(v) infection control.

Section 405.14 is amended to read as follows:

405.14 Respiratory care services.

* * *

(b) *Operation and service delivery.* Respiratory care services shall be provided in manner which assures the achievement and maintenance of generally accepted standards of professional medical practice and patient care.

(1) Respiratory care services shall only be provided in accordance with specific hospital protocols/policies or upon the orders of members of the medical staff. The order for respiratory care services shall specify the type, frequency and duration of treatment, and, as appropriate, the type and dose of medication, the type of diluent, and the oxygen concentration, <u>consistent with generally accepted standards of care.</u>

(2) All respiratory care services provided shall be documented in the patient's medical record, including the type of therapy, date and time of administration, effects of therapy, and any adverse reactions.

(3) If blood gases or other clinical laboratory tests are performed in the respiratory care unit, the unit shall meet the requirements for clinical laboratories with respect to management, adequacy of facilities, proficiency testing and quality control as set forth in section 405.16 of this Part.

(4) The service shall implement a planned and systematic process for the monitoring and evaluation of the quality and appropriateness of patient care and for the resolution of identified problems. The process shall involve the reporting of findings, conclusions and recommendations to the quality assurance committee in accordance with hospital policies and procedures.

<u>(5) All equipment and services provided shall be age and size appropriate.</u>

Section 405.15 is amended to read as follows:

405.15 Radiologic and nuclear medicine services.

(a) *General provisions for diagnostic and therapeutic radiologic services*. The hospital shall maintain or have available diagnostic radiologic services defined for purposes of this subdivision as imaging services utilizing diagnostic radiation equipment or devices which emit radiation by virtue of the application of high voltage. If therapeutic services are provided, they shall meet the requirements established in subdivision (b) of this section in addition to the requirements of this subdivision. In addition, the hospital shall meet the standards of Part 16 of the State Sanitary Code.

(1) The hospital shall maintain or have available radiologic services according to the needs of the patients as determined by the governing body in consultation with the medical staff and the administration.

(2) Radiologic services shall be provided in accordance with generally accepted standards of practice only on the order of physicians or, consistent with State law, of those other practitioners authorized by the medical staff and governing body to order such services. A practitioner's order for an imaging study shall be specific as to the body part(s) to be imaged.

(3) Safety for patients and personnel. [The radiologic services shall be free from hazards for patients and personnel.] Written policies and procedures shall be developed and implemented and available for review [inspection.] The policies and procedures regarding imaging studies for newborns and pediatric patients shall include standards for clinical appropriateness, appropriate radiation dosage and beam collimation, image quality and patient shielding. A policy and a procedure shall be developed to ensure that the practitioner's order for an imaging study is specific as to the body part(s) that are to be imaged.

Quality improvement audits shall verify that these policies and procedures are being followed. Quality improvement activities shall include a review of the adequacy of diagnostic images and interpretations.

(i) Proper safety precautions shall be maintained against fire and explosion hazards, electrical hazards and radiation hazards. This includes adequate shielding for patients and personnel, as well as appropriate storage, use and disposal of radioactive materials.

(ii) Any existing or potential hazards identified through periodic inspection by local or State health authorities shall be corrected promptly.

(iii) Personnel shall be instructed in radiation safety principles[;] and [radiation monitoring] practices. The radiation safety principles shall be adequate to ensure compliance with all [regulatory requirements] generally accepted standards of practice as well as pertinent laws, rules and regulations. Policies and procedures shall be developed to minimize the radiation exposure that is necessary to produce high quality imaging studies on patients of all ages.

(iv) Radiologic procedures requiring the use of contrast media or fluoroscopic interpretation and control shall be performed with the active participation of a qualified specialist in diagnostic radiology or a physician qualified in a medical specialty related to the radiographic procedure. Emergency equipment and staff trained in its use shall be available for anaphylactic shock reactions from contrast media.

(4) Personnel. The hospital shall provide qualified personnel adequate to supervise and conduct the services. For radiologic tests, the following personnel standards shall apply for the purposes of this subdivision:

(i) a full-time or part-time radiologist who is a board certified or board admissible in radiology shall direct the clinical aspects of the organization and delivery of radiologic

services. That radiologist or another individual qualified by education and experience shall direct the administrative aspects of the services;

(ii) radiologic tests shall be interpreted by a board certified or board admissible radiologist, except that radiologic tests may be interpreted by practitioners within their field of specialization who are granted privileges to interpret such test by the governing body and the medical staff in consultation with the director of radiologic services pursuant to the credentialing process in the hospital;

(iii) the services of qualified radiologists, qualified practitioners, and licensed radiologic technologists shall be sufficient and available to meet the needs of the patients. A licensed technologist shall be on duty or available at all times and function in accordance with Article 35 of the Public Health Law and Part 89 of this Title.

(iv) Use of the radiologic equipment and administration of radiologic procedures shall be limited to personnel who are currently licensed and designated as qualified by the hospital in accordance with any applicable licenses and regulations.

(v) The chief of radiology, in conjunction with the radiation safety officer, shall ensure that all practitioners who utilize ionizing radiation equipment within the hospital are properly trained in radiation safety procedures for patients of all ages.

(5) Records. Records of radiologic services including interpretations, consultations and

therapy shall be filed with the patient's record, and duplicate copies shall be kept in the radiology department/service. All films, scans and other image records shall be referenced in the patient's medical record and retained in the patient's medical record, radiology department/service or in another central location accessible to appropriate staff. All electronic images shall have a duplicate storage either offsite or in another area of the hospital separate from the primary storage devices.

(i) Requests by the attending practitioner for x-ray examination shall contain a concise statement of reasons for the examination which shall be authenticated by the requestor.

(ii) The radiologist or other practitioner who performs radiology services shall authenticate reports of his or her interpretations.

(iii) The hospital shall retain films, scans and other image records which have not been incorporated in the medical record for at least six years or three years after a minor patient reaches the age of majority.

(b) *Therapeutic radiology or radiation oncology*. Therapeutic radiology or radiation oncology services shall be provided in accordance with the following:

(1) no [facility] hospital providing the service shall refuse treatment of a patient on the basis of the referring practitioner or practitioner's hospital affiliation, if [any]known;

(2) institutions shall provide services for patients who cannot attend treatment sessions during normal day shift working hours;

(3) therapeutic radiology or radiation oncology services shall utilize [four] six or more megavoltage (MEV) [or cobalt teletherapy] units with a source-axis distance of [80] 100 or more centimeters [and rotational capabilities] as the primary unit in a multi-unit [radiotherapy service or as the sole unit in a smaller radiotherapy unit;] radiation oncology service.

(4) a therapeutic radiology service shall be headed by a board admissible or board certified radiation [therapist] oncologist or a general radiologist who devotes at least 80 percent of his/her time to the practice of therapeutic radiology and who treats not fewer than 175 patients per year;

(5) a therapeutic radiology service shall have on staff:

(i) [one full-time New York State licensed radiation therapy technologist for every MEV unit; and] a full time New York State licensed radiation therapists sufficient to meet the needs of the service; and

(ii) a full-time registered professional nurse with appropriate education and experience;

(6) a [facility] hospital with a therapeutic radiology service shall have on staff or through

formal arrangements:

(i) a board admissible or board certified medical oncologist, hematologist or other specialist who devotes at least 80 percent of his/her practice to medical oncology and who treats not fewer than 175 oncology patients per year; and

(ii) A New York State licensed radiation therapy [a radiological] physicist who will be involved in treatment, planning and dosimetry as well as calibrating the equipment. The hospital shall provide for the services of a licensed radiation therapy physicist(s) in sufficient quantity to adequately meet the needs of its patients of all ages. [and who holds a degree in physics and who is either certified or admissible for certification by the American Board of Radiology or the American Board of Health Physicists; or]

(iii) A physicist in training must be supervised by a licensed radiation therapy physicist.

[(a) a person holding a degree in physics and having full-time radiation therapy experience; or]

[(b) a physicist in training or a dosimetrist supervised by a part-time radiological physicist;]

(7) the therapeutic radiology service shall be part of a multidisciplinary approach to the management of cancer patients, involving a variety of specialists in a joint treatment

program, either through formal arrangement or in the hospital;

(8) each patient shall have a treatment plan in his/her medical records;

(9) each therapeutic radiology service shall have access, either through formal arrangements or in the hospital, to a full range of diagnostic services, including [ultrasound,] hematology, pathology, [CT scanners, nuclear medicine and diagnostic radiology] and medical imaging procedures;

(10) each hospital providing therapeutic radiology services shall have access to the full range of rehabilitation therapies, including but not limited to physical therapy, occupational therapy, vocational training, and psychological counseling services for its radiotherapeutic patients;

(11) a radiation therapy program operating [an MEV unit] a linear accelerator with photon or electron beam energies greater than 10 MEV's must be a part of a comprehensive program of cancer care which includes surgical oncology, medical oncology, pathology and diagnostic radiology, medical imaging and nuclear medicine. In addition such program shall meet the following standards:

(i) there shall be two full-time equivalent radiation oncologists on staff who are board-certified in radiation oncology or have equivalent training and experience and whose professional practices are limited to radiation oncology;

(ii) there shall be a full-time medical radiation physicist assigned to the radiation therapy program for the treatment planning of patients; and

(iii) [there shall be a simulator available within the radiation therapy program used for producing precise mock-ups of geometric relationships of treatment equipment to a patient and yielding high quality diagnostic radiographs of the treatment portals.] a CT scanner shall be available within the radiation therapy program that is equipped for radiation oncology treatment planning or arrangements shall be made for access to a CT scanner on an as needed basis.

Provisions shall be made for access to an MRI scanner for treatment planning purposes on an as needed basis.

(c) *Nuclear medicine services*. If the hospital provides nuclear medicine services, those services shall meet the needs of the patients in accordance with generally acceptable standards of practice. Nuclear medicine services shall be ordered only by a physician whose Federal or State licensure and staff privileges allow such referrals.

(1) Organization and staffing. The organization of the nuclear medicine service shall be appropriate to the scope and complexity of the services offered.

(i) The clinical aspect of the organization and delivery of nuclear medicine services shall be directed by a physician who is qualified in nuclear medicine and named in the hospital's New York State Health Department or New York City Health Department radioactive materials license as authorized to use radioactive materials in humans. The administrative aspects of these services shall be directed by that physician or another individual qualified for such duties by education and experience.

(ii) The qualifications, training, functions, and responsibilities of all nuclear medicine personnel shall be specified by the clinical service director in accordance with applicable regulations and approved by the medical staff and the hospital.

(2) Delivery of service. Radioactive materials shall be prepared, labeled, used, transported, stored, and disposed of in accordance with generally acceptable standards of practice and pertinent laws, rules and regulations.

(i) In-house preparation of radiopharmaceuticals shall be by, or under the direct supervision of, an appropriately trained registered pharmacist or a physician whose use of radioactive materials is authorized in the hospital's New York State Health Department or New York City Health Department radioactive materials license.

(ii) If clinical laboratory tests are performed in the nuclear medicine service, the service shall meet the requirement for clinical laboratories with respect to

management, adequacy of facilities, proficiency testing and quality control in accordance with the requirements of section 405.16 of this Part.

(3) Facilities. The hospital shall provide equipment and supplies which are appropriate for the types of nuclear medicine services offered and shall maintain such for safe and effective performance. The equipment shall be:

(i) maintained in safe operating condition; and

(ii) inspected, tested, and calibrated at least annually by qualified personnel and at the intervals specified in the hospital's quality assurance program.

(4) Records. The hospital shall maintain authenticated and dated reports of nuclear medicine interpretations, consultations and procedures.

(i) The hospital shall maintain copies of nuclear medicine reports which have not been incorporated into the patient's medical record for at least six years or three years after the patient reaches the age of majority.

(ii) Interpretation of the results of nuclear medicine procedures shall be made by a physician authorized in the hospital's New York State Health Department or New York City Health Department radioactive materials license, or a physician under his/her tutelage. Interpretations may be made in consultation with the referring

practitioner or other practitioners. The authorized physician, or physicians in tutelage, shall authenticate and date the interpretations of these tests.

Section 405.17 is amended to read as follows:

405.17 Pharmaceutical services.

The hospital shall provide pharmaceutical services that are available at all times on the premises to meet the needs of patients. The hospital shall have a pharmacy that is registered and operated in accordance with article 137 of the New York State Education Law and is directed by a registered pharmacist trained in the specialized functions of hospital pharmacy.

(a) *Organization and direction.* The pharmacy shall be responsible, in conjunction with the medical staff, for ensuring the health and safety of patients through the organization, management and operation of the service in accordance with <u>generally</u> accepted professional principles and the proper selection, storage, preparation, distribution, use, control, disposal and accountability of drugs and pharmaceuticals.
(1) The director shall be employed on a full-time or part-time basis based on the needs of the hospital.
(2) The director, in conjunction with designated members of the medical staff, shall ensure that:

(i) for patients of all ages weight shall be measured in metric units. [information] Up-to-date drug information reference systems relating to drug interactions, drug therapies, side effects, toxicology, dosage, indications for use, and routes of administration [is] are available to the professional staff. Pediatric dosing resources shall include age and size appropriate fluid and medication administration and dosing. Pediatric dosing must be weight based, should include the calculated dose, the dosing determination, such as the dose per weight (e.g., milligrams per kilogram) or body surface area, to facilitate an independent double-check of the calculation, and should not exceed adult maximum dosage, or in emergencies, length based,

(ii) a formulary is established and reviewed at least annually and updated as necessary to meet the needs of the patients for use in the hospital to assure quality pharmaceuticals at reasonable costs;

(iii) standards are established concerning the use and control of investigational drugs and research in the use of recognized drugs;

(iv) clinical data are evaluated concerning new drugs or preparations requested for use in the hospital; and

(v) the list of floor stock medication is reviewed and recommendations are made concerning drugs to be stocked on the nursing unit floors and by other services.

* * *

(9) The director will ensure that there is a quality assurance program to monitor personnel qualifications, training performance, equipment and facilities.

(i) The director shall require and document the participation of pharmacy personnel in relevant education programs, including orientation of new employees as well as inservice and outside continuing education programs.

(ii) The quality assurance program shall include policies, [and] procedures and monitoring and improvement activities to identify, measure, prevent, [to] minimize and/or mitigate adverse drug [errors] events, adverse drug reactions and medication errors in accordance with generally accepted standards and practices in the field of medication safety and quality improvement.

(iii) The director in conjunction with the medical and nursing staff shall ensure the monitoring and evaluation of the quality and appropriateness of patient services provided by the pharmaceutical service.

(10) The director shall participate in those aspects of the hospital's overall quality assurance program that relate to drug utilization and effectiveness.

(b) Operation and service delivery. All drugs and biologicals shall be controlled and distributed in accordance with written policies and procedures to maximize patient safety and quality of care.

(1) The compounding, preparation, labeling or dispensing of drugs shall be performed by a licensed pharmacist or pharmacy intern in accordance with applicable State and Federal laws, rules and regulations.

* * *

Section 405.19 is amended to read as follows:

405.19 Emergency services.

(a) *General.* (1) Emergency services shall be provided in accordance with this subdivision or subdivisions (b) through (e) of this section as appropriate.

(2) If emergency services are not provided as an organized service of the hospital, the governing body and the medical staff shall assure:

(i) prompt physician evaluation of patients presenting with emergencies;

(ii) initial treatment and stabilization or management; and

(iii) transfer, where indicated, of patients to an appropriate receiving hospital. The hospital shall have a written agreement with local emergency medical services (EMS) to accommodate the need for timely inter-hospital transfer on a 24 hours a day, 7 days a week, 365 days a year basis.

(b) *Organization.* (1) The medical staff shall develop and implement written policies and procedures approved by the governing body that shall specify:

(i) the responsibility of the emergency services to evaluate, initially manage and treat, or admit or recommend admission, or transfer patients to another facility that can provide definitive treatment. Such policies and procedures shall include a written agreement with one or more local emergency medical services (EMS) to accommodate the need for timely inter-facility transport on a 24 hours a day, 7 days a week, 365 days a year basis;

(ii) the organizational structure of the emergency service, including the specification of authority and accountability for services; and

(iii) explicit prohibition on transfer of patients based on their ability or inability to pay for services.

(2) <u>At least one clinician on every shift must have the skills to assess and manage a critically ill or injured pediatric patient and be able to resuscitate an infant or a child.</u> The emergency service shall be directed by a licensed and currently registered physician who is board-certified or board-admissible for a period not to exceed five years after the physician first attained board admissibility in emergency medicine, surgery, internal medicine, pediatrics or family practice, and who is currently certified in advanced trauma life support (ATLS), or has <u>current</u> training and experience equivalent to ATLS. Such

physician shall also have successfully completed a current course in advanced cardiac life support (ACLS) and pediatric advanced life support (PALS) or have had current training and experience equivalent to ACLS and PALS. A licensed and currently registered physician who is board-certified or board-admissible in psychiatry for a period not to exceed five years after the physician first attained board-admissibility, in psychiatry may serve as psychiatrist director of a separately operated psychiatric emergency service. Directors of separately operated psychiatric emergency services need not be qualified to perform [ACLS and] ATLS, ACLS and PALS or have current training and experience equivalent to ATLS, ACLS and PALS.

(3) An emergency service shall have laboratory and X-ray capability, including both fixed and mobile equipment, available 24 hours a day, seven days a week, to provide test results to the service within a time considered reasonable by accepted emergency medical standards.

(c) *General policies and procedures.* (1) The location and telephone number of the State Department of Health designated poison control center, shall be maintained at the telephone switchboard and in the emergency service.

(2) All cases of suspected child abuse or neglect shall be treated and reported immediately to the New York State Central Register of Child Abuse and Maltreatment pursuant to procedures set forth in article 6, title 6 of the Social Services Law.

(3) Domestic violence. The emergency service shall develop and implement policies and

procedures which provide for the management of cases of suspected or confirmed domestic violence victims in accordance with the requirements of section 405.9(e) of this Part.

(4) The emergency service shall establish and implement written policies and procedures for the maintenance of sexual offense evidence as part of the hospital-wide provisions required by this Part. An organized protocol for survivors of sexual offenses, including medical and psychological care shall be incorporated into such policies and procedures. These policies, procedures and protocols shall be consistent with the standards for patient care and evidence collection established in section 405.9(c) of this Part.

(5) The emergency service, in conjunction with the discharge planning program of the hospital, shall [establish and implement] develop and implement written policies and procedures, including written patient criteria and guidelines, for transfer of those patients for whom the hospital does not have the capability to care. Such policies and procedures shall [specifying]specify the circumstances, the actions to be taken, and the appropriate contact agencies and individuals to accomplish adequate discharge planning for persons in need of post emergency treatment or services, but not in need of inpatient hospital care.

(6) An admission and discharge register shall be current and shall include at least the following information for every individual seeking care:

(i) date, name, age, gender, ZIP code;

(ii) expected source of payment;

(iii) time and means of arrival, including name of ambulance service for patients arriving by ambulance;

(iv) complaint and disposition of the case; and

(v) time and means of departure, including name of ambulance service for patients transferred by ambulance.

(7) There shall be a medical record that meets the medical record requirements of this Part for every patient seen in the emergency service. Medical records shall be integrated or cross-referenced with the inpatient and outpatient medical records system to assure the timely availability of previous patient care information and shall contain the prehospital care report or equivalent report for patients who arrive by ambulance. On arrival to emergency services, a patient shall be asked for the name of his or her primary care provider, if known, which shall be documented in the patient's medical record.

(8) The hospital shall develop and implement written policies and procedures pertaining to the review and communication of laboratory and diagnostic test/service results ordered for a patient while admitted or receiving emergency services to the patient. If the patient

lacks medical decision-making capacity, the communication shall be to the patient's medical decision-maker, if known. The results shall also be provided to the patient's primary care provider, if known. Such policies and procedures shall be reviewed and updated as necessary and at a minimum shall include:

(i) a requirement that all laboratory and other diagnostic tests/service results be reviewed upon completion by a physician, physician assistant or nurse practitioner familiar with the patient's presenting condition;

(ii) a requirement that all laboratory and other diagnostic test services results be forwarded to the patient's primary provider, if known, after review by a physician, physician assistant or nurse practitioner;

(iii) provisions to include in the discharge plan information regarding the patient's completed and pending laboratory and other diagnostic test/service results, medications, diagnoses, and follow-up care and to review such information with the patient or, if the patient is not legally capable of making decisions, the patient's parent, legal guardian or health care agent, or surrogate, as appropriate, subject to all applicable confidentiality laws and regulations;

(iv) a requirement that patients may not be discharged from the hospital or the emergency room until any tests that could reasonably be expected to yield "critical value" results – results that suggest a life-threatening or

otherwise significant condition such that it requires immediate medical attention– are reviewed by a physician, physician assistant (PA) and/or nurse practitioner (NP) and are communicated to the patient, his or her parents or other decision makers, as appropriate.

(v) a requirement that all information be presented to the patient or if the patient is not legally capable of making decisions, the patient's parent, legal guardian or health care agent, or surrogate, as appropriate, subject to all applicable confidentiality laws and regulations, in a manner that reasonably assures that the patient, their parents or other medical decision makers understand the health information provided in order to make appropriate health decisions.

[(8)](9) Review of the hospital emergency service shall be conducted at least four times a year as part of the hospital's overall quality assurance program. Receiving hospitals shall report to sending hospitals and emergency medical systems, as appropriate, all patients that die unexpectedly within 24 hours upon arrival at the receiving hospitals. These patient mortalities shall be included in both hospitals' quality assurance review.

(d) *Staffing*. The following requirements are applicable to all organized emergency services:

(1) Emergency service physician services shall meet the following requirements:

(i) The emergency services attending physician shall meet the minimum qualifications set forth in either clauses (a) or (b) of this subparagraph.

(a) The emergency services attending physician shall be a licensed and currently registered physician who is board-certified in emergency medicine, surgery, internal medicine, pediatrics or family practice and who is currently certified in advanced trauma life support (ATLS) or has current training and experience equivalent to ATLS. Such physician shall also have successfully completed a course and be current in advanced cardiac life support (ACLS) and pediatric advanced life support (PALS) or have had current training and experience equivalent to ACLS and PALS. A licensed and currently registered physician who is board-certified in psychiatry may serve as psychiatrist attending in a separately operated psychiatric emergency service. A licensed and currently registered physician who is board-admissible in one of these specialty areas and is currently certified in ATLS or who has current training and experience equivalent to ATLS and has successfully completed a course and is current in ACLS and PALS or has had current training and experience equivalent to ACLS and PALS, may be designated as attending physician for a period not to exceed five years after the physician has first attained board-admissibility. [except that the] The requirement to be qualified to perform ATLS, [and] ACLS and PALS shall not be applicable to qualified psychiatrist attendings in a separately operated psychiatric emergency service. Physicians who are board-certified or admissible, for a period not to exceed five years after the physician first attained board-admissibility, in other specialty areas may be designated as attending physicians for patients requiring their expertise.

(b) The emergency services attending physician shall be a physician who:

(1) is licensed and currently registered;

(2) has successfully completed one year of postgraduate training;

(3) has, within the past five years, accumulated 7,000 documented patient contact hours or hours of teaching medical students, physicians in-training, or physicians in emergency medicine. Up to 3,500 hours of documented experience in hospital-based settings or other settings in the specialties of internal medicine, family practice, surgery or pediatrics may be substituted for the required hours of emergency medicine experience on an hour-for-hour basis;

(4) has acquired in each of the last three years, an average of 50 hours or more per year of continuing medical education pertinent to emergency medicine or to the specialties of practice which contributed to meeting the 7,000 hours requirement specified in subclause (3) of this clause;

(5) is currently certified in ATLS or has current training and experience equivalent to ATLS; and

(6) has successfully completed a course and is current in advanced cardiac life support

(ACLS) and pediatric advanced life support (PALS) or has had current training and experience equivalent to ACLS and PALS.

(ii) There shall be at least one emergency service attending physician on duty 24 hours a day, seven days a week. For hospitals that exceed 15,000 unscheduled visits annually, the attending physician shall be present and available to provide patient care and supervision in the emergency service. As necessitated by patient care needs, additional attending physicians shall be present and available to provide patient care and supervision. Appropriate subspecialty availability as demanded by the case mix shall be provided promptly in accordance with patient needs. For hospitals with less than 15,000 unscheduled emergency visits per year, the supervising or an attending physician need not be present but shall be available within 30 minutes of patient presentation, provided that at least one physician, nurse practitioner, or [registered] licensed physician assistant shall be on duty in the emergency service 24 hours a day, seven days a week. The hospital shall develop and implement protocols specifying when physicians must be present.

(iii) Other medical staff practitioner services provided in the emergency service shall be in accordance with the privileges granted the individual.

(iv) Every medical-surgical specialty on the hospital's medical staff which is organized as a department or clinical service and where practitioner staffing is sufficient, shall have a

schedule to provide coverage to the emergency service by attending physicians in a timely manner, 24 hours a day, seven days a week, in accordance with patient needs.

(2) Nursing services:

(i) There shall be at least one supervising emergency services registered professional nurse present and available to provide patient care services in the emergency service 24 hours a day, seven days a week.

(ii) Emergency services supervising nurses shall be licensed and currently registered and possess current, comprehensive knowledge and skills in emergency health care. They shall have at least one year of clinical experience, be able to demonstrate skills and knowledge necessary to perform basic life support measures, [have successfully completed a course] and be current in ACLS and PALS or have [had] current training and experience equivalent to ACLS and PALS;

(iii) Registered professional nurses in the emergency service shall be licensed and currently registered professional nurses who possess current, comprehensive knowledge and skills in emergency health care. They shall have at least one year of clinical experience, have successfully completed an emergency nursing orientation program and be able to demonstrate skills and knowledge necessary to perform basic life support measures. Within one year of assignment to the emergency service, each emergency service nurse shall [have successfully completed a course] be current in ACLS and PALS

or have [had] current training and experience equivalent to ACLS and PALS [and shall maintain current competence in ACLS as determined by the hospital].

(iv) Additional registered professional nurses and nursing staff shall be assigned to the emergency service in accordance with patient needs. If, on average:

(a) the volume of patients per eight-hour shift is under 25, an additional registered professional nurse shall be available as needed to assist the supervising registered professional nurse with delivery of direct patient care; or

(b) the volume of patients per eight-hour shift is over 25, there shall be a minimum of two registered professional nurses per shift assigned to provide direct patient care. As patient volume and intensity increases, the total number of available registered professional nurses shall also be increased to meet patient care needs;

(3) [registered] licensed [physician's] physician assistants and nurse practitioners.

(i) Patient care services provided by [registered] licensed [physician's] physician assistants shall be in accordance with section 405.4 of this Part.

(ii) Patient care services provided by certified nurse practitioners shall be in collaboration with a licensed physician whose professional privileges include approval to work in the emergency service and in accordance with written practice protocols for these services.

(iii) the [registered] licensed physician assistants and the nurse practitioners shall meet the following standards:

(a) the [registered] licensed physician assistants and the nurse practitioners in the emergency service shall [have successfully completed a course] be current in ACLS and PALS or have had current training and experience equivalent to ACLS and PALS when determined necessary by the hospital to meet anticipated patient needs or when a physician assistant or nurse practitioner is serving as the sole practitioner on duty in a hospital with less than 15,000 unscheduled emergency visits per year;

(b) [registered] licensed physician assistants and nurse practitioners in the emergency service shall be current in ATLS or have had current training and experience equivalent to ATLS when determined necessary by the hospital to meet anticipated patient needs or when a physician assistant or nurse practitioner is serving as the sole practitioner on duty in a hospital with less than 15,000 unscheduled emergency visits per year.

(4) Support personnel. There shall be sufficient support personnel assigned to the emergency service to perform the following duties on a timely basis: patient registration, reception, messenger service, acquisition of supplies, equipment, delivery and label[l]ing of laboratory specimens, responsible for the timely retrieval of laboratory reports, obtaining records, patient transport and other services as required.

(e) Patient care. (1) The hospital shall assure that all persons [arriving at the] presenting for emergency services [for treatment] receive emergency health care that meets generally accepted standards of practice [medical care].

(2) Every person [arriving at the] presenting for emergency services [for care] shall be promptly examined, diagnosed and appropriately treated in accordance with triage and transfer policies, procedures and protocols adopted by the emergency service and approved by the [hospital] governing body. Such policies, procedures and protocols must include written agreements with local emergency medical services (EMS) in accordance with subparagraph (b)(1)(i) of this section. All patient care services shall be provided under the direction and control of the emergency services director or attending physician. In no event shall a patient be discharged or transferred to another [facility] hospital, unless evaluated, initially managed, and treated as necessary by an appropriately privileged physician, physician assistant, or nurse practitioner. No later than eight hours after presenting in the emergency service, every person shall be admitted to the hospital, or assigned to an observation unit in accordance with subdivision (g) of this section, or transferred to another hospital in accordance with paragraph (6) of this subdivision, or discharged to self-care or the care of a physician or other appropriate follow-up service. Hospitals which elect to use physician assistants or nurse practitioners shall develop and implement written policies, procedures and treatment protocols subject to approval by the governing body that specify patient conditions that may be treated by a [registered] licensed physician assistant or nurse practitioner without direct visual supervision of the emergency services attending physician.

(3) Hospitals that have limited capability for receiving and treating patients in need of specialized emergency care shall develop and implement standard descriptions of such patients, and have triage and treatment protocols including consultation and formal written transfer agreements with hospitals that are designated as being able to receive and provide definitive care for such patients. Patients in need of specialized emergency care shall include, but not be limited to:

(i) trauma patients and multiple injury patients;

(ii) burn patients with burns ranging from moderate uncomplicated to major burns as determined by use of generally acceptable methods for estimating total body surface area:

(iii) high risk maternity patients or neonates or pediatric patients in need of [intensive]higher level care

(iv) head injured or spinal cord injured patients;

(v) acute psychiatric patients;

(vi) replantation patients;

(vii) dialysis patients; and

(viii) acute myocardial infarction patients including but not limited to patients with ST elevation.

(4) Hospitals shall verbally request ambulance dispatcher services to divert patients with life threatening conditions to other hospitals only when the chief executive officer or

designee appointed in writing, determines that acceptance of an additional critical patient would endanger the life of that patient or another patient. Request for diversion shall be documented in writing and, if warranted, renewed at the beginning of each shift.

(5) Reserved.

(6) Patients shall be transferred to another hospital only when:

(i) the patient's condition is stable or being managed;

(ii) the attending practitioner has authorized the transfer; and

(iii) administration of the receiving hospital is informed and can provide the necessary resources to care for the patient; or

(iv) when pursuant to paragraph (2) of this subdivision, the patient is in need of specialized emergency care at a hospital designated to receive and provide definitive care for such patients.

(7) Hospitals located within a city with a population of one million or more persons shall apply, and if accepted, participate to the full extent of their capability in the emergency medical service which is operated by such city or such city's health and hospitals corporation.

(f) Quality assurance. (1) Quality assurance activities of the emergency service shall be integrated with the hospital-wide quality assurance program and shall include review of: (i) arrangements for medical control and direction of pre-hospital emergency medical services;

(ii) provisions for triage of persons in need of specialized emergency care to hospitals designated as capable of treating those patients;

(iii) emergency care provided to hospital patients, to be conducted at least four times a year, and to include pre-hospital care providers, emergency services personnel and emergency service physicians; and

(iv) adequacy of staff training and continuing education to meet the needs of patients of all ages presenting for emergency services.

* * *

Section 405.20 is amended to read as follows:

405.20 Outpatient services.

Outpatient services, including ambulatory care services and extension clinics, shall be provided in a manner which safely and effectively meets the needs of the patients.

(a) *General requirements*. As a minimum when provided, outpatient services shall comply with the rules and regulations set forth in this Part as well as the outpatient care provisions of Part 751, sections 752.1 and 753.1 and Parts 756, 757 and 758 of Subchapter C of this Title.

* * *

(d) *Hospital-based ambulatory service.* In a hospital maintaining an on-site hospital-based ambulatory surgery service, the following requirements supplement existing applicable requirements of sections 405.12 (Surgical services) and 405.13 (Anesthesia services) of this Part. Hospital-based ambulatory surgery services shall mean a service organized to provide surgical procedures which shall be performed for reasons of safety in an operating room on anesthetized patients requiring a stay of less than 24 hours duration. These procedures do not include outpatient surgical procedures which can be performed safely in a private physician's office or in an outpatient treatment room.

(1) The hospital-based ambulatory surgery service shall be directed by a physician found qualified by the governing body to perform such duties.

(2) The governing body and the medical staff shall develop, maintain and periodically review a list of surgical procedures which may be performed in the service. The medical staff shall assure that procedures performed in the service conform with generally accepted standards of professional practice, in accordance with the competencies of the medical and professional staff that have privileges in the hospital-based ambulatory surgery service, and are appropriate in the facilities and consistent with the equipment [available] necessary to meet the needs of all patients. The medical staff shall, based upon

its review of individual medical staff qualifications, recommend to the governing body specific surgical procedures which each practitioner is qualified to perform in the hospital-based ambulatory surgery service.

(3) Hospital-based ambulatory surgery services may be located at the same site as the hospital (on-site) or apart from the hospital (off-site), pursuant to section 709.5 of this Title.

(i) Recovery rooms adequate for the needs of hospital-based ambulatory surgery patients, conveniently located to the operating room, shall be provided.

(ii) Waiting rooms adequate for the needs of patients and responsible persons accompanying patients shall be provided.

(4) Prior to surgery, each patient shall have a timely history and physical examination, appropriate to the patient's physical condition and the surgical procedure to be performed, which shall be recorded in the patient medical record.

(5) Each postsurgery patient shall be observed for postoperative complications for an adequate time period as determined by the attending practitioner and the anesthesiologist. The service shall have written policies for hospital admission of patients whose post-operative status prevents discharge and necessitates inpatient admission <u>to a hospital capable of providing the appropriate level of care.</u>

(6) Detailed verbal instructions understandable to the patient, or the patient's parent, legal guardian, or health care agent, confirmed by written instructions, and approved by the medical staff of the hospital-based ambulatory surgery service shall be provided to each patient, or the patient's parent, legal guardian, or health care agent, at discharge, to include at least the following:

(i) information about complications that may arise;

(ii) telephone number(s) to be used by the patient should complications or questions arise;

(iii) directions for medications prescribed, if any;

(iv) date, time and location of follow-up visit or return visit; and

(v) designated place to go for treatment in the event of emergency.

(7) The hospital-based ambulatory surgery service staff shall develop written policies, approved by the medical staff, for documentation of the patient's postoperative course of treatment. The policies must be reviewed and adopted by the governing [board] body of the hospital prior to implementation. The policies must provide a mechanism to assure

that complications of surgery or anesthesia, which occur before and after discharge, are identified and documented in the patient's medical record.

(8) The hospital-based ambulatory surgery service shall have an organized system of quality assurance approved by the medical staff and the governing body which undertakes investigations into operative results of surgical procedures performed on the service and maintains statistics on operative failures and complications.

(9) Notwithstanding anything herein to the contrary, an off-site hospital-based ambulatory surgery service shall be operated in accordance with the provisions of Part 755 of this Title.

Section 405.22 is amended to read as follows:

405.22 Critical care and special care services.

(a) General provisions.

* * *

(b) Pediatric Intensive Care Unit (PICU) Services.

(1) Definitions.

(1) *PICU.* A PICU is a physically separate unit that provides intensive care to pediatric patients (infants, children and adolescents) who are critically ill or

injured. A PICU must be staffed by qualified practitioners competent to care for critically ill or injured pediatric patients.

(2) *Qualified practitioner*. Qualified practitioner as referred to in this section shall mean a practitioner functioning within his or her scope of practice according to State Education Law who meets the hospital's criteria for competence, credentialing and privileging practitioners in the management of critically ill or injured pediatric patients.

(2) General. (i) A PICU must be approved by the Department. The governing body of a hospital that provides PICU services must develop written policies and procedures for operation of the PICU in accordance with generally accepted standards of medical care for critically ill or injured pediatric patients. The PICU shall:

(a) Provide multidisciplinary definitive care for a wide range of complex, progressive, and rapidly changing medical, surgical, and traumatic disorders occurring in pediatric patients;

(b) Have a minimum average annual pediatric patient number of 200/year;

(c) Have age and size appropriate equipment available in the unit; and

(d) Provide medical oversight for interhospital transfers of critically ill or injured patients during transfer to the receiving PICU.

(ii) Organization and Direction. The PICU shall be directed by a board certified pediatric medical, surgical, or anesthesiology critical care/intensivist physician who shall be responsible for the organization and delivery of PICU care and has specialized training and demonstrated competence in pediatric critical care. Such physician in conjunction with the nursing leadership responsible for the PICU shall participate in administrative aspects of the PICU. Such responsibilities shall include development and annual review of PICU policies and procedures, oversight of patient care, quality improvement activities, and staff training and development.

(a) All hospitals with PICUs must have a physician, notwithstanding emergency department staffing, in-house 24 hours per day who is available to provide bedside care to patients in the PICU. Such physician shall be at least a post graduate year three in pediatrics or anesthesiology. This physician must be skilled in and be credentialed by the hospital to provide emergency care to critically ill or injured children.

(b) The PICU shall have, at a minimum, a physician at the level of post graduate year two or above and/or physician assistant and/or nurse practitioner with specialized training in pediatric critical/intensive care assigned to the unit 24

hours/day, 7 days/week with an attending pediatric, medical, surgical or anesthesiology critical care/intensivist available within 60 minutes.

(c) An attending pediatric medical, surgical, or anesthesiology critical care/intensivist physician shall be responsible for the oversight of patient care at all times.

(d) The PICU shall provide registered professional nursing staffing sufficient to meet critically ill or injured pediatric patient needs, ensure patient safety and provide quality care.

(e) PICU physician and nursing staff shall have successfully completed a course and be current in pediatric advanced life support (PALS) or have current equivalent training and/or experience to PALS.

(iii) Quality Performance. The hospital shall have an organized quality assessment performance improvement (QAPI) program for PICU services. Such program shall require participation by all clinical members of the PICU team and include: monitoring of volume and outcomes, morbidity and all case mortality review, regular multidisciplinary conferences including all health professionals involved in the care of PICU patients.

(iv) Closure. Failure to meet one or more regulatory requirements or inactivity in a program for a period of 12 months or more may result in actions, including, but not limited to, the Department's withdrawal of approval for the hospital to serve as a PICU.

(v) Voluntary closure. The hospital must give written notification, including a closure plan acceptable to the department, at least 90 days prior to planned discontinuance of PICU services. No PICU shall discontinue operation without first obtaining written approval from the department.

(vi) Notification of significant changes. A hospital must notify the department in writing within 7 days of any significant changes in its PICU services, including, but not limited to: (a) any temporary or permanent suspension of services or (b) difficulty meeting staffing or workload requirements.

(c) [(b)] Organ transplant center.

* * *

(d) [(c)] Burn unit/center.

* * *

(e) [(d)] Alternate level of care.

* * *

(f) [(e)]Acquired immune deficiency syndrome (AIDS) centers.

* * *

(g) [(f)] Comprehensive and extended screening and monitoring services for epilepsy.

* * *

(h) [(g)] Pediatric and maternal human immunodeficiency virus (HIV) services.

* * *

(i) [(h)] Secure units for tuberculosis patients including detainees.

* * *

(j) [(i)] Tuberculosis treatment center - for legally detained tuberculosis patients.

* * *

(k) [(j)] Live Adult Liver Transplantation Services.

* * *

Section 405.28 is amended to read as follows:

405.28 Social services.

The hospital shall provide appropriate supportive services to meet the psychosocial needs of its patients. The services shall be oriented to assist patients and their families with personal and environmental difficulties which predispose to illness or interfere with obtaining maximum benefits from hospital care.

(a) Each patient shall be screened prior to or upon admission to determine the need for social services. All patients and families identified through such screening, and all patients and families subsequently identified as needing social services by medical, nursing or other clinical staff, shall be provided with the support they require.

(b)[Social services shall be provided under the direction of a qualified medical social worker or other person with appropriate training and experience.]

Social services shall be provided under the direction of a qualified social worker who is licensed and registered by the New York State Education Department to practice as a licensed master social worker (LMSW) or licensed clinical social worker (LCSW), with the scope of practice defined in Article 154 of the Education Law.

* * *

REVISED REGULATORY IMPACT STATEMENT

Statutory Authority:

The authority for the promulgation of these regulations is contained in Public Health Law ("PHL") Sections 2800 and 2803 (2). PHL Article 28 (Hospitals), Section 2800 specifies 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 and related services . . . ."

PHL Section 2803(2) authorizes the Public Health and Health Planning Council ("PHHPC") to adopt and amend rules and regulations, subject to the approval of the Commissioner, 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 objective of PHL Article 28 includes the protection of the health of the residents of the State by assuring the efficient provision and proper utilization of health services, of the highest quality at a reasonable cost.

Needs and Benefits:

These amendments are promulgated to update various Part 405 pediatric and general hospital provisions including surgical, anesthesia, radiology and pharmacy and emergency services. Pediatrics is a unique, distinct part of medicine which is very different than adult medicine. Historically, children have often been seen as small adults. This has changed over time and it is now recognized that certain areas of pediatric care such as emergency, critical care and medication dosing require specialized knowledge, skills and equipment.

Part 405 of Title 10 NYCRR sets forth general hospital minimum standards. In 2010, the New York State Emergency Medical Services for Children ("EMS-C") Advisory Committee recommended and the Department determined that Part 405 needed to be updated to address the unique needs of children. A comprehensive approach was necessary to make sure that hospitals are admitting children for whom it has appropriate staff, resources and equipment and that policies and procedures are in place for

transferring those patients for whom the hospital does not have the capability to provide care, except under conditions of disasters and emergency surge situations. Many facilities that once had dedicated pediatric units have closed or reduced their units, resulting in a reduced focus on pediatric care. Currently, the pediatric provisions need strengthening as they do not specifically address minimum standards for pediatric critical or emergency care. Pediatric care has become much more sophisticated and requires highly trained staff with expertise in the particular requirements for caring for children. In addition, various Part 405 subdivisions have been updated for all patients including surgical, anesthesia, radiologic and nuclear medicine, pharmaceutical and emergency services to reflect current practice.

The Department, in conjunction with the EMS-C Advisory Committee, carefully reviewed Part 405 of Title 10 and proposes numerous updates and amendments. In particular, significant changes have been made to the Emergency, Radiology and Pharmacy provisions and new provisions are added regarding standards for Pediatric Intensive Care Units (PICUs). New provisions will require age appropriate equipment and supplies. The new provisions assure that personnel in the emergency department and pediatric intensive care unit have the skills to access and manage a critically ill or injured pediatric patient, including resuscitation. Changes in technology and equipment for diagnostic medical imaging and appropriate use of such equipment are addressed. Policies and procedures regarding imaging studies for newborns and pediatric patients are updated to include standards for clinical appropriateness, appropriate radiation dosage and beam collimation, image quality and patient shielding. Pharmacy and equipment

requirements for pediatric patients are revised to assure age and size appropriate dosing. The regulations clarify that pediatric dosing must be weight based and all patients must be weighed in kilograms. Current regulations require Advanced Cardiac Life Support ("ACLS") training or current training equivalent to ACLS for adults but do not require Pediatric Advanced Life Support ("PALS") or current training equivalent to PALS for appropriate staff that will be caring for children within the hospital. These regulations address this inequity. This regulatory proposal attempts to strengthen minimum standards for the care of children that are flexible enough to fit the large tertiary care facilities as well as rural and community hospitals. This measure also requires that if laboratory and other diagnostic tests/services are ordered for a patient while receiving emergency services, the hospital must develop and implement written policies and procedures pertaining to the review and communication of the laboratory and diagnostic test/service results to the patient, the patient's parent, legal guardian or health care agent, or surrogate, if known, and the patient's primary provider, if known.

These regulations, requiring hospitals provide patients and their parents or other medical decision makers with critical information about the patient's care and to provide and post a Parent's Bill of Rights, and another set of regulations requiring hospitals to adopt protocols to identify and treat sepsis, were inspired by the case of Rory Staunton, a 12-year old boy who died of sepsis in April of 2012. Both sets of regulations, together known as "Rory's Regulations," will help New York State set a "gold standard" for patient care.

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

Costs that may be incurred by the regulated parties could include PALS training, accommodations for parent(s) to stay with their child at all times, review and update of various policies and procedures, pharmacy requirements regarding weight based dosing and the requirement of a board certified pediatric medical, surgical, or anesthesiology critical care/intensivist physician who has demonstrated competence in pediatric critical care to direct PICU services. The cost of providing and posting the Parent's Bill of Rights should be minimal. Regulated parties must also ensure that their equipment is age and size appropriate.

PALS certification costs can range from $0-$300. Currently there are grant funded opportunities for PALS certification. Accommodations for parents may be able to be arranged with existing resources, but could also require additional furnishings. What accommodation costs would be incurred depends on the hospital involved. Review and update of the various policies and procedures and the pharmacy requirements could be accomplished with existing staff imposing little or no additional cost to the regulated parties. The "average" salary of a board certified medical, surgical, pediatric, or anesthesia intensivist to direct the PICU would be approximately $187,192. Hospitals will need to inventory their equipment and supplies to ensure that they are size and age appropriate and provide accordingly. Pediatric dosing resources must include age and

size appropriate fluid and medication administration dosing information if not already currently provided.

Cost to State and Local Government:

There is no anticipated fiscal impact to State or local government as a result of these regulations, except that hospitals operated by the State or local governments will incur minimal costs as discussed above.

Cost to the Department of Health:

There will be no additional costs to the Department associated with the implementation of this regulation. Existing staff will be utilized to conduct surveillance of the regulated parties and monitor compliance with these provisions.

Local Government Mandates:

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

Paperwork:

This measure will require facilities to develop various written policies and procedures with respect to: transfers of pediatric patients when unable to appropriately and safely care for them, enabling parents/guardians to stay with pediatric patients, assurance that staff privileges are commensurate with training and experience, assurance that various equipment is age and size appropriate, imaging studies and orders. In addition, monitoring and improvement activities to identify, measure, prevent or mitigate adverse drug events, and for a hospital that provides PICU services policies and procedures for the operation of the PICU in accordance with generally accepted standards of medical care for critically ill or injured pediatric patients.

For hospitals with less than 15,000 unscheduled emergency visits per year, the hospital must develop and implement protocols specifying when supervising or attending physicians must be present. (Such facilities must have at least one physician, nurse practitioner, or licensed physician assistant on duty in the emergency service 24 hours a day, seven days a week).

Duplication:

These regulations will not conflict with any state or federal rules.

Alternative Approaches:

There are no viable alternatives to this regulatory proposal. All general hospitals must be able to admit pediatric patients consistent with its ability to provide qualified staff, size and age appropriate equipment necessary for the unique needs of pediatric patients. If the hospital cannot meet these requirements, it will be required to develop criteria and policies and procedures for transfer of pediatric patients.

Consideration was made when developing the Pharmaceutical Services provisions in Section 405.17, that for pediatric patients only weight must be measured in kilograms. Upon further consideration it was determined that it was more appropriate to require that weight be measured in kilograms for patients of all ages.

When developing the Critical Care and Special Care Services for provisions for Pediatric Intensive Care Unit (PICU) services in Section 405.22 the Department initially considered a minimum bed standard of six beds. Upon further consideration it was determined that a minimum standard would not be a bed standard but instead require that a PICU must have a minimum average annual pediatric patient number of 200/per year.

Federal Requirements:

These regulations will not conflict with any state or federal rules.

Compliance Schedule:

These regulations will take effect upon publication of a Notice of Adoption in the New York State Register, but general hospitals will have 90 days from such date to comply with these provisions.

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REVISED REGULATORY FLEXIBILITY ANALYSIS

FOR SMALL BUSINESS AND LOCAL GOVERNMENTS

Effect of Rule:

These regulations will apply to the 228 general hospitals in New York State. A recent survey conducted by the Department determined that 32 hospitals in New York State currently have a pediatric intensive care unit ("PICU"). The proposed amendments will apply Statewide, including 18 general hospitals operated by local governments. These hospitals will not be affected in any way different from any other hospital. The operation of a PICU is not mandated by the State but is at the option of the hospital.

Compliance Requirements:

The literature supports the regulatory changes made to general hospital minimum standards with respect to pediatric care**.** These provisions specify that general hospitals in New York State must ensure that at least one clinician on every shift in the emergency department has the skills to assess and manage a critically ill or injured pediatric patient and be able to resuscitate a child. This standard is supported by the American Academy of Pediatrics *(see Pediatrics* 1995; 96:526). This measure also states that policies and procedures regarding imaging studies for newborns and pediatric patients must include standards for clinical appropriateness, appropriate radiation dosage and beam collimation, image quality and patient shielding. Medical imaging policies must provide age and

weight-appropriate dosing for children receiving studies involving ionizing radiation as supported by the American Academy of Pediatrics and the American College of Emergency Physicians (*Pediatrics* 2009; 124:1223). Pediatric pharmacy resources must include age and size appropriate fluid and medication administration and dosing. Dosing must be weight based and weight must be measured in kilograms as recommended by the American Academy of Pediatrics; (*Pediatrics* 2003;111:1120). Pediatric Advanced Life Support (PALS) or equivalent training will be required for appropriate staff that will be caring for children in the hospital, a practice supported by the American Academy of (*Pediatrics* 1995;96:526).

The PICU shall have a medical director who has received special training and has demonstrated competence in pediatric critical care as recommended by the American Academy of Pediatrics and Society of Critical Care Medicine (*Pediatrics* 2004; 114: 1114). PICU medical and nursing directors shall be responsible for promoting and verifying pediatric qualifications of staff, overseeing pediatric quality assurance and developing and reviewing PICU care policies consistent with recommendations of the American Academy of Pediatrics, Society of Critical Care Medicine, Pediatrics 2004; 114: 1114. PICUs must have a minimum average annual patient number of 200/year. This is consistent with the recommendation made in the American College of Surgeons' *Resources for Optimal Care of the Injured Patient, 2006.*

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 necessary.

Professional Services:

The majority of facilities have in-house staff that could make any required changes to the policies and procedures. Small facilities may contract with outside professional staff from the various disciplines to assist them.

Compliance Costs:

A hospital that wants to provide PICU services must have an intensivist who has received special training and has demonstrated competence in pediatric care to direct the PICU. Currently, the majority of PICUs in New York State already have an intensivist in their employ. According to Jobs-Salary.com, the average pediatric intensivist salary is $187,712, with a range from $100,651 to $280,000. PALS training ranges from $0-300.

Economic and Technological Feasibility:

This proposal is economically and technically feasible.

Minimizing Adverse Impact:

General hospitals will have 90 days from the effective date of these regulations to implement these provisions In addition, at present; grant funding is available for PALS certification.

Small Business and Local Government Participation:

This proposal has been discussed and reviewed by the EMS-C Advisory Committee, the Greater New York Hospital Association ("GNYHA"), the Healthcare Association of New York State ("HANYS"), the Iroquois Hospitals Association and the State Hospital Pharmacy Association.

RURAL AREA FLEXIBILITY ANALYSIS

Effect of Rule:

The provisions of these regulations will apply to general hospitals in New York State, including the 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 the admission of pediatric patients only if qualified staff and appropriate equipment are available. Further, compliance will require the adoption and implementation of policies and procedures tailored to the pediatric patient related to surgery, anesthesia, respiratory care, radiologic and nuclear medicine, pharmacy, emergency medicine, etc. ensuring the pediatric patient is appropriately cared for by skilled staff with the appropriate equipment in the appropriate location.

Professional Services:

Professional services for hospitals in rural areas are not expected to be impacted as a result of these regulations differently than other hospitals.

Compliance Costs:

Costs for general hospitals in rural areas will be the same as for general hospitals in nonrural areas. Cost that may be incurred by the regulated parties could include PALS training, accommodations for parent(s) to stay with their child at all times, review and update of various policies and procedures, pharmacy requirements regarding weight based dosing and the requirement of a board certified pediatric medical, surgical, or anesthesiology critical care/intensivist physician who has demonstrated competence in pediatric critical care to direct PICU services. Regulated parties must also ensure that their equipment is age and size appropriate.

PALS certification costs can range from $0-$300. Currently there are grant funded opportunities for PALS certification. Accommodations for parents may be able to be arranged with existing resources, but could also require additional furnishings. What accommodation costs would be incurred depends on the hospital involved. Review and update of the various policies and procedures and the pharmacy requirements could be accomplished with existing staff imposing little or no additional cost to the regulated parties. The "average" salary of a board certified medical, surgical, pediatric, or anesthesia intensivist to direct the PICU would be approximately $187,192. Hospitals will need to inventory their equipment and supplies to ensure that they are size and age appropriate and provide accordingly. Pediatric dosing resources must include age and size appropriate fluid and medication administration dosing information if not already currently provided.

Minimizing Adverse Impact:

Adverse impact will be minimized through the provision of time sufficient to comply with the regulations. Hospitals will have a minimum of 90 days following adoption of these regulations to adopt and implement sepsis protocols 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. The associations are supportive of this initiative.

REVISED JOB IMPACT STATEMENT

Nature of Impact:

These provisions will not have a significant impact on jobs. A PICU in any New York State general hospital must be directed by a board certified pediatric medical, surgical, anesthesiology or critical care/intensivist physician who must be responsible for the organization and delivery of PICU care. Such intensivist must have specialized training and demonstrated competence in critical care. Hospitals that want to provide PICU services may already have an intensivist to direct their unit.

Categories and Numbers Affected:

There are 32 hospitals in New York State the report that they have a PICU.

Regions of Adverse Impact:

There are no regions of adverse impact.

Minimizing Adverse Impact:

Hospitals will have 90 days from the effective date of these regulations to implement the provisions. In addition, at present, there is grant funding available for PALS certification.

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:

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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 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

This rule amends Sections 700.2 and 717.3 and Parts 793 and 794 of Title 10 (Health) of NYCRR, the operational rules for hospices approved to provide services in New York State under Article 40 of the Public Health Law. The changes will make state regulations consistent with the federal conditions of participation/rules, which were revised and implemented on December 3, 2008, as well as with Chapter 441 of the Laws of 2011.

Section 700.2 (Definitions) is amended to define hospice patient as a person in the terminal state of illness with a life expectancy of 12 months or less (instead of 6 months or less) who has voluntarily requested admission and been accepted into a hospice for which the department has issued a certificate of approval.

Section 717.3 (Patient and service areas in hospice inpatient facilities and units) is amended to reduce maximum room capacity from four to two patients as required by new federal rules.

Section 793.1 (Patient Rights) sets forth patient rights for hospice patients and requires alleged violations of mistreatment, neglect or abuse to be investigated and reported to the State, if verified.

Section 793.2 (Eligibility, Election, Admission and Discharge) sets forth provisions for determining eligibility for and admitting persons into a hospice program as well as requirements for discharging a hospice patient.

Section 793.3 (Initial and Comprehensive Assessment) requires hospices to complete initial and comprehensive assessments and reassessments within specified time periods and identifies the information required in such assessments.

Section 793.4 (Patient Plan of Care, Interdisciplinary Group and Coordination of Care) defines the interdisciplinary group members responsible for management of hospice care, identifies the responsibilities of the group, and lists the information required in the hospice plan of care.

Section 793.5 (Quality Assessment and Performance Improvement) sets forth requirements for the hospice quality assessment and performance improvement program. Hospices will be required to track performance indicators and conduct performance improvement projects.

Section 793.6 (Infection Control) sets forth requirements for management of an infection control program including policies and procedures for preventing and managing persons exposed to blood borne pathogens and appropriate training of staff.

Section 793.7 (Staff and Services) identifies the types of personnel a hospice is expected to employ and their responsibilities. This section also clarifies employment options (direct or contract), qualifications and supervision requirements strengthening the onsite supervision home health aide requirement.

Section 794.1 (Governing Authority) lists the responsibilities of the governing authority. It also sets forth requirements for a patient complaint investigation process and emergency plan. This section also requires hospices to obtain and maintain a Health Commerce System account as a communication link with the Department of Health.

Section 794.2 (Contracts) sets forth contract requirements between the hospice and individual, facility or agency providers delivering services on behalf of the hospice. This section also specifies requirements for management contracts and explains those responsibilities that may not be delegated by the governing body.

Section 794.3 (Personnel) sets forth personnel requirements including health requirements, identification and reference checks, maintenance and content of personnel records, job descriptions and orientation, performance appraisal and inservice education.

Section 794.4 (Clinical Record) sets forth requirements for maintenance and content of clinical records. Record retention standards are also included in this section.

Section 794.5 (Short Term Inpatient Service) sets forth structural and operational standards for the provision of short term inpatient service by the hospice. Physical plant, staffing, quality of life and patient comfort measures are addressed. This section also sets forth operational requirement for management and coordination of care.

Section 794.6 (Hospice Residence Service) sets forth requirements for hospice residences, when a hospice chooses to offer a hospice operated home to a hospice patient without a suitable home in which to receive services.

Section 794.7 (Leases) sets forth information which must be included in a lease agreement between a hospice and an inpatient setting or hospice residence.

Section 794.8 (Hospice Care Provided to Residents of a Skilled Nursing Facility (SNF) or Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) identifies responsibilities of the hospice and the facility when a resident elects the hospice benefit. Services expected to be provided by the hospice and the facility are clarified, and development and implementation of collaborative plans of care and care coordination between the two entities is required.

Section 794.9 (Records and Reports) identifies those records which must be maintained by the hospice, and the retention timeframes. This section also specifies reports which must be submitted to the Department of Health.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by subdivision (4) of section 4010 of the Public Health Law, Sections 700.2 and 717.3 and Parts 793 and 794 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) are amended, to be effective upon publication of a Notice of Adoption in the New York State Register, as follows:

Subparagraph (55) of paragraph (c) of Section 700.2 (Definitions) is amended as follows:

* * *

(c) The following general definitions, based on standards approved by the commissioner, shall apply to this Chapter, unless the context otherwise requires:

* * *

(55) Hospice patient shall mean a person certified as being terminally ill, with a life expectancy of [approximately six] <u>twelve</u> months or less if the illness runs its normal course, who, alone or in conjunction with designated family member(s), has [voluntary]<u>voluntarily</u> requested admission and has been accepted into a hospice for which the [department] <u>Department</u> has issued a certificate of approval.

* * *

Section 717.3 is amended as follows:

Section 717.3 - Patient and service areas in hospice inpatient facilities and units.

(a) Patient rooms and facilities shall meet the following requirements:

(1) <u>be at or above grade level</u>;

[1] <u>(2)</u> At least two rooms shall be designed for one bed and equipped with a private sink

and toilet.

[2] (3) Maximum room capacity shall be [four] for two patients and their families.

[3] (4) Minimum net room areas exclusive of toilet rooms, and space occupied by furniture, lockers or wardrobes, or used for closets, alcoves or vestibule shall be 100 square feet in single-bed rooms and 80 square feet per bed in [multi-bed]double rooms.

[4] (5) Each patient room shall have a window which can be opened without the use of tools.

[5] (6) Each patient shall be provided with a separate nurse's calling device, furniture and closet space adequate for storage of clothing and personal items.

[6] (7) Each patient in a multi-bed room shall be provided with visual privacy by use of flame retardant cubicle curtains.

[7] (8) Each patient room shall be accessible to a conveniently located toilet room. One room containing a toilet and a sink shall serve no more than four beds.

[8] (9) One bathtub or shower shall be provided for each 10 beds which are not otherwise served by bathing facilities within patient rooms. A minimum of one bathtub shall be provided to serve the hospice inpatient facility. Each tub or shower shall provide for privacy and sufficient space to permit assistance, if necessary.

[9] (10) Corridors, aisles, alcoves, vestibules and door widths shall be designed to make all toilets, wardrobes, closets and furniture accessible to and usable by the physically disabled.

(b) Patient and family areas shall include a dining area, space for recreation and private interactions including pastoral care, and accommodations for family privacy after the patient's death.

(c) As a minimum, sufficient areas shall be provided for staff and administrative

functions to include but not necessarily be limited to:

(1) working area for conducting business transactions, completing medical and financial records, and performing other administrative and professional staff functions;

(2) storage space for medical records and administrative supplies;

(3) staff lounge and toilet rooms;

(4) clean work area or clean holding area which contains a work counter, handwashing and storage facilities;

(5) soiled work area or soiled holding area which contains a clinical sink or equivalent flushing rim fixture, sink equipped for handwashing, work counter, and waste receptacle;

(6) pharmaceutical distribution area which contains a work counter, refrigerator, sink and locked storage for biologicals and drugs;

(7) equipment storage area, including accommodations for wheelchairs and stretchers;

(8) interview space(s) for private interviews;

(9) multi-purpose room for conferences, meetings, and health education purposes; and

(10) food service facilities designed and equipped to meet the requirements of the hospice program, including but not limited to:

(i) storage space for four days' supply of food, including cold storage;

(ii) food preparation facilities as required by the program, including space and equipment for preparing and serving;

(iii) handwashing facilities in the food preparation area;

(iv) dishwashing facilities; and

(v) waste storage and disposal equipment.

Parts 793 (Organization and Administration) and 794 (Patient/Family Care Services) are

repealed and replaced by new Parts 793 Patient/Family Care Services and 794 Organization and Administration to read as follows:

Part 793 Patient/Family Care Services

Section 793.1 Patient rights. (a) The governing authority shall establish written policies regarding the rights and responsibilities of the patient and shall assure the development of procedures implementing such policies to ensure that, as a minimum, the patient has a right to:

(1) be fully informed of these rights prior to or at the time of admission, verbally and in writing, in a language and manner that the patient understands, as evidenced by written acknowledgment of receipt signed by the patient or the patient's representative, pursuant to subdivision (b) of this Section;

(2) be given a statement of the services provided by the hospice and covered under the hospice benefit, including any limitations on those services, and of related charges including charges for services not covered by third-party payors or not covered by the hospice basic rate;

(3) be fully informed of the patient's medical condition;

(4) adequate, appropriate and timely care and services, including effective pain management and symptom control for conditions relating to the patient's terminal illness, for the duration of the illness for which hospice was elected;

(5) be involved in developing his or her hospice plan of care;

(6) choose his or her attending physician;

(7) refuse to participate in experimental research;

(8) refuse medication, care and treatment after being fully informed of and understanding

the consequences of such actions;

(9) voice complaints and recommend changes in policies and services to hospice staff, the New York State Department of Health or any outside representative of the patient's choice. The expression of such complaints by the patient or his/her designee shall be free from restraint, interference, coercion, discrimination or reprisal;

(10) express complaints about the care and services provided and to have the program investigate such complaints as specified in section 794.1 (*l*) of this Title. The program is responsible for notifying the patient or his/her designee that if the patient is not satisfied by the response the patient may complain to the Department of Health;

(11) be treated with consideration, respect and full recognition of the patient’s dignity and individuality;

(12) independent personal decisions and knowledge of available choices;

(13) confidential treatment of patient records in accordance with applicable state and federal laws;

(14) be informed of the name and function of any person and/or agency providing care and services;

(15) receive services without regard to age, race, color, creed, sex, national origin, disability or source of payment;

(16) services without discontinuation or diminishment because of the inability to pay for care;

(17) receive written information and assistance with executing advance directives as set forth in Article 29-CCC of the Public Health Law and implementing regulations, as well as applicable federal regulations;

(18) exercise his or her rights without fear of discrimination or reprisal; and

(19) have his or her person and property treated with respect and to be free from mistreatment, neglect, or verbal, mental, sexual and/or physical abuse, including injuries of unknown source, and misappropriation of property.

(b) If a patient lacks capacity to exercise these rights, the rights shall be exercised by an individual, guardian or entity legally authorized to represent the patient.

(c) The governing authority must:

(1) ensure that all alleged violations involving mistreatment, neglect, or verbal, mental, sexual, and physical abuse, including injuries of unknown source, and misappropriation of patient property by anyone furnishing services on behalf of the hospice, are reported immediately by hospice employees and contracted staff to the hospice administrator;

(2) immediately investigate all alleged violations involving anyone furnishing services on behalf of the hospice and immediately take action to prevent further potential violations while the alleged violation is being verified. Investigations and/or documentation of all alleged violations must be conducted in accordance with established procedures;

(3) take appropriate corrective action in accordance with state law if the alleged violation is verified by the hospice administration or an outside body having jurisdiction, such as the Department of Health or local law enforcement agency; and

(4) ensure that verified violations are reported to State and local bodies having jurisdiction including the Department of Health within 5 working days of becoming aware of the violation.

Section 793.2 - Eligibility, Election, Admission and Discharge

The governing authority shall ensure that:

(a) except as prohibited by article 45 of the Public Health Law or any other law or regulation, a patient referred to a hospice may be accepted from any source;

(b) policies and procedures for admission and discharge are developed and implemented;

(c) any individual admitted to hospice is certified as being terminally ill with a life expectancy of twelve (12) months or less if the illness runs its normal course. Written certification of terminal illness is required prior to admission and each election period defined in paragraph (d)(4) of this Section. If hospice cannot obtain the written certification within 2 calendar days after the election period begins, it must obtain an oral certification within 2 calendar days and the written certification before it submits a claim for payment.

(1) Initial certification of terminal illness must be obtained from either the medical director of the hospice or the physician member of the hospice interdisciplinary group provided for in Section 793.4 of this Part, and also from the individual's attending physician, if the individual has an attending physician. In connection with the initial certification, the medical director or physician designee must consider the following:

(i) diagnosis of the primary terminal condition, along with any supporting current clinically relevant information;

(ii) related diagnoses, if any, along with any supporting current clinically relevant information;

(iii) current subjective and objective medical findings;

(iv) current medication and treatment orders; and

(v) information about the medical management of any of the patient's conditions unrelated to the terminal illness.

(2) Subsequent certifications of terminal illness are obtained from the medical director of the hospice or the physician member of the hospice interdisciplinary group and must be based on the certifying individual's clinical judgment regarding the normal course of the individual's illness.

(3) All certifications must:

(i) specify that the individual's prognosis is for a life expectancy of twelve (12) months or less if the terminal illness runs its normal course;

(ii) include clinical information and other documentation that support the medical prognosis; and

(iii) be filed in the clinical record.

(d) an individual who meets the hospice eligibility requirements files an election statement with a particular hospice. If the individual is physically or mentally incapacitated, his or her representative as provided for in subdivision (b) of Section 793.1 of this Part may file the election statement;

(1) The election statement shall remain in effect as long as the individual remains in the care of a hospice unless the individual revokes the election in accordance with paragraph 3 of this subdivision or is discharged from the hospice in accordance with subdivision (e) of this Section. He/she may at any time file an election if again eligible for hospice care.

(2) The signed election statement must:

(i) identify the hospice that will provide care;

(ii) include the individual's or representative's acknowledgment that he or she has been given a full understanding of the palliative rather than curative nature of hospice care; and

(iii) include the effective date of the election, which may be the first day of hospice care or a later date, but no earlier than the date of the election statement.

(3) An individual or representative may revoke the election of hospice care at any time by filing a signed and dated revocation statement with the hospice. This statement must include the effective date for the revocation.

(4) An individual may elect to receive hospice care during one or more of the following election periods, which are available in the order listed and may be selected separately at different times:

(i) an initial 90 day period;

(ii) a subsequent 90-day period;

(iii) an unlimited number of subsequent 60-day periods.

(e) a patient is discharged only if:

(1) the patient moves out of the hospice's service area or transfers to another hospice;

(2) the hospice determines that the patient no longer meets the eligibility criteria set forth in paragraph (c) of this Section; or

(3) the hospice determines, under a policy set by the hospice for the purpose of addressing discharge for cause that the patient's (or other persons in the patient's home) behavior is disruptive, abusive, or uncooperative to the extent that delivery of care to the patient or the ability of the hospice to operate effectively is seriously impaired.

(i) The hospice must do the following before it seeks to discharge a patient for cause:

(a) advise the patient that a discharge for cause is being considered;

(b) make a serious effort to resolve the problem(s) presented by the patient's behavior or situation;

(c) ascertain that the patient's proposed discharge is not due to the patient's use of necessary hospice services; and

(d) document the problem(s) and efforts made to resolve the problem(s) and enter this documentation into the clinical record.

(ii) prior to discharging a patient, a written discharge order must be obtained from the hospice medical director. If a patient has an attending physician involved in his or her care, this physician should be consulted before discharge and his or her review and decision included in the discharge note.

(iii) prior to discharging or transferring the patient from one hospice to another, continuing care and services are arranged and a discharge summary completed as specified in Section 794.4 of this Title.

Section 793.3 Initial and Comprehensive Assessment. (a) The hospice registered nurse, as a member of the interdisciplinary group identified in Section 793.4 of this Part, must complete an initial assessment within 48 hours after the election of hospice care in accordance with Section 793.2 of this Part unless the physician, patient, or representative requests that the initial assessment be completed in less than 48 hours. Initial assessment means an evaluation of the patient's physical, psychosocial and emotional status related to the terminal illness and related conditions to determine the patient's immediate care and support needs.

(b) The hospice interdisciplinary group, in consultation with the individual's attending physician (if any), shall conduct and document in writing a patient-specific comprehensive assessment no later than 5 calendar days after the election of hospice care. Comprehensive assessment means a thorough evaluation of the patient's physical, psychosocial, emotional and spiritual status related to the terminal illness and related conditions including the caregiver's and family's willingness and capability to care for the patient.

(c) The comprehensive assessment must take into consideration the following factors:

(1) the nature and condition causing admission (including the presence or lack of objective data and subjective complaints);

(2) complications and risk factors that affect care planning;

(3) functional status, including the patient's ability to understand and participate in his or her own care;

(4) imminence of death;

(5) severity of symptoms;

6) a review of all of the patient's prescription and over-the counter drugs, herbal remedies and other alternative treatments that could affect drug therapy. This includes, but is not limited to, identification of the following:

(i) effectiveness of drug therapy;

(ii) drug side effects;

(iii) actual or potential drug interactions;

(iv) duplicate drug therapy; and

(v) drug therapy currently associated with laboratory monitoring;

(7) an initial bereavement assessment of the needs of the patient's family and other individuals focusing on the social, spiritual, and cultural factors that may impact their ability to cope with the patient's death. Information gathered from the initial bereavement assessment must be incorporated into the plan of care and considered in the bereavement plan of care; and

(8) the need for referrals and further evaluation by appropriate health professionals.

(d) The comprehensive assessment must include data elements that allow for measurement of outcomes. The data elements must:

(1) take into consideration aspects of care related to hospice and palliation;

(2) be measured and documented in the same way for all patients;

(3) be an integral part of the comprehensive assessment and documented in a systematic and retrievable way for each patient;

(4) be used in individual patient care planning and in the coordination of services; and

(5) be used in the aggregate for the hospice's quality assessment and performance improvement program.

(e) The hospice interdisciplinary group must update the comprehensive assessment in

collaboration with the individual's attending physician, if any, as frequently as the condition of the patient requires, but no less frequently than every 15 days. The update must consider changes that have taken place since the initial assessment and include information on the patient's progress toward desired outcomes, as well as a reassessment of the patient's response to care.

793.4 Patient Plan of Care, Interdisciplinary Group and Coordination of Care. The governing authority must:

(a) designate an interdisciplinary group or groups composed of individuals who work together to meet the physical, medical, psychosocial, emotional, and spiritual needs of the hospice patients and families facing terminal illness and bereavement. The members of the interdisciplinary group are responsible for providing the care and services offered by the hospice, and the group must collectively supervise the care and services.

(1) The interdisciplinary group must include, but is not limited to:

(i) a doctor of medicine or osteopathy (who is an employee or under contract with the hospice);

(ii) a registered nurse;

(iii) a social worker; and

(iv) a pastoral or other counselor.

(2) The governing authority must designate a registered nurse who is a member of the interdisciplinary group to coordinate care and ensure continuous assessment of each patient's and family's needs and implementation of the interdisciplinary plan of care;

(b) if the hospice has more than one interdisciplinary group, specifically designate an interdisciplinary group to establish policies governing the day-to-day provision of hospice care and services;

(c) ensure that all hospice care and services furnished to patients and their families follow an individualized written plan of care established by the interdisciplinary group in collaboration with the patient's attending physician, if any, and, if they so desire, the patient or representative and the primary caregiver. The plan of care shall indicate for each patient/family how palliative and supportive care is to be achieved including:

(1) goals and interventions based on the problems identified in the initial, comprehensive, and updated comprehensive assessments;

(2) all services necessary for the palliation and management of the terminal illness and related conditions and the individual(s) who will provide those services, including:

(i) interventions to manage pain and symptoms;

(ii) a detailed statement of the scope and frequency of services necessary to meet the specific patient and family needs;

(iii) measurable outcomes anticipated from implementing and coordinating the plan of care;

(iv) drugs, biologicals, treatments, medical supplies, appliances and durable medical equipment that must be provided by the hospice while the patient is under hospice care;

(v) identification of the registered nurse responsible for coordinating care; and

(vi) documentation in the clinical record of the patient's or representative's level of understanding, involvement, and agreement with the plan of care, in accordance with the hospice's own policies;

(d) ensure that the hospice interdisciplinary group confers with an individual educated and trained in drug management to ensure that drugs and biologicals meet each patient's needs;

(e) ensure that each patient and the primary care giver(s) receives education and training regarding their responsibilities for the care and services identified in the plan of care followed by an assessment of their ability to provide care including their ability to self administer drugs and biologicals;

(f) ensure discussion and written instructions are provided to the patient/family regarding the management and disposal of controlled drugs in the home when controlled drugs are

initially ordered and documentation of such in the clinical record;

(g) ensure that the hospice interdisciplinary group reviews, revises and documents the individualized plan as frequently as the patient's condition requires, but no less frequently than every 15 calendar days. A revised plan of care must include information from the patient's updated comprehensive assessment, must note the patient's progress toward the outcomes and goals specified in the plan of care, and must be documented in the clinical record; and

(h) develop and maintain a system of communication and integration, in accordance with the hospice's own policies and procedures, to:

(1) ensure that the interdisciplinary group maintains responsibility for directing, coordinating, and supervising the care and services provided by all hospice and non hospice providers;

(2) ensure that care and services provided are based on all assessments of the patient and family needs;

(3) provide for and ensure the ongoing sharing of information between all disciplines providing care and services in all settings, whether the care and services are provided directly or under arrangement; and

(4) provide for an ongoing sharing of information with other non-hospice healthcare providers furnishing services unrelated to the terminal illness and related conditions.

Section 793.5 - Quality Assessment and Performance Improvement

The governing authority must ensure that the hospice:

(a) develops, implements, and maintains an ongoing, effective, hospice-wide data driven program for quality assessment and performance improvement, which shall be evaluated annually. The program must:

(1) reflect the complexity of the hospice organization and services;

(2) involve all hospice services, including those services furnished under contract or arrangement, and all locations;

(3) include the use of quality indicator data in the design of the program, which focuses on improved palliative and end of life outcomes;

(4) take actions to demonstrate improvement in hospice performance;

(5) address priorities for improved quality of care and patient safety; and

(6) be capable of showing measurable improvement in indicators related to improved palliative outcomes and hospice services.

(b) maintains documentary evidence of the program, and be capable of demonstrating its operation;

(c) designates one or more individual(s) responsible for operating the program;

(d) designates a committee which includes licensed professionals, representative of the services provided by the hospice, and administrative personnel to participate in and make recommendations to the governing authority regarding the quality program and perform other quality management activities including:

(1) review of quality assessment and performance improvement efforts, at least annually, and in collaboration with the hospice interdisciplinary group recommend revisions to the governing authority, as necessary, of policies and procedures;

(2) review of patient care records for appropriateness of admission, adequacy of assessment of patient/family needs and quality and quantity of services provided;

(3) review of complaints and other investigations; and

(4) review of the effectiveness of the hospice's infection control program, including appropriate identification of infection and communicable disease transmission and control problems and plans for appropriate corrective action, improvement and subsequent prevention.

(e) measures, analyzes, and tracks quality indicators, including adverse patient events and/or potentially avoidable events and other aspects of performance, in the frequency and detail approved by the governing authority. The data shall include patient care data and other relevant data reflective of the hospice operation, the quality of all services provided and all activities that may impact patient care and must enable the hospice to:

(1) assess processes of care, hospice services, and operations;

(2) monitor the effectiveness and safety of services and quality of care; and

(3) identify opportunities and priorities for improvement.

(f) develops, implements and evaluates performance improvement projects conducted annually, sufficient in number and scope to reflect the hospice's population, internal organizational needs, and scope, complexity and past performance of services and operation, using quality indicator data collected. These projects must:

(1) focus on high risk, high volume, or problem-prone areas;

(2) consider incidence, prevalence, and severity of problems in those areas;

(3) take actions aimed at performance improvement in palliative outcomes, patient safety, and quality of care;

(4) measure the success of such actions and track performance to ensure that improvements are sustained;

(5) track and analyze the cause of any adverse patient event;

(6) implement preventive actions and mechanisms that include feedback and learning throughout the hospice; and

(7) be documented by the hospice including the reasons for conducting the project and the measurable progress achieved.

Section 793.6 Infection Control. The hospice must:

(a) implement and enforce an agency wide program for the surveillance, identification, prevention, control and investigation of infectious and communicable diseases, which could result in staff, volunteers, visitors, or patients and family members becoming exposed to such communicable diseases or infections. Such a program shall include:

(1) policies and procedures for maintaining and documenting an effective infection control program in all settings where patients reside, including but not limited to protocols for addressing patient care issues and prevention of infection related to airborne pathogens, infusion therapy, urinary tract care, respiratory tract care, wound care and multi-drug resistant organisms;

(2) following accepted standards of practice to prevent transmission of infections and communicable disease;

(3) monitoring staff for compliance with hospice policies and procedures related to infection control;

(4) protocols for educating staff, contracted personnel, patients, families and other caregivers in infectious disease transmission, standard precautions and the prevention and control of infection; and

(5) a specific program for protecting patients, staff and families from bi-directional spread of HIV and other blood borne pathogens, as specified in subdivision (b) of this Section.

(b) assure that a program be implemented and enforced for the prevention of circumstances which could result in staff, including housekeeping, direct care staff and volunteers, or patients and family members becoming exposed to significant risk body substances which could put them at significant risk of HIV infection, as defined in

section 63.1 of this Title, or other blood borne pathogen infection, during the provision of services. Such a program shall include:

(1) use of scientifically accepted protective barriers during job-related activities which involve, or may involve, exposure to significant risk body substances. Such preventative action shall be taken by the staff with each patient and shall constitute an essential element for the prevention of bi-directional spread of HIV or other blood borne pathogens.

(2) use of scientifically accepted preventive practices during job-related activities which involve the use of contaminated instruments or equipment which may cause puncture injuries;

(3) training at the time of employment and yearly staff development programs on the use of protective equipment, preventive practices, and circumstances which represent a significant risk for all employees whose job-related tasks involve, or may involve, exposure to significant risk body substances;

(4) provision of personal protective equipment for staff which is appropriate to the tasks being performed; and

(5) a system for monitoring preventive programs to assure compliance and safety.

(c) implement and enforce a policy/procedure for the management of individuals who are exposed to significant risk body substances under circumstances which constitute significant risk of transmitting or contracting HIV or other blood borne pathogen infection. The policies/procedure shall include:

(1) a system for reporting to a designated individual in the hospice exposure thought to represent a circumstance which constitutes significant risk of transmitting or contracting HIV or other blood borne pathogen infection;

(2) evaluation of the circumstances of a reported exposure and services providing follow-up of the exposed individual which includes:

(i) medical and epidemiological assessment of the individual who is the source of the exposure, where that individual is known and available;

(ii) if indicated epidemiologically, HIV or other blood borne pathogen counseling and voluntary testing of the source individual. Disclosure of the HIV status of the source individual can be made, consistent with Article 27-f of Public Health Law and Part 63 of this Title, with the express written consent of the protected individual, or a person authorized pursuant to law to consent to health care for the protected individual if such person lacks capacity to consent, or pursuant to court order, if the HIV status is not known to the exposed individual;

(iii) appropriate medical follow-up of the exposed individual; and

(iv) assurances for protection of confidentiality for those involved in reported exposures.

Section 793.7 Staff and services. (a) At a minimum, hospice staff shall be composed of:

(1) a hospice administrator who is appointed by the governing authority and is an employee of the hospice who works a minimum of halftime for the hospice. The administrator is responsible for the day to day management of the hospice.

(2) a hospice medical director who is:

(i) a doctor of medicine or osteopathy who is licensed and registered to practice in New York State or maintains a current license and who is an employee or is under contract with the hospice. When the medical director is not available, a physician designated by the hospice shall assume the same responsibilities and obligations as the medical director; and

(ii) responsible for supervision of all physician employees and physicians under contract;

(3) a hospice nurse coordinator;

(4) a hospice social worker;

(5) a pastoral care coordinator; and

(6) a coordinator of volunteer services, whose responsibilities shall include:

(i) ensuring implementation of policies and procedures related to volunteer services;

(ii) providing and documenting volunteer orientation and training;

(iii) ensuring that volunteers are used in defined administrative or direct patient care roles under the supervision of a designated hospice employee;

(iv) ongoing efforts to recruit and retain volunteers; and

(v) demonstrating and documenting cost savings achieved through the use of volunteers including:

(*a*) identification of each position that is occupied by a volunteer and his or her work time; and

(*b*) estimates of the dollar costs that the hospice would have incurred if paid employees occupied the positions. Volunteers must provide services in an amount that, at a minimum, equals 5 percent of the total patient care hours of all paid hospice employees and contract staff.

(b) As the needs of the patient dictate, the hospice shall provide the following services:

(1) core services, which include nursing, physician, medical social services, dietary, bereavement and spiritual or pastoral care counseling; and

(2) non-core services which include physical therapy, occupational therapy, speech and language pathology, audiology, respiratory therapy, psychological, drugs and biologicals, laboratory, medical supplies, equipment and appliances, home health aide, personal care, housekeeper, homemaker, and inpatient services.

(c) With the exception of physician services, core services must routinely be provided directly by hospice employees. A hospice may use contracted staff only if necessary to supplement hospice employees in order to meet the needs of patients under extraordinary or other non-routine circumstances such as unanticipated periods of high patient loads, staffing shortages due to illness or other short-term temporary situations that interrupt patient care such as natural disasters and temporary travel of a patient outside the hospice's service area.

(d) Non-core services as specified in subdivision (b) of this Section may be provided directly by the hospice or under contractual arrangements made by the hospice as specified in Section 794.2 of this Title.

(e) Physician, nursing, medical social services counseling and volunteer services shall be provided by the same health care practitioners to the same patient and family, whenever possible.

(f) Nursing services, physician services and drugs and biologicals must be routinely available on a 24 hour basis 7 days a week. Other services must be available on a 24 hour basis when reasonable and necessary to meet the needs of the patient and family.

(g) The hospice medical director, physician employees, and contracted physician(s) of the hospice, in conjunction with the patient's attending physician, must assume responsibility for the palliation and management of the terminal illness and conditions related to the terminal illness. If the attending physician is unavailable, the medical director, contracted physician, and/or hospice physician employee is responsible for meeting the medical needs of the patient.

(h) Nursing care and services must be provided by or under the supervision of a registered nurse in accordance with patient assessments and plans of care:

(1) Nursing services in the home shall be provided by or under the direction of hospice personnel who meet the requirements of community health nurse as defined in section 700.2 of this Title.

(2) Highly specialized nursing services that are provided so infrequently that the provision of such services by direct hospice employees would be impracticable and prohibitively expensive, may be provided under contract.

(3) Registered nurses certified as nurse practitioners may treat and write orders for hospice patients to the extent permitted by New York State Education Law.

(i) Medical social services must be provided by a qualified social worker, under the direction of a physician. Medical social services must be based on the patient's psychosocial assessment and the patient's and family's needs and acceptance of services.

(j) Counseling services must be available to the patient and family to assist the patient and family in minimizing the stress and problems that arise from the terminal illness,

related conditions, and the dying process. Counseling services must include, but are not limited to:

(1) an organized program of bereavement counseling furnished under the supervision of a qualified professional with experience or education in grief or loss counseling. Bereavement services shall be available to the family and other individuals in the bereavement plan of care up to 1 year following the death of the patient;

(2) dietary counseling performed by a qualified individual, which include dietitians as well as nurses and other individuals who are able to address and assure that the dietary needs of the patient are met; and

(3) spiritual counseling which is provided in accordance with the patient's and family's acceptance of this service, and in a manner consistent with patient and family beliefs and desires. All reasonable efforts should be made to facilitate visits by local clergy, pastoral counselors, or other individuals who can support the patient's spiritual needs to the best of its ability.

(k) All aide services must be provided by individuals who:

(1) have successfully completed a home health aide training and competency evaluation program as required by paragraph (9) of subdivision (b) of Section 700.2 or this Part; and

(2) are currently listed in good standing on the Home Care Registry in the State.

(l) Aide services must be ordered by a member of the interdisciplinary team, included in the plan of care and consistent with training and tasks permitted to be performed by home health aides, including but not limited to personal care and simple procedures as an extension of nursing or therapies.

(m) A registered nurse who is a member of the interdisciplinary group must make patient assignments, prepare written patient care instructions and provide supervision of aides.

(n) A registered nurse must make an on-site visit to the patient’s home no less frequently than every 14 days to assess the quality of care and services provided by the aide and to ensure that services ordered by the hospice interdisciplinary group meet the patient’s needs.

(1) The aide should be present during the registered nurse’s on-site visit periodically, but no less frequently than every ninety days, or more frequently if an area of concern is noted by the supervising nurse.

(2) If an area of concern is verified by the nurse during the on-site visit, then the hospice must conduct, and the aide must successfully complete a competency evaluation.

(3) The supervising nurse must assess an aide’s ability to demonstrate initial and continued satisfactory performance in meeting outcome criteria that include, but are not limited to:

(i) following the patient’s plan of care for completion of tasks assigned to the aide by the registered nurse;

(ii) creating successful interpersonal relationships with the patient and family;

(iii) demonstrating competency with assigned tasks;

(iv) complying with infection control policies and procedures;

(v) reporting changes in the patient’s condition; and

(vi) completing appropriate records and documentation of care provided.

(o) The hospice must ensure that staff are adequately supervised. The department shall consider the following factors as evidence of adequate supervision:

(1) supervision of nursing personnel is conducted by a supervising nurse;

(2) personnel regularly provide services at the frequencies specified in the patient's plan of care, and in accordance with the policies and procedures of their respective services;

(3) personnel are assigned to the care of patients in accordance with their licensure, as appropriate, and their training, orientation and demonstrated skills;

(4) clinical records are kept complete, and changes in patient condition, adverse reactions, and problems with informal supports or home environment are charted promptly and reported to supervisory personnel;

(5) plans of care are revised as determined by patient condition, and changes are reported to the authorized practitioner and other personnel providing care to the patient;

(6) in-home visits are made by supervisory personnel to direct, demonstrate and evaluate the delivery of patient care and to provide clinical consultation;

(7) professional guidance on agency policies and procedures is provided;

(8) supervision of a home health aide is conducted by a registered professional nurse; and

(9) in-home supervision, by professional personnel, of home health aides takes place:

(i) to demonstrate to and instruct the aide in the treatments or services to be provided, with successful redemonstration by the aide during the initial service visit, or where there is a change in personnel providing care, if the aide does not have documented training and experience in performing the tasks prescribed in the plan of care;

(ii) to evaluate changes in patient condition reported by the aide and initiate any revision in the plan of care which may be needed; and

(iii) to instruct the aide as to the observations and written reports to be made to the supervising nurse.

(p) Homemaker services shall be provided to assist in patient care. A qualified homemaker is an individual who has successfully completed hospice orientation and training in the tasks to be performed.

(1) Homemaker services must be assigned, coordinated and supervised by a member of the interdisciplinary group.

(2) Homemakers must report all concerns about the patient or family to the member of the interdisciplinary group and complete appropriate documentation of care provided.

Part 794 Organization and Administration

Section 794.1 Governing authority. The governing authority, as defined in Part 790 of this Title shall:

(a) be responsible for the management and fiscal operations of the hospice, the provision of all hospice services, and continuous quality assessment and performance improvement;

(b) ensure compliance with all applicable Federal, State and local laws, rules and regulations;

(c) provide for coordinated, interdisciplinary inpatient and home care services, 24 hours a day, 7 days a week;

(d) ensure adequate staff and resources to provide continuity of care based on the needs of the persons served;

(e) adopt, amend and implement bylaws regarding the responsibilities, functions and activities of the governing body;

(f) adopt the hospice budgets, control assets and funds, and provide for annual fiscal audits;

(g) prohibit any employee of the hospice to be reimbursed by any party other than the hospice for service provided as part of the hospice program, or the splitting or sharing of fees between a referral agency/facility or individual and the hospice;

(h) ensure the prompt submission of all records and reports required by the department;

(i) ensure compliance with the pertinent provisions regarding the discontinuance of operations of a medical facility, as set forth in section 401.3 of this Chapter, in the event the hospice discontinues operation for any reason;

(j) negotiate agreements with other patient care facilities/agencies for the referral and

acceptance of hospice patients;

(k) adopt and amend policies and procedures regarding management and operation of the hospice and the provision of patient care services;

(l) ensure the development and implementation of a patient complaint procedure to include:

(1) documentation of receipt, investigation and resolution of any complaint, including maintenance of a complaint log indicating the dates of receipt and resolution of all complaints received by the program;

(2) review of each complaint with a written response to all written complaints and to oral complaints, if requested by the individual making the oral complaint, explaining the complaint investigation findings and the decisions rendered to date by the program within 15 days of receipt of such complaint; and

(3) an appeals process with review by a member or committee of the governing authority within 30 days of receipt of the appeal.

(m) ensure the development, implementation and annual review of a written emergency plan which is current and includes hospice emergency contact information, current staff call down list, and community partners contact list and procedures to be followed to assure health care needs of patients continue to be met in emergencies that interfere with the delivery of services, and orientation of all employees to their responsibilities in carrying out such a plan;

(n) obtain from the Department's Health Commerce System (HCS), accounts for each hospice it operates and ensure that sufficient, knowledgeable staff will be available to and shall maintain and keep current such accounts. At a minimum, twenty-four hour, seven-day a week contacts for emergency communication and alerts, must be designated by

each hospice in the HCS Communications Directory. A policy defining the hospice's HCS coverage consistent with the hospice's hours of operation shall be created and reviewed by the hospice no less than annually. Maintenance of each hospice's HCS accounts shall consist of, but not be limited to, the following:

(1) sufficient designation of the hospice's HCS coordinator(s) to allow for HCS individual user application;

(2) designation by the governing authority of the hospice of sufficient staff users of the HCS accounts to ensure rapid response to requests for information by the State and/or local Department of Health;

(3) adherence to the requirements of the HCS user contract; and

(4) current and complete updates of the Communications Directory reflecting changes that include, but are not limited to, general information and personnel role changes as soon as they occur, and at a minimum, on a monthly basis.

Section 794.2 Contracts. (a) The governing authority may enter into contracts with appropriate qualified individuals, organizations, agencies and/or facilities, when necessary, to provide for those services required by patients/families when the hospice itself does not have sufficient staff or necessary equipment available to render such services directly.

(1) Such contracts shall meet all applicable State and Federal requirements and shall specify:

(i) each party's responsibilities, functions, objectives, financial arrangements and charges, including responsibility for supervision;

(ii) that personnel meet the personnel requirements as set forth in section 794.3 of this Part, which can be verified by written documented evidence accessible to the hospice or department on request;

(iii) that services provided by contract to the patient shall be authorized by the hospice in accordance with the plan of care developed by the hospice and that the contract provider agrees to abide by the patient care policies established by the hospice for its patients;

(iv) that the contracting provider agrees to participate in patient/family care planning conferences as requested by the hospice;

(v) that contracting providers who are licensed professionals agree to participate in:

(*a*) the coordination of all aspects of the patient's hospice care, including ongoing interdisciplinary comprehensive assessments, developing and evaluating the plan of care, and contributing to patient and family counseling and education;

(*b*) the hospice's quality assessment and performance improvement program; and

(*c*) hospice sponsored in-service training.

(vi) any provisions made for indemnification between the hospice and contracting

providers; and

(vii) the following terms and conditions: "Notwithstanding any other provision in this contract, the hospice remains responsible for (a) ensuring that any service provided pursuant to this contract complies with all pertinent provisions of Federal, State and local statutes, rules and regulations; (b) planning, coordinating and ensuring the quality of all services provided; and (c) ensuring adherence to the plan of care established for patients."

(2) When a contract is with a licensed medical facility or certified home health agency, the service provided must be in compliance with the applicable provisions of article 28 or 36 of the Public Health Law, respectively, and the applicable rules and regulations promulgated thereunder. If such statutory and regulatory provisions are inconsistent with the provisions of article 40 of the Public Health Law or the regulations promulgated thereunder, then the contracting provider shall comply with the applicable provisions of article 40 of the Public Health Law and the regulations promulgated thereunder.

(3) When a contract is between the hospice and a Skilled Nursing Facility (SNF) /Intermediate Care Facility (ICF) to provide hospice services to residents of the SNF/ICF, the provisions of section 794.8 of this Part related to contracts shall also apply.

(b) Except when a management contract has been approved pursuant to this section, the governing authority may not delegate its responsibility for the operation of the hospice to another organization, a parent or subsidiary corporation or through a managing authority contract. An improper delegation may be found to exist where the governing authority no longer retains authority over the operation and management of the hospice, including but not limited to such areas as:

(1) authority to hire or fire the administrator;

(2) authority for the maintenance and control of the books and records;

(3) authority over the disposition of assets and the incurring of liabilities on behalf of the hospice; or

(4) authority over the adoption and enforcement of policies regarding the operation of the hospice.

(c) If the governing authority enters into a management contract, the requirements of this subdivision shall be met.

(1) For the purpose of this section, a management contract is an agreement between a hospice's governing authority and a managing authority for the purpose of managing the day-to-day operation of the hospice or any portion thereof.

(2) Management contracts shall be effective only with the prior written consent of the Commissioner, and shall include the following:

(i) a description of the proposed roles of the governing authority and managing authority during the period of the proposed management contract. The description shall clearly reflect retention by the governing authority of ongoing responsibility for statutory and regulatory compliance;

(ii) a provision that clearly recognizes that the responsibilities of the hospice's governing authority are in no way obviated by entering into the management contract, and that any powers not specifically delegated to the managing authority through the provisions of the contract remain with the governing authority;

(iii) a clear acknowledgment of the authority of the Commissioner to void the contract pursuant to paragraph (9) of this subdivision;

(iv) a plan for assuring maintenance of the fiscal stability, the level of service provided and the quality of care rendered by the hospice during the term of the management contract;

(v) an acknowledgment that the costs of the contract are subject to all applicable provisions of Part 86 of this Title;

(vi) a requirement that the reports described in paragraph (10) of this subdivision will be provided to the department and to the governing authority annually for the term of the management contract;

(vii) an express representation that any management contract approved by the Commissioner is the sole agreement between the managing authority and the governing authority for the purpose of managing the day-to-day operation of the hospice or any portion thereof, and that any amendments or revisions to the management contract shall be effective only with the prior written consent of the Commissioner; and

(viii) a provision that includes the terms of paragraph (8) of this subdivision.

(3) No management contract shall be approved if the governing authority does not retain sufficient authority and control to discharge its responsibility as the certified operator. The following elements of control shall not be delegated to a managing authority;

(i) direct independent authority to hire or fire the administrator;

(ii) independent control of the books and records;

(iii) authority over the disposition of assets and the authority to incur on behalf of the hospice liabilities not normally associated with the day-to-day operation of a hospice; and

(iv) independent adoption of policies affecting the delivery of health care services.

(4) In addition to a proposed written contract complying with the provisions of paragraph (2) of this subdivision, a governing authority seeking to enter into a management contract shall submit to the department, at least 60 days prior to the intended effective date, unless a shorter period is approved by the Commissioner due to extraordinary circumstances, the following:

(i) documentation indicating that the proposed managing authority holds all necessary approvals to do business in New York State;

(ii) documentation of the goals and objectives of the management contract, including a mechanism for periodic evaluation of the effectiveness of the arrangement in meeting these goals and objectives;

(iii) evidence of the managing authority's financial stability;

(iv) information necessary to determine that the character and competence of the proposed managing authority, and its principals, officers and directors, are satisfactory, including evidence that all agencies or health care facilities managed or operated, in or outside of New York State, have provided a high level of care; and

(v) evidence that it is financially feasible for the hospice to enter into the proposed management contract, recognizing that the costs of the contract are subject to all applicable provisions of Part 86 of this Title.

(5) During the period between a hospice's submission of a request for approval of a management contract and disposition of that request, a hospice may not enter into any arrangement for management contract services other than a written interim consultative agreement with the proposed managing authority. Any interim agreement shall reflect consistency with the provisions of this section, and shall be submitted to the department no later than five days after its effective date.

(6) The term of a management contract shall be limited to three years and may be renewed only when authorized by the Commissioner, provided compliance with this section and the following provisions can be demonstrated:

(i) that the goals and objectives of the contract have been met within specified timeframes;

(ii) that the quality of care provided by the hospice during the term of the contract has been maintained or has improved; and

(iii) that the reporting requirements contained in paragraph (10) of this subdivision have been met.

(7) Any application for renewal shall be submitted at least 90 days prior to the expiration of the existing contract.

(8) A hospice's governing authority shall, within the terms of the contract, retain the authority to discharge the managing authority and its employees from their positions at the hospice with or without cause on not more than 90 days notice. In such event, the hospice shall notify the department in writing at the time the managing authority is notified. The hospice's governing authority shall provide a plan for the operation of the hospice subsequent to the discharge, to be submitted with the notification to the department.

(9) A management contract shall terminate and be deemed cancelled, without financial penalty to the governing authority, not more than 60 days after notification to the parties by the department of a determination that the management of the hospice is so deficient that the health and safety of patients would be threatened by continuation of the contract.

(10) Each managing authority shall submit annual reports to the department and the governing authority providing measurements of hospice performance in the following areas:

(i) financial operations, including a balance sheet, any change in financial position, and a statement of revenues and expenses sufficient to determine liquidity, working capital, net operating margin and age, extent and type of payables and receivables;

(ii) personnel; and

(iii) services delivered.

Section 794.3 Personnel. The governing authority shall ensure for all personnel, which includes direct employees, contract staff and volunteers:

(a) the development and implementation of written personnel policies and procedures, which are reviewed annually and revised as necessary;

(b) that personnel are qualified as specified in section 700.2 of this Title;

(c) that the health status of all new personnel is assessed prior to the beginning of patient/family contact. The assessment shall be of sufficient scope to ensure that no person shall assume his/her duties unless he/she is free from a health impairment that is of potential risk to the patient/family or to employees or that may interfere with the performance of his/her duties including the habituation or addiction to depressants, stimulants, alcohol, or other drugs or substances which may alter the individual's behavior;

(d) that a record of the following tests and examinations is maintained for all employees, and those volunteers who have direct patient/family contact:

(1) a certificate of immunization against rubella which means:

(i) a document prepared by a physician, physician assistant, specialist assistant, nurse practitioner or a laboratory possessing a laboratory permit issued pursuant to Part 58 of this Title, demonstrating a serologic evidence of rubella antibodies, or

(ii) a document indicating one dose of live virus rubella vaccine was administered on or after the age of twelve months, showing the product administered and the date of administration, and prepared by the health practitioner who administered the immunization, or

(iii) a copy of a document described in (i) or (ii) of this paragraph which comes from a previous employer or the school which the employee attended as a student;

(2) a certificate of immunization against measles, for all personnel born on or after January 1, 1957, which means:

(i) a document prepared by a physician, physician assistant, specialist assistant, nurse practitioner or a laboratory possessing a laboratory permit issued pursuant to Part 58 of this Title, demonstrating serologic evidence of measles antibodies, or

(ii) a document indicating two doses of live virus measles vaccine were administered with the first dose administered on or after the age of 12 months and the second dose administered more than 30 days after the first dose but after 15 months of age showing the product administered and the date of administration, and prepared by the health practitioner who administered the immunization, or

(iii) a document, indicating a diagnosis of the employee as having had measles disease, prepared by the physician, physician assistant/specialist assistant or nurse practitioner who diagnosed the employee's measles, or

(iv) a copy of a document described in (i), (ii) or (iii) of this paragraph which comes from a previous employer or the school which the employee attended as a student;

(3) if any licensed physician, physician assistant/specialist assistant or nurse practitioner certifies that immunization with measles or rubella vaccine may be detrimental to the employee's health, the requirements of paragraph (1) and/or (2) of this subdivision relating to measles and/or rubella immunization shall be inapplicable until such immunization is found no longer to be detrimental to such employee's health. The nature and duration of the medical exemption must be stated in the employee's employment medical record; and must be in accordance with generally accepted medical standards, (see, for example, the recommendations of the American Academy of Pediatrics and the Immunization Practices Advisory Committee of the U.S. Department of Health and

Human Services);

(4) ppd (Mantoux) skin test or whole blood assay test for tuberculosis prior to employment or voluntary service and no less than every year thereafter for negative findings. Positive findings shall require appropriate clinical follow-up but no repeat skin test;

(5) documentation of any immunization(s) required by the Department; and

(6) an annual, or more frequent if necessary, health status assessment to assure that all personnel are free from health impairment that is of potential risk to the patient/family or to employees or that may interfere with the performance of his/her duties;

(e) that a record of all tests, examinations, health assessments and immunizations required by this section is maintained for all personnel who have direct patient contact;

(f) that personal identification is produced by each applicant and verified by the program prior to retention of an applicant by the program;

(g) that prior to patient contact, employment history from previous employers, if applicable, and recommendations from other persons unrelated to the applicant if not previously employed, are verified;

(h) that personnel records include, as appropriate, records of professional licenses and registrations; verifications of employment history and qualifications for the duties assigned; signed and dated applications for employment; records of pre-employment physical examinations and health status assessments; criminal background check; performance evaluations; time and payroll records; dates of employment, resignations, dismissals, inservice training and other pertinent data; provided that all documentation and information pertaining to an employee's medical condition or health status, including such records of physical examinations and health status assessments shall be maintained

separate and apart from the non-medical personnel record information and shall be afforded the same confidential treatment given patient clinical records under section 794.4 of this Part;

(i) that time and payment records are maintained for all personnel;

(j) that there is a current written job description for each position which delineates responsibilities and specific education and experience requirements;

(k) that all personnel, including hospice employees, volunteers and contract staff with direct patient and family contact, receive orientation to the concept of hospice care, his or her specific job duties, and the policies and procedures for the hospice operation, inservice education necessary to perform his/her responsibilities and continuing programs for development and support. At a minimum home health aides shall participate in 12 hours of inservice education per year, which may occur while the aide is furnishing care. Inservice may be offered by any organization and must be supervised by a registered nurse;

(l) that employees providing care in the home display proper and current identification, including name, title and current photograph of care provider and name of the program providing the service, to be returned to the program upon termination of employment; and

(m) that an annual assessment of the performance and effectiveness of all personnel is conducted. Such assessment shall include an assessment of skills and competence of individuals providing care including volunteers and include:

(1) written policies and procedures describing the methods of competency assessment, which shall be implemented; and

(2) training and education to personnel to improve competency in areas identified by the assessment process as requiring such improvement.

Section 794.4 Clinical record. The governing authority shall ensure that:

(a) there is a standardized clinical record system which is maintained in conformance with generally accepted medical record practices;

(b) a clinical record containing past and current findings is maintained for each hospice patient. The clinical record must contain correct clinical information that is available to the patient's attending physician and hospice staff including:

(1) initial assessment, comprehensive assessments and updated comprehensive assessments;

(2) initial plan of care and updated plans of care;

(3) clinical notes. A clinical note means a notation of a contact with the patient and/or the family that is written and dated by any person providing services and that describes signs and symptoms, treatments and medications administered, including the patient's reaction and/or response, any changes in physical, emotional, psychosocial or spiritual condition during a given period of time;

(4) signed copies of the notice of patient rights pursuant to Section 793.1 of this Title and election statement pursuant to Section 793.2 of this Title;

(5) responses to medications, symptom management, treatments and services;

(6) outcome measure data elements;

(7) physician certification and recertification of terminal illness;

(8) any advance directives;

(9) physician orders;

(10) documentation regarding instructions and written information provided to patients and families on the use, management and disposal of controlled substances and durable medical equipment and supplies; and

(11) a discharge summary if the patient is discharged from hospice, completed by appropriate personnel, including but not limited to:

(i) reason for discharge and date;

(ii) a summary of the hospice care given including treatments, symptoms and pain management; and

(iii) patient status upon discharge including a description of any remaining needs.

(c) the clinical record for each patient is in a form that can be summarized for transferral of information for inpatient care, home care services, and bereavement services, as appropriate;

(d) the clinical record meets the following requirements as applicable:

(1) all entries shall be current;

(2) all entries shall be legible and recorded in dark ink to facilitate photocopying;

(3) all entries shall be signed and dated, including the time of day and authenticated; and

(4) all records shall be kept in a place convenient to and easily retrievable by the hospice staff;

(e) the clinical record, whether hard copy or in electronic form, is readily available on request by an appropriate authority;

(f) the clinical record, its contents and the information contained is safeguarded against loss or unauthorized use. The hospice must be in compliance with state and federal requirements, including Section 18 of the Public Health Law, governing the disclosure of personal health information.

(g) each patient's clinical record shall be retained by the hospice for at least a six-year period after death or discharge from the hospice. In the case of a minor who is discharged from the hospice, clinical records shall be retained for at least a six-year period after

death or discharge or, if the minor attains majority (18 years), for a three-year period thereafter, whichever period is longer.

Section 794.5 - Short Term Inpatient Service.

(a) Part 702 of this Title, Section 717.3 of this Title and Part 14 of the Sanitary Code shall apply to hospice inpatient settings as applicable.

(b) The hospice may provide short-term inpatient services for respite and for pain control and management of symptoms related to the terminal illness in a free-standing hospice facility, a skilled nursing facility or a general hospital.

(c) The provision of inpatient services shall be consistent with applicable Federal requirements and with the definition of hospice as defined in section 700.2 of this Title, and shall include, but not be limited to:

(1) 24 hour nursing services that meet the needs of all patients and are furnished in accordance with the patient's plan of care, including the services of a registered professional nurse if a hospice patient has been admitted to inpatient services for other than respite care. Each patient must receive all nursing services as prescribed and must be comfortable, clean, well groomed, and protected from accident, injury and infection;

(2) accommodations to enable families to store and prepare food brought in by the family;

(3) accommodations to enable families to remain with the patient throughout the night;

(4) flexible visitation policies which include 24-hour a day visiting privileges regardless of age of visitor;

(5) provision of adequate and wholesome food and supplemental nourishments under the direction of a dietician;

(6) flexibility in meal times and in selection of food based on individual needs of patients;

(7) accommodations for recreational and religious activities;

(8) adequate space for private small group interactions;

(9) retention and use of personal possessions as space and safety permits;

(10) a telephone accessible to the patient; and

(11) oxygen available to each patient, as necessary.

(d) In addition to meeting the provisions of section 794.2 of this Part and any applicable State and Federal requirements, contractual arrangements with a facility for inpatient services must include a written agreement describing the arrangements and the agreement shall specify that:

(1) a member of the hospice interdisciplinary care group shall conduct onsite reviews of the inpatient services provided to ensure conformance with the established plan of care, at least weekly;

(2) the hospice supplies the inpatient provider with a copy of the patient's plan of care and specifies the inpatient services to be furnished;

(3) the inpatient provider has established patient care policies consistent with those of the hospice and agrees to abide by the palliative care protocols and plan of care established by the hospice for its patients;

(4) the hospice patient's inpatient clinical record includes a record of all inpatient services furnished and events regarding care that occurred at the facility;

(5) upon discharge from the inpatient service, a copy of the discharge summary and if requested a copy of the inpatient medical record will be forwarded to the hospice and retained as part of the hospice clinical record;

(6) the inpatient facility has identified an individual within the facility who is responsible for the implementation of the provisions of the agreement;

(7) the hospice retains responsibility for ensuring that the training of personnel who will

be providing the patient's care in the inpatient facility has been provided and that a description of the training and the names of those giving the training are documented; and

(8) a method for verifying that the requirements in paragraphs (d)(1) through (d)(6) of this section are met.

(e) The hospice that provides inpatient care directly in its own facility must demonstrate compliance with all of the following standards:

(1) ensuring that staffing for all services reflects its volume of patients, their acuity, and the level of intensity of services needed to ensure that plan of care outcomes are achieved and negative outcomes are avoided;

(2) providing 24-hour nursing services that meet the nursing needs of all patients and are furnished in accordance with each patient's plan of care;

(3) providing pharmacy services under the direction of a licensed pharmacist responsible for evaluating the patient's response to drug therapy, identification of potential drug reactions and recommend corrective action;

(4) having a written policy for dispensing drugs accurately and maintaining records of receipt and disposition of controlled drugs;

(5) maintaining a safe physical environment free of hazards for patients, staff, and visitors which includes:

(i) addressing real or potential threats to health and safety of patients, others and property;

(ii) having a written disaster plan in effect for managing power failures, natural disasters and other emergencies affecting the ability to provide care. The plan must be periodically reviewed and rehearsed with staff;

(iii) developing and implementing procedures for routine storage and prompt disposal of trash and medical waste; light, temperature and ventilation/air exchanges; emergency gas and water supply; and scheduled and emergency maintenance and repair of all equipment;

(6) ensuring that patient areas are designed to preserve the dignity, comfort, and privacy of patients; and

(7) developing and implementing policies that meet federal standards for use of seclusion and restraints.

Section 794.6 Hospice Residence Service. (a) Part 702 of this Title, Section 717.4 of Part 717 of this Title and Part 14 of the Sanitary Code shall apply to all hospice residence settings, as applicable.

(b) Hospice residence as defined in Part 702 of this Title shall mean a hospice operated home which is residential in character and physical structure, and operated for the purpose of providing more than two hospice patients, but not more than eight hospice patients, with hospice care.

(c) Hospice residence service shall include, but not be limited to:

(1) the provision of services as specified in Section 794.5(c)(2), (3), (4), (6), (7), (8), (9), (10) and (11) of this Part.

(2) the provision of either home health aide, licensed practical nurse or registered nurse services, as appropriate, to address the medical needs and ensure the safety and well-being of residents on a 24-hour a day basis;

(3) the provision of adequate and wholesome food and supplemental nutrition under the direction of a dietician. The hospice residence must:

(i) store, prepare, distribute and serve food under sanitary conditions in accordance with the sanitary requirements of Part 14 (Service Food Establishments) of Chapter 1 (State Sanitary Code) of this Title;

(ii) offer each resident at least three meals, or their equivalent, each day at regular times, with not more than 14 hours between a substantial evening meal and breakfast; and

(iii) prepare and serve therapeutic diets, prescribed by a physician, and planned and supervised by a professionally qualified dietitian; and

(4) routine and emergency drugs and biologicals, provided either directly to residents, or obtained under contract as described in section 794.2 of this Part, in accordance with Article 33 of the Public Health Law and Part 80 of this Title.

Section 794.7 Leases. (a) Whenever a hospice leases premises in which the inpatient component of a hospice or a hospice residence is to be provided, the hospice shall ensure that the lease contains the following language:

"The landlord acknowledges that its rights of reentry into the premises set forth in this lease do not confer on it the authority to operate a hospital or hospice as defined in articles 28 and 40, respectively, of the Public Health Law on the premises and agrees to provide the New York State Department of Health with notification by certified mail of intent to reenter the premises or to initiate dispossess proceedings or that the lease is due to expire, at least 30 days prior to the date on which the landlord intends to exercise a right of reentry or to initiate such proceedings or at least 60 days before expiration of the lease."

(b) Upon receipt of notice from the landlord of its intent to exercise its right of reentry or upon the service of process in dispossess proceedings and 60 days prior to the expiration of the lease, the hospice shall immediately notify by certified mail the New York State Department of Health of receipt of such notice or service of such process or that the lease is about to expire.

(c) No lease covering the administrative office site or the premises in which the inpatient component of a hospice or a hospice residence as defined in Article 40 of the Public Health Law is to be conducted and no lease covering any equipment used in the operation of a hospice may contain any provision whereby rent, or any increase therein, is based upon the Consumer Price Index or any other cost of living index. In the event the lease covering such hospice premises or equipment contains provisions whereby it is the lessor's responsibility to pay necessary expenses associated with such premises or equipment, such as real estate taxes, utilities, heat, insurance, maintenance and operating

supplies, such lease may contain provisions which allow adjustments to the rent only to the extent necessary to compensate the lessor for changes in such expenses.

Section 794.8 Hospice care provided to residents of a Skilled Nursing Facility (SNF) or Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID).

(a) A hospice that provides hospice care to residents of a SNF or ICF/IID, hereafter referred to as the facility, must assume responsibility for professional management of the hospice services provided to the resident, in accordance with the hospice plan of care, including assessing, planning, monitoring, directing and evaluating the patient's/resident's hospice care across all settings.

(b) The hospice and the facility must have a written agreement for the provision of hospice services between the two entities signed by an authorized representative of the hospice and the facility. The written agreement must include the following provisions:

(1) the manner in which the facility and the hospice are to communicate with each other and document such communications to ensure that the needs of patients are addressed and met 24 hours a day;

(2) that the facility immediately notifies the hospice if:

(i) a significant change in a patient's physical, mental, social, or emotional status occurs;

(ii) clinical complications appear that suggest a need to alter the plan of care;

(iii) a need to transfer a patient from the facility arises, and the hospice makes arrangements for, and remains responsible for, any necessary continuous care or inpatient care necessary which is related to the terminal illness and related conditions; or

(iv) a patient dies;

(3) that the hospice is responsible for determining the appropriate course of hospice care, including the determination to change the level of services provided;

(4) that the facility is responsible for furnishing 24 hour room and board care; and for meeting the personal care and nursing needs that would have been provided by the

primary caregiver at home and at the same level of care provided before hospice care was elected;

(5) a delineation of the hospice's responsibilities, which include, but are not limited to providing:

(i) medical direction and management of the patient;

(ii) core services including nursing and counseling (including spiritual, dietary and bereavement), as well as medical social services; medical supplies, durable medical equipment and drugs necessary for the palliation of pain and symptoms associated with the terminal illness and related conditions; and all other hospice services that are necessary for the care of the resident's terminal illness and related conditions; and

(iii) services at the same level and to the same extent as those services would be provided if the resident were in his or her own home;

(6) that the hospice may use the facility nursing personnel where permitted by State and Federal law and as specified by the SNF or ICF/IID to assist in the administration of prescribed therapies included in the plan of care only to the extent that the hospice would routinely use the services of a hospice patient's family in implementing the plan of care;

(7) that the hospice must report all alleged violations involving mistreatment, neglect, or verbal, mental, sexual, and physical abuse, including injuries of unknown source, and misappropriation of patient property by anyone unrelated to the hospice to the facility administrator within 24 hours of the hospice becoming aware of the alleged violation; and

(8) a delineation of the responsibilities of the hospice and the SNF or ICF/IID to provide bereavement services to facility staff.

(c) A written hospice plan of care must be established and maintained in consultation

with facility representatives.

(1) The hospice plan of care must identify the care and services that are needed and specifically identify which provider is responsible for performing the respective functions that have been agreed upon and included in the hospice plan of care.

(2) The hospice plan of care should reflect the participation of the hospice, the facility staff, and the patient and family to the extent possible.

(3) Based on collaboration between the hospice and the facility, the hospice plan of care should reflect:

(i) a common problem list;

(ii) palliative interventions;

(iii) palliative outcomes;

(iv) responsible discipline;

(v) responsible provider; and

(vi) patient goals.

(4) The hospice must approve any changes in the hospice plan of care before implementation and discuss such changes with the patient or representative, and facility representatives.

(d) For each patient, the hospice must designate a member of the interdisciplinary group who will be responsible for:

(1) providing overall coordination of the hospice care of the resident with the facility representatives and communicating with facility representatives and other health care providers and physicians participating in the provision of care;

(2) providing the facility, for each hospice patient, with:

(i) the most recent hospice plan of care;

(ii) the hospice election form and any advance directives;

(iii) the physician certification and recertification of the terminal illness;

(iv) the names and contact information for hospice personnel involved in hospice care;

(v) hospice medication information;

(vi) hospice physician and attending physician (if any) orders; and

(vii) instructions on how to access the hospice's 24-hour on-call system;

(e) Hospice staff must orient facility staff furnishing care to hospice patients to the hospice philosophy; hospice policies and procedures regarding methods of comfort, pain control, and symptom management; principles about death and dying and individual responses to death; patient rights; appropriate forms; and record keeping requirements.

Section 794.9 Records and reports. (a) The governing authority shall ensure that:

(1) the following records are retained on file at the principal office of the hospice within its approved geographic service area and available to the Department upon request:

(i) the certificate of incorporation, if applicable;

(ii) the certificate of approval;

(iii) all current contracts, leases and other agreements entered into by the hospice;

(iv) current operating policies and procedures; and

(v) a current patient/family roster;

(2) copies of the documents under subparagraphs (1)(iv) and (v) of this subdivision are retained on file at each suboffice of the hospice, if applicable;

(3) the following reports and records are retained by the hospice and available to the department upon request:

(i) minutes of the meetings of the hospice governing authority and the quality assurance committee which shall be retained for three years from the date of the meeting;

(ii) the reports of hospice surveys and inspections by outside agencies with statements attached thereto specifying the steps taken to correct any deficiencies or to carry out the recommendations contained therein which shall be retained for five years from the date of such survey or inspection;

(iii) records of all financial transactions which shall be retained eight years from the date of the transaction;

(iv) personnel records, which shall be retained six years from the date of employee termination or resignation;

(v) records of complaints and appeals, which shall be retained three years from resolution; and

(vi) records of tracking, receipt and resolution of accident and incidents.

(b) The hospice shall furnish annually to the department a copy of:

(1) the current annual report submitted to its governing body; and

(2) other such data, records and reports as may be required by the department.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Section 4010(4) of the Public Health Law authorizes the adoption and amendment of regulations for hospice providers approved pursuant to PHL Article 40 (Hospices). Section 4002 of the Public Health Law is amended by adding a new subdivision 5 to read as follows: "Terminally ill" means an individual has a medical prognosis that the individual's life expectancy is approximately one year or less if the illness runs its normal course.

Legislative Objective:

PHL Article 40 provides for Hospice care to offer persons with terminal illness an appropriate palliative care alternative to curative treatments and to protect such vulnerable individuals through the imposition of care delivery standards for providers. It is the legislative intent that hospice's interdisciplinary program and innovative approach to home and inpatient services be available statewide. These proposed regulations further this objective by expanding the definition of terminal illness to allow individuals the benefit of hospice care earlier in their terminal illness to manage their symptoms on an ongoing basis, thereby reducing the need for costly emergency room visits and hospital stays.

Needs and Benefits:

The proposed rule making was necessitated by changes in the federal conditions of participation/rules for hospice providers and recent Medicaid Redesign Initiatives. State rules have been revised and reordered to be consistent with federal rules to facilitate provider compliance and surveillance activities. Revisions to federal and state rules are

intended to improve care delivery processes and support performance improvement activity at the provider level. Additionally, amendments were necessitated by Chapter 441 of the Laws of 2011, signed by the Governor on August 17, 2011 and Medicaid Redesign efforts to expand hospice benefits. Individuals could benefit from receiving hospice services earlier in their terminal illness, by having their symptoms managed on an on-going basis, thereby reducing the need for emergency room visits and hospital stays.

Costs:

Costs to Regulated Parties:

Nominal costs may be incurred by hospice providers if coordination, management and documentation of care has not been effectively implemented by the hospice; or if data driven, outcome based quality assessment and performance improvement activities have not been taking place. These nominal costs are associated with federal quality assessment and performance improvement program requirements and would have to be incurred regardless of the proposed regulatory changes. There are currently 48 hospices in New York State.

Costs to the Agency and to the State and Local Governments Including this Agency:

The change in hospice patient eligibility which allows individuals with a 12 month life expectancy to elect the hospice benefit, has been estimated to have a net aggregate increase in gross Medicaid expenditures of $1,704,658. The aggregate NY State and Local Government share of the increase in Medicaid expenditures is approximately $400,000 for State government, and another $400,000 for local governments in the aggregate. Pursuant to 42 CFR Section 447.205, the Department gave public notice in December 2011 to amend the NYS Medicaid Plan for hospice

services to expand access to the hospice benefit. No additional costs are anticipated for the Agency or for State and Local Governments.

Local Government Mandates:

There are no local mandates in this rule. However, 6 counties operate hospice programs and will be required to meet these rules in the same manner as will private entities, as there is no exemption authority for publicly sponsored programs.

Paperwork:

Under the proposed rules, providers will now be required to report verified incidences of mistreatment or abuse to the Department of Health and or state/local bodies having jurisdiction, as required by federal rules. All other reporting requirements are consistent with existing regulations.

Duplication:

Proposed rules will be duplicative of, but consistent with, federal rules. There are no known conflicts with federal rules; consistency should facilitate provider compliance and improve effectiveness of surveillance processes.

Alternatives:

The Department could choose to retain existing standards in which case federal rules would supersede State rules where gaps or inconsistency exist. This option was rejected as it would be confusing to both providers and surveyors. Furthermore, conforming state requirements to the federal requirements will facilitate the enforcement of both.

Federal Standards:

Section 418 of 42 CFR sets forth the federal rules for hospices. The proposed State rules are consistent with federal rules, but do exceed federal rules as follows:

- The quality assessment and performance improvement section includes the requirement to have a quality committee to assure comprehensive representation and involvement in quality activities and to assure a broader quality oversight process at the provider level. This is a state requirement that is not included in the federal rules.
- Infection control includes standards for prevention and management of HIV and other bloodborne pathogen infections, consistent with existing standards for all provider types in NYS. The standards exceed federal rules by including the required program specifications.
- The responsibilities of the governing body are more clearly delineated in the proposed rules than in the federal rules, including implementation of a complaint investigation procedure and requiring that the governing body obtain a Health Commerce System account for communication with the Department.
- The proposed rule specifically states the requirements for contracts, including management contracts, to ensure hospice and provider accountability and governing body responsibilities. Such requirements are not stated in the federal rules.
- Health requirements for personnel are specific and consistent with other provider types in NYS to assure adequate patient care protection. Job descriptions, employee identification and personnel records are also required as appropriate business practices. These requirements are not stated in the federal rules.

Compliance Schedule:

As the amendments ensure conformance with federal standards that were already in effect as of December 3, 2008, and any state requirements exceeding federal rules are already in effect, regulated parties should already be in compliance, and should readily be able to comply as of the effective date of these regulations.

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REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS

Effect of Rule:

Local governments will not be affected by this rule except to the extent that they are providers of hospice services. There are 6 county-based hospice providers. The small businesses which will be affected are hospice providers which employ fewer than 100 persons. There are approximately 36 small business hospices in NYS.

Compliance Requirements:

Regulated parties are expected to be in immediate compliance as these rules are consistent with federal standards already in effect as of Dec. 3, 2008, and rules that exceed the federal rules are already in place for existing hospice providers in NYS. The proposed regulations will create a new state reporting requirement, consistent with federal rules, for reporting verified instances of patient mistreatment, abuse or neglect to the Department or to other state and local authorities. The reporting will be done through existing complaint reporting mechanisms. The proposed regulations also require the hospice to report to the Department data on quality indicators and patient outcomes, which will be the basis for performance improvement activities. This may require additional staff training and electronic data systems at the hospice. The Department implemented a hospice quality initiative intended to assist hospices with meeting this requirement. All other reporting requirements mentioned in the proposed regulations currently exist for the hospice providers.

The Department does not intend to publish a small business regulation guide in connection with this regulation. Although a number of hospices are small businesses, the

impact is not expected to be substantial. Additional guidance will be posted on the web as needed after the regulation is promulgated.

Professional Services:

No additional professional staff are expected to be needed as a result of the regulations. Quality assessment and performance improvement requirements could be handled by existing staff with appropriate training, unless staff shortages already exist at the hospice.

Compliance Costs:

There are no capital costs associated with these proposed rules. Additional costs may be associated with maintaining and analyzing data and carrying out performance improvement activities. The costs for small businesses and county sponsored hospices should not be significantly different from the costs to other affected providers.

Economic and Technological Feasibility:

The Department has considered feasibility and believes the rules can be met with minimal economic and technological impact. Departmental resources have been identified to assist hospices with quality indicators and performance improvement. Other regulations should not affect the routine cost of doing business.

Minimizing Adverse Impact:

While the Department has considered the options of State Administrative Procedure Act (SAPA) Section 202-b(1) in developing this rule, flexibility does not exist for any particular entity since the new requirements are consistent with new federal rules already in effect.

Small Business and Local Government Participations:

The Hospice and Palliative Care Association of NYS, which represents 47 of the 48 hospices statewide, were included during the development of the proposed rulemaking. The Department will meet the requirements of SAPA Section 202-b(6) in part by publishing a notice of proposed rulemaking in the State Register with a comment period. The Department will also conduct a meeting with the State-wide provider associations representing hospices and county-based hospice providers.

RURAL AREA FLEXIBILITY ANALYSIS

Types and Estimated Numbers of Rural Areas:

All counties in NYS have rural areas with the exception of 7 downstate counties. Counties with rural areas are served by 34 of the existing 48 hospices in NYS.

Reporting, Record Keeping and Other Compliance Requirements and Professional Services:

Regulated parties are expected to be in immediate compliance as these rules are consistent with federal standards already in effect as of Dec. 3, 2008, and rules that exceed the federal rules are already in place for existing hospice providers in NYS.

The proposed regulations will create a new state reporting requirement, consistent with federal rules, for reporting verified instances of patient mistreatment, abuse or neglect to the Department or other state and local authorities. The reporting will be done through existing complaint reporting mechanisms. The proposed regulations also require the hospice to report to the Department data on quality indicators and patient outcomes, which will be the basis for performance improvement activities. This may require additional staff training and electronic data systems at the hospice. The Department implemented a hospice quality initiative intended to assist hospices with meeting this requirement. All other reporting requirements mentioned in the proposed regulations currently exist for the hospice providers.

Additional quality indicator and outcome data will need to be maintained in support of the reporting of the quality indicators and patient outcomes. This can be accomplished by existing clinical and/or administrative staff with appropriate training. Professional personnel required of the hospice is unchanged from existing requirements.

Costs:

There are no capital costs associated with these rules; any such costs would result from new federal rules, regardless of whether amendments were made to state regulation. Additional training of staff in quality assessment and performance improvement may be required to be in compliance with the requirements of the new federal rules.

Minimizing Adverse Impact:

While the Department has considered the options in State Administrative Procedure Act (SAPA) Section 202-bb(2)(b), the proposed regulatory changes are consistent with new federal requirements. Therefore, Department authority to minimize impact is limited. Adverse impact is expected to be minimal.

Rural Area Impact:

The Department will meet the requirements of SAPA Section 202-bb(7) in part by publishing a notice of proposed rulemaking in the State Register with a comment period. The Department will also conduct a meeting with the statewide provider organization representing hospice providers.

STATEMENT IN LIEU OF
JOB IMPACT STATEMENT

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. The proposed regulations are intended to be consistent with current federal rules and also expand the definition of "terminal illness" to allow expanded access to hospice services and improve patient care. It is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs or employment opportunities.

Pursuant to the authority vested in the Public Health and Health Planning Council and subject to the approval of the Commissioner of Health by Section 2803 of the Public Health Law, Part 405 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:

Section 405.2 of Part 405 is amended to read as follows:

405.2 Governing body.

(f) *Care of patients.* The governing body shall require that the following patient care practices are implemented, shall monitor the hospital's compliance with these patient care practices, and shall take corrective action as necessary to attain compliance:

(4) a physician, or a licensed physician assistant under the general supervision of a physician, or a nurse practitioner in collaboration with a physician, is on duty at all times in the hospital except that the commissioner may approve substitute coverage, for all or part of each day, by each patient's attending physician when these physicians are immediately available to the hospital by telephone, and available in person <u>or by telemedicine</u> within [20] <u>30</u> minutes as needed, upon a hospital demonstrating to the commissioner that:

(i) all patients are medically stable and patients who become medically unstable are promptly transferred to an appropriate receiving hospital in accordance with section 400.9 of this Title;

(ii) the hospital does not operate an emergency service; and

(iii) the entire hospital has less than 25 approved beds;

Section 405.3 of Part 405 is amended to read as follows:

405.3 Administration

(b) Personnel. The chief executive officer develops and implements personnel policies and practices with regard to at least the following:

(10) the provision for a physical examination and recorded medical history for all personnel including all employees, members of the medical staff, contract staff, students and volunteers, whose activities are such that a health impairment would pose a potential risk to patients. The examination shall be of sufficient scope to ensure that no person shall assume his/her duties unless he/she is free from a health impairment which is of potential risk to the patient or which might interfere with the performance of his/her duties, including the habituation or addiction to depressants, stimulants, narcotics, alcohol or other drugs or substances which may alter the individual's behavior. The hospital is required to provide such examination without cost for all employees who are required to have such examination. For personnel whose activities are such that a health impairment

would neither pose a risk to patients nor interfere with the performance of his/her duties, the hospital shall conduct a health status assessment in order to determine that the health and well-being of patients are not jeopardized by the condition of such individuals. The hospital shall require the following of all personnel, with the exception of those physicians who are practicing medicine from a remote location [outside of New York State], as a condition of employment or affiliation.

Section 405.5 of Part 405 is amended to read as follows:

405.5 Nursing services.

(b) *Delivery of services.*

(3) Written nursing care plans shall be kept current. Such plans shall indicate what nursing care is needed, how it is to be provided, and the methods, approaches and mechanisms for ongoing modifications necessary to ensure the most effective and beneficial results for the patient. Patient education and patient/family knowledge of care requirements shall be included in the nursing plan. <u>The nursing care plan may be integrated into the overall interdisciplinary plan of care.</u>

(c) *Administration of drugs.* All drugs and biological shall be administered in accordance with the orders of the practitioner or practitioners responsible for the patient's

care as specified under section 405.2 of this Part, and generally accepted standards of practice. They shall be administered by a licensed physician or a registered professional nurse, or other personnel in accordance with applicable licensing requirements of title 8 of the New York State Education Law, except as set forth in paragraphs (4) and (5) of this subdivision, and in accordance with approved hospital policies and procedure.

(4) Hospitals, in accordance with approved hospital policies and procedures, may authorize hospital-issued medications to be self-administered, but must ensure that:

(i) a practitioner who is responsible for the care of the patient has issued an order allowing self-administration;

(ii) the capacity of the patient or his or her caregiver to administer the medication has been assessed;

(iv) the patient or his or her caregiver has been given instructions for the safe and accurate administration of the medication;

(v) the security of the medication has been addressed; and

(vi) there is documentation in the patient's record of the administration of each medication as reported by the patient or his or her caregiver.

(5) Hospitals, in accordance with approved hospital policies and procedures may authorize a patient to bring in his or her own medications and self-administer them, but must ensure that:

(i) a practitioner responsible for the care of the patient has issued an order, consistent with hospital policy, permitting self-administration of the medication;

(ii) the capacity of the patient and or the patient's caregiver to administer the medication has been assessed;

(iii) a determination is made if the patient and or the patient's caregiver needs instruction on the safe and accurate administration of the medication;

(iv) the medication is identified and visually evaluated for integrity;

(v) the security of the medication is addressed; and

(vi) documentation is made of the administration of each medication in the patient's record, as reported by the patient and or caregiver.

Section 405.10 of Part 405 is amended to read as follows:

405.10 Medical records.

(c) *Authentication of medical records, record entries and medical orders.*

(8) The hospital shall implement policies and procedures regarding the use and authentication of verbal orders, including telephone orders. [Such orders shall be used sparingly, shall be accepted, recorded and authenticated only in accordance with applicable scope of practice provisions for licensed, certified or registered practitioners, consistent with Federal and State law, and with hospital policies and procedures and shall

be authenticated by the prescribing practitioner, or, until January 26, 2012, by another practitioner responsible for the care of the patient and authorized to write such an order, within 48 hours, also in accordance with such policies and procedures for Federal and State law.] Such policies and procedures must:

(i) Specify the process for accepting and documenting such orders;

(ii) Ensure that such orders will be issued only in accordance with applicable scope of practice provisions for licensed, certified or registered practitioners, consistent with Federal and State law; and

(iii) Specify that such orders must be authenticated by the prescribing practitioner, or by another practitioner responsible for the care of the patient and authorized to write such orders and the time frame for such authentication.

Section 405.19 of Part 405 is amended to read as follows:

405.19 Emergency services.

(d) *Staffing*. The following requirements are applicable to all organized emergency services.

(1) Emergency service physician services shall meet the following requirements:

(ii) There shall be at least one emergency service attending physician on duty 24 hours a day, seven days a week. For hospitals that exceed 15,000 unscheduled visits annually, the attending physician shall be present and available to provide patient care and supervision in the emergency service. As necessitated by patient care needs, additional attending physicians shall be present and available to provide patient care and supervision. Appropriate subspecialty availability as demanded by the case mix shall be provided promptly in accordance with patient needs. For hospitals with less than 15,000 unscheduled emergency visits per year, the supervising or attending physician need not be present but shall be available within 30 minutes, in person or by telemedicine, provided that at least one physician, nurse practitioner, or licensed physician assistant shall be on duty in the emergency service 24 hours a day, 7 days a week.

Pursuant to the authority vested in the Public Health and Health Planning Council and subject to the approval of the Commissioner of Health by Section 2803 of the Public Health Law, Section 711.3 of Part 711 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:

711.3 Site requirements.

(a) Each health facility shall be easily accessible to patients or residents, staff and visitors and to service vehicles such as fire protection apparatus. Health facility grounds shall have paved roads and walkways to provide access to all public and service entrances, including loading docks. Emergency department entrances shall be conspicuously marked to facilitate access from public roads and streets. Access to emergency entrances shall not conflict with other vehicular or pedestrian traffic.

(b) Health facilities shall be located with due regard to the accessibility by public transportation for patients, staff and visitors and the availability of competent medical and surgical consultation.

(c) Off-street parking shall be made available for patients, staff and visitors. In urban areas where a health facility is accessible by public transportation, the commissioner may waive the requirement for off-street

parking, if compliance with this requirement is burdensome or unnecessary because adequate parking exists to accommodate patients, staff and visitors.

(d) In earthquake prone regions, health facilities that are subdivided into separate structural units by seismic joints, each unit shall be provided with an exit stairway to permit evacuation from the building without traversing the seismic joints. Special care shall be taken to anchor fixed equipment, suspended ceilings, light fixtures and similar items to minimize hazard to occupants and damage to the equipment and building during an earthquake. Storage shelves and racks holding breakable or fragile supplies shall be designed to retain their contents when subject to the lateral forces of an earthquake.

(e) If a health facility [is located in a flood plain] within the 500 year flood crest level, the commissioner may
require that the health facility comply with any, or all, of the following:

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

(2) A helicopter landing pad shall be located on the facility roof and shall be structurally sound and suitable for safe helicopter evacuations

of patients and staff.

(3) The health facility shall be designed and capable of providing services necessary to maintain the life and safety of patients and staff if floodwaters reach the [one]five-hundred year flood crest level and shall include the following:

(i) electrical service, emergency power supply, heating, ventilating and sterilizers;

(ii) main internal communication capability, including nurses' call systems and the fire alarm system;

(iii) dietary service;

(iv) an acceptable alternate to the normal water supply system;

(v) an acceptable emergency means of storage and/or disposal of sewage, biological waste, and garbage;

(vi) emergency department service; and,

(vii) x-ray service.

(4) No floor level or basement shall be located below the [100]500-year flood crest level, unless specifically approved by the commissioner. On those floor levels or basements that the commissioner approves to be below the [100]500-year flood crest level:

(i) all new partitions shall be constructed without void such as solid concrete, solid concrete block, or other solid material;

(ii) no new carpeting shall be installed; and

(iii) the following services and equipment shall not be provided or located in such area:

(a) medical records storage area;

(b) medical records library;

(c) surgical suite; and

(d) such other services and fixed equipment that the commissioner may determine, taking into consideration patient safety and cost of replacement.

(5) Storage of available building plans of the existing buildings shall be above the [100]500-year flood crest level.

(6) Health facilities shall:

(i) install flood resistant emergency generators and fuel supplies;

(ii) install generators and fuel pumps in a manner so that they are readily accessible in the event of a flood;

(iii) install external pre-connections in power systems for use in the event of an emergency power system failure;

(iv) install external pre-connections on HVAC system for temporary boiler and chiller hook-up; and

(v) ensure that the emergency power generation capacity is capable of powering the facilities HVAC system during a power outage.

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

November 21, 2013

Acute Care Services - Construction **Exhibit # 2**

1.	132009 C	Hospital for Special Surgery (New York County)
2.	131326 C	Memorial Hospital for Cancer and Allied Diseases (New York County)
3.	132037 C	Memorial Hospital for Cancer and Allied Diseases (New York County)
4.	132077 C	Memorial Hospital for Cancer and Allied Diseases (Suffolk County)

Public Health and Health Planning Council

Project # 132009 C
Hospital for Special Surgery

County: **New York**
Purpose: **Construction**
Program: **Hospital**
Acknowledged: **July 16, 2013**

Executive Summary

Description
New York Society for the Relief of the Ruptured and Crippled d/b/a Hospital for Special Surgery (HSS), a 205-bed not-for-profit hospital located in New York County, requests approval to expand the hospital by constructing an addition, adding operating rooms, and certifying an additional 10 medical/surgical beds.

A four level addition to the existing west wing of the hospital will primarily be used to accommodate continued inpatient surgical growth, which is to be accomplished through the addition of three new inpatient Class C orthopedic operating rooms (ORs) adjacent to the existing fourth floor surgical suite. This will increase the total inpatient ORs from 21 to 24. The addition will also include two sub-sterile rooms, a seven-room examination suite, an administrative suite, orthopedic storage areas, a mechanical equipment room, two new elevators and breakthrough connections to the existing third, fourth and fifth floors of the Hospital's West Wing.

The addition of 10 medical/surgical beds will increase the Hospital's current certified bed total from 205 to 215. After the addition of the 10 beds, the bed complement will be: 201 Medical/Surgical, 10 Pediatric, and 4 Intensive Care. The additional beds will address the growth in volume that the hospital is realizing and can be accommodated in the Hospital's current footprint, without any construction and with a capital cost of less than $300,000.

DOH Recommendation
Contingent Approval

Need Summary
The addition of 10 medical/surgical beds and 3 operating rooms will allow the hospital to meet the increasing demand for inpatient and outpatient services.

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

Financial Summary
Project costs of $15,822,074 will be met via equity from operations of $11,877,034 and a TELP loan for $3,945,000 at a 3.0% interest rate for 6 years.

Incremental Budget:	
Revenues	$18,231,354
Expenses	12,080,981
Excess of Revenues over Expenses	$6,150,373

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 review of this project.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fIfty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of documentation of receipt of Public Authorities Control Board approval of the TELP financing 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]

Approval conditional upon:

1. Project must be completed within three 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. Staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. Signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. Entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. 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. Applicant shall complete construction by June 15, 2015. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

December 12, 2013.

Need Analysis

Background

Hospital for Special Surgery (HSS) is a 205-bed acute care hospital located at 535 East 70th Street, New York, 10021, in New York County. HSS seeks CON approval to add 10 net new inpatient beds to its current certified capacity of 205 total beds for a new certified total beds complement of 215 and three (3) net new operating rooms (ORs) for a total of 24.

Hospital for Special Surgery has the following certified beds and services:

Table 1: Hospital for Special Surgery: Certified Capacity

Bed Category	*Current*	*Requested*	*Upon Project Completion*
Medical / Surgical	191	+10	201
Intensive Care	4		4
Pediatric	10		10
Total	205		215

Table 2: Hospital for Special Surgery: Certified Services

Ambulatory Surgery - Multi Specialty	Audiology O/P
Clinical Laboratory Service	CT Scanner
Magnetic Resonance Imaging	Medical Social Services
Medical/Surgical	Nuclear Medicine - Diagnostic
Pediatric	Pediatric O/P
Pharmaceutical Service	Physical Medicine and Rehabilitation O/P
Primary Medical Care O/P	Radiology - Diagnostic
Respiratory Care	Therapy - Occupational O/P
Therapy - Physical O/P	Therapy - Speech Language Pathology

HSS is a member of New York Presbyterian Healthcare System and an affiliate of the Weill Medical College of Cornell University.

The hospital is authorized to provide health care at nine (9) sites in the New York metropolitan area. These sites provide outpatient services such as Physical Therapy, Primary Medical Care, Physical Medicine and Rehabilitation, Diagnostic Radiology, and Ambulatory Surgery - Single Specialty.

Hospital for Special Surgery is an acute care hospital that specializes in orthopedic surgery. Approximately 97.0% of the hospital's inpatient discharges are allocated to major diagnostic category diseases and disorders of the musculoskeletal system and connective tissue. The facility's service area is comprised of non-NYS residents (33.0%), all the boroughs of New York City and the New York metropolitan area (63.0%), and other NYS counties (4.0%).

In 2008, HSS recorded 10,979 medical/surgical discharges; by 2012, discharges increased by 23.1%, to 13,511. The average daily census (ADC) for these discharges stood at 131 patients on any given day in 2008; then increased to 138 in 2009. The hospital's upward trend in medical/surgical ADC continued in 2010, to 141 patients on any given day and reached a high of 148 patients in 2012. At the same time, HSS experienced a marked decline in the average length of stay (ALOS) of its medical/surgical discharges. During the period, medical/surgical ALOS declined by 7.0%, from 4.3 days in 2008 to 4.0 in 2012 (Table 3).

Table 3: Hospital for Special Surgery: Inpatient Utilization Statistics by Major Service *Category. Source: SPARCS 2006 – 2009.*					
Service	*2008*	*2009*	*2010*	*2011*	*2012*
Discharges					
Medical/Surgical	10,979	12,359	12,924	13,021	13,511
Pediatric	284	344	348	287	324
General Psychiatric	0	1	2	0	0
Total	11,263	12,704	13,274	13,308	13,835
Average Daily Census					
Medical/Surgical	131	138	141	142	148
Pediatric	2	3	3	2	3
General Psychiatric	0	0	0	0	0
Total	133	140	144	145	151
Average Length of Stay					
Medical/Surgical	4.3	4.1	4.0	4.0	4.0
Pediatric	2.8	2.8	2.8	3.1	3.3
General Psychiatric	0.0	1.0	3.5	0.0	0.0
Total	4.3	4.0	4.0	4.0	4.0

The facility recorded a considerable number of ambulatory surgery procedures. In 2008, HSS recorded 19,681 ambulatory surgery procedures; by 2012, the number increased by 34.6%, to 26,499 (Table 4).

Table 4: Hospital for Special Surgery: Distribution of Ambulatory Surgery Cases *Source: SPARCS 2008 – 2012*				
2008	*2009*	*2010*	*2011*	*2012*
19,681	23,224	24,540	26,429	26,499

Need for Additional Operating Rooms and Inpatient Beds

HSS's performs the majority of its cases on Monday through Friday. During these times the operating rooms exceed the maximum utilization rate, causing the hospital to be unable to accommodate new surgeons, the growing practices of current surgeons, or emergencies. In order to alleviate surgical constraints, HSS implemented an inpatient surgical schedule every other Saturday. However, the extent of the surgeries that can be done on Saturdays is limited by surgeon schedules and staff availability, and by the need to manage daily inpatient bed occupancy.

Currently, there are 21 certified operating rooms at the facility. During the period from 2008 to 2012, the hospital averaged 12,346 and 24,075 inpatient and outpatient surgeries, respectively. Combined, HSS inpatient and outpatient surgeries averaged 36,421 per year. The average per operating room was 1,734, which exceeded the general guideline of 1,200 cases per OR per year.

There are several reasons that HSS seeks to increase its medical/surgical complement of beds. Firstly, the increase in inpatient admissions/discharges over the past several years demonstrates market demand for its services. SPARCS data for the years 2008 – 2012, show that HSS's inpatient discharges have grown at an average annual rate of 5.8 percent per year. The applicant expects that the demand for its services will continue to grow at a rate of 4.0 percent for the remainder of the decade. HSS also expects that the following factors will continue to contribute to its growth:

- broad geographic service area;
- the general aging of the population that is favorable for orthopedic surgery; and
- the number of revision surgeries to replace implants that have reached the end of their useful life expectancy.

The facility's sustained growth in inpatient volume over the last five years was in part due to its improvement in ALOS, which allowed the hospital to turn over its beds. If HSS did not improve its ALOS, the hospital would have operated closer to the medical/surgical optimum of 85.0 percent. HSS efficient discharge planning allows the hospital to have patients in the operating room while those in-house are being discharged.

Conclusion

The additional beds will allow HSS to meet the demand for its inpatient services as admission continues to increase at an average annual rate of about 5.8 percent. The need for the additional operating rooms is supported by the facility's 7.7 percent annual rate of growth in surgical cases over the last five years. The additional beds and OR's will also support the hospital's current surgeons and assist in the recruitment of new orthopedic surgeons, which will help ensure timely access to inpatient surgical services.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Program Description

The Hospital for Special Surgery seeks approval to construct a four (4) level addition to its existing West Wing and add three (3) new inpatient Class C orthopedic operating rooms (ORs) adjacent to the existing fourth floor surgical suite, thus increasing the total inpatient ORs from 21 to 24. The Hospital also seeks approval to add ten (10) Medical/Surgical inpatient beds (within the hospital's current footprint), thus increasing the bed total from 205 to 215.

Staffing is expected to increase by 71.60 FTEs in the first year after completion and remain at that level through the third year of operation.

Compliance with Applicable Codes, Rules and Regulations

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total project cost, which is for new construction and moveable equipment, is estimated at $15,822,074, itemized as follows:

Item	Cost
New Construction	$8,450,000
Design Contingency	845,000
Construction Contingency	422,500
Planning Consultant Fees	50,000
Architect/Engineering Fees	600,000
Construction Manager Fees	350,000
Other Fees (Consultant)	796,000
Moveable Equipment	3,945,040
Telecommunications	250,000
Financing Costs	25,000
CON Fee	2,000
Additional Processing Fee	86,534
Total Project Cost	$15,822,074

Project costs are based on a construction start date of 12/15/2013, and a six-month construction period. The applicant's financing plan is as follows:

Equity	$11,877,034
TELP Equipment Lease	3,945,040
(3% interest for a 6 Year term)	

Operating Budget

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

Inpatient:	Year One	Year Three
Revenues	$15,903,347	$17,583,514
Expenses:		
Operating	$9,560,744	$9,975,987
Capital	1,246,759	1,233,891
Total Expenses	$10,807,503	$11,209,878
Excess of Revenues over Expenses	$5,095,844	$6,373,636
Utilization: (Inpatient Discharges)	567	627
Cost Per Discharge	$19,060.85	$17,878.59

Outpatient:	Year One	Year Three
Revenues	$597,287	$647,840
Expenses:		
Operating	$749,435	$739,467
Capital	137,299	131,636
Total Expenses	$886,734	$871,103
Excess of Revenues over Expenses	($289,447)	($223,263)
Utilization: (Outpatient Procedures)	98	105
Cost Per Procedure	$9,048.31	8,296.22

Total:	Year One	Year Three
Revenues	$16,500,634	$18,231,354
Expenses:		
Operating	$10,310,179	$10,715,454
Capital	1,384,058	1,365,527
Total Expenses	$11,694,237	$12,080,981
Excess of Revenues over Expenses	$4,806,397	$6,150,373
Utilization: (Inpatient Admissions)	567	627
Utilization: (Outpatient Procedures)	98	105

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

Inpatient:	Year One	Year Three
Medicaid Fee-For-Service	.53%	.48%
Medicaid Managed Care	1.23%	1.28%
Medicare Fee- For-Service	40.39%	40.35%
Medicare Managed Care	2.29%	2.23%
Commercial Fee-For-Service	1.41%	1.44%
Commercial Managed Care	49.56%	49.75%
Private Pay	.89%	.80%
Other	3.70%	3.67%

Outpatient:	Year One	Year Three
Medicaid Managed Care	1.02%	.95%
Medicare Fee- For-Service	10.20%	9.52%
Medicare Managed Care	1.02%	.95%
Commercial Fee-For-Service	3.06%	3.81%
Commercial Managed Care	76.53%	77.14%
Private Pay	1.02%	.95%
Other	7.15%	6.68%

Expense and utilization assumptions are based on the historical experience of the facility.

Capability and Feasibility

The applicant will provide equity of $11,877,034 from operations, with the remainder coming from a TELP loan in the amount of $3,945,040 at the above stated terms to meet the total project cost. BFA Attachment B is the March 31, 2013 internal financial statement of New York Society for the Relief of the Ruptured and Crippled d/b/a Hospital for Special Surgery, which indicates the availability of sufficient funds for the equity contribution.

Working capital requirements are estimated at $2,013,497, which appears reasonable based on two months of third year expenses. The applicant will provide the working capital requirement from equity. BFA Attachments A and B are the 2011 and 2012 certified financial summary and the 2013 three month internal financial summary of Hospital for Special Surgery. Review of Attachments A and B indicates there are sufficient liquid resources to meet the equity and working capital requirements.

The submitted incremental budget indicates an excess of revenues over expenses of $4,806,397, and $6,150,373 during the first and third years. Revenues are based on current reimbursement methodologies. The budget seems reasonable.

BFA Attachment A is the 2011 and 2012 certified financial statements of Hospital for Special Surgery. As shown on BFA Attachment A, the applicant had an average positive working capital position and average positive net asset position. Also, the applicant achieved an average operating income of $38,285,000 during 2011 and 2012.

BFA Attachment B is the first three months of the 2013 internal financial statement of Hospital for Special Surgery, the certified December 31, 2012 Balance sheet, and the first three months of 2012 certified income statement of Hospital for Special Surgery. As shown on BFA Attachment B, the applicant had a positive working capital position and a positive net asset position for 2012. They also show a positive working capital and net asset position for the internal first three months of 2013. The applicant achieved an operating income of $6,464,000 during first three months of 2012 and an operating income of $2,658,000 during the first three months of 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	2011-2012 Certified Financial Summary- New York Society for the Relief of the Ruptured and Crippled, Maintaining the Hospital for Special Surgery
BFA Attachment B	March 31, 2013 internal financial statement of New York Society for the Relief of the Ruptured and Crippled, Maintaining and Hospital for Special Surgery, and the December 31, 2012 Balance sheet and first three months of 2012 certified income statement of New York Society for the Relief of the Ruptured and Crippled, Maintaining and Hospital for Special Surgery

Public Health and Health Planning Council

Project # 131326-C
Memorial Hospital for Cancer and Allied Diseases

County: New York
Purpose: Construction
Program: Hospital
Acknowledged: July 16, 2013

Executive Summary

Description

Memorial Hospital for Cancer and Allied Disease (Memorial), a 514-bed not-for-profit hospital located in New York County, which is affiliated with Memorial Sloan-Kettering Cancer Center (MSKCC), requests approval to construct a next-generation ambulatory care center for cancer care. The building will be 23 stories and approximately 759,615 square feet. The building is in the proximate location of the main campus, which will allow coordination between outpatient and inpatient services. The state-of-the art building is sufficient to meet the current ambulatory care demand and provide space to meet the anticipated growth projections through 2026. It should be noted that there are two companion applications being processed in tandem with this project; CON number 132037 and 13207, which will be discussed in separate reviews.

The building will include:

- Clinic space for hematologic, thoracic, endocrinology, head, neck and other oncology services, including an outpatient bone marrow transplant program;
- Infusion rooms for standard chemotherapy and early stage trials of new drugs and biologic agents;
- Consultative services including, dental, speech and swallowing, cardiology, pulmonary, pre-surgical testing, cutaneous lymphoma and outpatient rehabilitation;
- Radiation oncology program including: three linear accelerators, one MRI simulation suite and one CT simulation suite;
- Diagnostic imaging program including: three angio/CT units and one PET/CT;
- An interventional radiology program including: chemotherapy and retail pharmacies, laboratory medicine and pathology services;
- Academic and administrative office space and a conference center.

It is anticipated by 2026 the building will accommodate over 1,300 patients, 2,600 visitors and 1,600 staff per day. The facility will also be performing bone marrow transplants to patients on Saturdays, and Sundays.

Memorial Hospital will reach capacity for both inpatient and outpatient services by 2014, given the current trend over the past three years.

The applicant anticipates a stable market share during this period given three trends that currently exist:

1. Projections are consistent with the emerging trends in treating cancer patients as treatment shifts from inpatient to outpatient.
2. Cancer patients are receiving a longer course of treatment, which has allowed the patients to live longer.
3. Approximately 70% of the patients receive multiple medical treatments.

This application is in response to current trends, coupled with the projected number of individuals over age 60, which illustrate the challenges that Memorial will face in responding to the increasing incidence of cancer in the population over the next ten to fifteen years. This facility will serve New York City's five boroughs, Long Island's Nassau County, twelve counties in New Jersey, as well as Fairfield County in Connecticut. The increase in cancer is projected to rise by 20.2% between 2013 and 2030.

The Hospital believes this proposal will enable the facility to promote more efficient use of space that currently impedes programs from functioning together seamlessly. It will also emphasize institutional-based service delivery; and enhance medical and health information technologies that will increase quality, efficiency, and patient safety. A design team studied the utilization assumptions and provide data with industry guidelines/standards, using a per square foot model for productivity and taking into account historical utilization patterns and the future model of the changing healthcare environment.

This proposed site at 74th Street will provide additional space to accommodate anticipated patient growth projections.

DOH Recommendation
Contingent Approval

Need Summary
Memorial Hospital for Cancer and Allied Diseases seeks approval to certify a hospital extension clinic, the Memorial Sloan Kettering Ambulatory Care Center. The facility will be an ambulatory care center specifically designed for the diagnosis and treatment of cancer. The building will contain enough space to meet current demand as well as projected growth and allow the hospital to transfer patients into an outpatient setting where appropriate.

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

Financial Summary
Project costs of $1,506,019,991 will be met from the following: Equity of $150,674,316, operations / philanthropy of $505,345,675, and $850,000,000 in bond financing.

Budget in (000s):

Revenues:	$ 4,076,888
Expenses:	3,951,366
Gain/ (Loss)	$ 125,522

It should be noted that due to components of the project which are not reimbursable by Medicaid, the Total Reimbursable Project Cost is limited to $1,230,484,285.

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

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Recommendations

Health Systems Agency
There will be no HSA recommendation for this application.

Office of Health Systems Management
Approval contingent upon:
1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fIfty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of design development drawings, acceptable to the Department, complying with requirements of 10NCYRR Part 710.4, for review by DASNY. [DAS]

Approval conditional upon:
1. The project must be completed within five 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 Pharmaceutical Services, licensure by the New York State Pharmacy Board is required. [HSP]
7. All devices producing ionizing radiation must be licensed by the New York State Department of Health -- Bureau of Environmental Radiation Protection. [HSP]
8. To provide Clinical Laboratory Services, licensure by the New York State Department of Health - Wadsworth Center is required. [HSP]
9. The applicant is required to submit final construction documents, complying with requirements of 10NCYRR Part 710.7, to NYS DOH Bureau of Architecture and Engineering Facility Planning (BAEFP) prior to start of construction. [DAS]
10. Resolution of the Exterior Site Noise Exposure Category as specified in the 2010 FGI Guidelines section 1.2-6.1.2.3. [DAS]
11. The applicant must adhere to the revised Construction Start (02/17/2014) and Completion Dates (12/30/2018) provided in the application. [DAS]

Council Action Date
December 12, 2013.

Need Analysis

Project Description

Memorial Hospital for Cancer and Allied Diseases is a 514-bed acute care hospital located at 1275 York Avenue, New York, 10021, in New York County. The applicant seeks CON approval to certify a hospital extension clinic to be located on the far-east end of the block between 73rd and 74th Streets and York Avenue and the FDR Drive, New York, in New York County.

Background/Analysis

Memorial Hospital for Cancer and Allied Services has the following certified beds and services:

Table 1: Memorial Hospital for Cancer and Allied Services: Certified Beds by Service.

Bed Category	Capacity
Intensive Care	20
Medical / Surgical	457
Pediatric	37
Total	514

Table 2: Proposed Services at the 74th Street Site:

Service	Add
CT scanner	√
Dental	√
Linear Accelerator	√
Magnetic Resonance Imaging	√
Nuclear Medicine (Diagnostic)	√
Nuclear Medicine (Therapeutic)	√
Nutritional	√
Pet Scanner	√
Pharmaceutical Service	√
Radiology - Diagnostic	√
Radiology - Therapeutic	√
Therapy - Occupational	√
Therapy - Physical	√
Therapy - Respiratory	√
Therapy - Speech Language Pathology	√
Transfusion Services - Limited	√
Oncology O/P	√

Memorial is authorized to operate 13 extension clinics in the following counties: Kings, New York, Nassau, Suffolk and Westchester. These clinics provide out patient services such as diagnostic radiology, medical social services, nursing, pharmaceutical, primary medical care O/P, psychology, nutritional, clinical laboratory, CT scanner, magnetic resonance imaging, physical medicine and rehabilitation, and linear accelerator.

Memorial has 514 total inpatient beds. In 2008, the hospital recorded 22,618 total inpatient discharges; by 2012, these discharges increased by 8.5 percent to 24,534 (Table 3). Memorial has a large service area. An average of 32 percent of the hospital's inpatient discharges are for patients that reside outside New York State, while 53.0 percent of discharges originate from Kings, New York, Queens, Suffolk, Nassau, and Westchester Counties. In 2000, the total census of the aforementioned counties was 9,909,272 residents; by the 2010 census period, the population increased by 2.0 percent to 10,103,290 and is projected to reach 10,327,907 by 2020.

Table 3: Total Inpatient Discharges (SPARCS 2008 – 2012)

	2008	2009	2010	2011	2012
Total Inpatient Discharges	22,618	23,423	24,381	24,468	24,534

During the five year time interval 1996-2000, the average cancer incidence for the residents of counties from which the hospital draws about 53 percent of its inpatients discharges was 47,225 ; by 2006-2010, this increased by 9.8 percent to 51,830. During the same period, cancer incidence in New York State increased by 11.6 percent from 93,112 to 103,907.

The overall current patient visits for all of Memorial's sites totaled 1,171,131. Of these, 3.0 percent, 23.3 percent and 39.6 percent were allocated to magnetic resonance imaging, diagnostic radiology and primary medical care, respectively.

The outpatient visits that Memorial saw on its main campus will be moved to the new extension clinic. In 2010, the hospital recorded 116,489 visits, by 2012, those visits increased by 9.2 percent to 127,247. The facility expects the aforementioned to exceed 133,000 by the end of 2013 and increase to more than 142,000 by 2014.

Imaging at the new site will support the complement of outpatient clinical programs in the building, as well as provide additional capacity for institutional growth. Patients will also benefit by having all of their services in a single setting. Patients will be able to coordinate their appointments with physician visits and/or infusion treatments, thereby reducing travel times, patient fatigue and the burden on the caregiver. Memorial indicates that in 2012, there were 242,056 outpatient diagnostic radiology procedures performed at its Manhattan sites. The facility expects its year one volume to increase slightly to 254,966 and reach 259,546 by year three (3).

Memorial states that its current Interventional Radiology (IR) program is at maximum capacity. On average, its patients encounter a four-day wait time for procedure appointments. In order to ameliorate the issue, the hospital states that it has extended its hours of operation and offered weekend hours. However, by 2017, the hospital expects that the IR service capacity will be exhausted. This service will also relocate to the new building and be built with capacity for current demand and for future growth. The program will also support the other clinical programs in the ambulatory care center. The applicant's 2012 data show that the program recorded 7,081 IR procedures; by the first year of operation the facility expects that these procedures will increase more than twofold, to 17,723, and reach 16,250 by the third year of operation.

The hospital recorded 22,505 radiation oncology procedures in 2010; by 2012, said procedures increased by 4.0 percent to 23,414. The hospital will add 3 net new linear accelerators to support the program. Based on current use and the need as described below, the hospital has the usage to support the request.

According to the need methodology set forth in section 709.16, linear accelerators are expected to perform between 5,000 and 6,500 treatments per year.

Based on 709.16, the public need for linear accelerators in New York City is:

1	Number of Cancer Cases per Year	37,840
2	60% will be Candidates for Radiation Therapy	22,704
3	50% of (2) will be Curative Patients	11,352
4	50% of (2) will be Palliative Patients	11,352
5	Course of Treatment for Curative Patients is 35 Treatments	397,322
6	Course of Treatment for Palliative patients is 15 Treatments	170,281
7	The Total Number of Treatments [(5)+(6)]	567,603
8	Need for MEV Machines in NYC (Each MEV Machine has Capacity for 6,500 Treatments)	87
9	Existing/Approved Resources	72
10	Remaining Need for MEV Machines	15

There is a remaining need for 15 linear Accelerators in New York City. If this project is approved, there will be a remaining need for 12 linear accelerators

The new Ambulatory Care Center will support state-of-the-art early clinical trials of new drugs and biologicals (phase 1, 2 and 3 level protocols) across the entire spectrum of malignant diseases, and investigate the efficiency of new pharmacology. The space currently occupied by the outpatient clinics on the main campus will be reallocated for use by inpatient services. This will allow the hospital to address its inpatient needs for cancer patients that are immuno-compromised and in need of single occupancy rooms.

Conclusion

The new building will enhance Memorial's ability to provide cancer care and meet the oncology needs of the patients that choose to use the hospital's services. It will also allow the hospital to continue to recruit new faculty, and implement state-of-the-art technology and medical treatment used in cancer care.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Project Proposal

Memorial Hospital for Cancer and Allied Diseases proposes to construct a 23-story ambulatory care extension clinic. The Center will offer multidisciplinary care with all services under one roof.

Approved services will be: CT Scanner; Dental; Linear Accelerator; Magnetic Resonance Imaging; Nuclear Medicine (Diagnostic & Therapeutic); Nutrition; Pet Scanner; Pharmaceutical Service; Radiology (Diagnostic & Therapeutic); Therapy (Occupational, Physical, Respiratory, and Speech Language Pathology); and Transfusion Services (Limited).

Staffing will increase by 650.0 FTEs in the first year after completion and by an additional 23.0 FTEs by the third year of operation.

Compliance with Applicable Codes, Rules and Regulations

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total project cost, which is for new construction and the acquisition of moveable equipment is estimated at $1,506,410,216, itemized as follows:

Land Acquisition	$ 215,000,000
New Construction	705,265,643
Renovation and Demolition Equipment	2,802,557
Site Development	15,084,562
Temporary Utilities	4,200,023
Asbestos Abatement and Removal	17,850,097
Design Contingency	47,097,585
Construction Contingency	23,548,793
Planning Consulting Fees	11,130,431
Architect Engineering Fees	42,103,353
Construction Manager Fees	12,180,066
Other Fees (Consultant)	63,649,239
Moveable Equipment	118,984,063
Telecommunications	42,984,599
Financing Costs	6,766,000
Interim Interest Expense	169,852,406
Total Submitted Project Costs	1,498,499,416
Application Fee	2,000
*Adjusted Additional Processing Fee	7,518,575
Total Project Costs	$1,506,019,991

Non-Reimbursable Cost

Note, at this time, the applicant is aware that land, shell space, retail and café space, and off-site property remediation are not reimbursable by Medicaid as part of this project. The total non-reimbursable cost, according to the Bureau of Architectural & Engineering Facility Planning, is $275,535,706. The adjusted additional processing fee is based upon the submitted project costs less non-Article 28 costs. Based on the determined non-reimbursable costs and the adjusted processing fee, total reimbursable project costs are limited to $1,230,484,285. The total reimbursable costs are as follows:

Total Project Cost submitted without fees:	$1,498,499,416
Non-Reimbursable Costs:	
Land Acquisition	(215,000,000)
Retail Space	(1,408,386)
Shell/Unassigned Space:	(47,577,320)
Off-site property remediation	(11,550,000)
Total Reimbursable Cost without Fees:	**$1,222,963,710**
Application Fee:	2,000
*Adjusted Additional Processing Fee:	7,518,575
Total Reimbursable Project Cost:	**$1,230,484,285**

Project costs are estimated based on a July 1, 2014 start date and a 57-month construction period.

* Note: The additional processing fee is calculated on the sum of Total Reimbursable Cost without Fees plus the 67% of the land acquisition costs related to Article 28 use.

Project Financing

Project Financing is presented below:

Equity	$150,674,316
Operations/Philanthropy	505,345,675
Bonds ($550,000,000 Issued)	850,000,000
Total	$1,506,019,991

Bonds Issued (Taxable) fixed rate 5% for 40 years	$400,000,000
Bonds Issued (Taxable) fixed rate 4.125% for 40 years	150,000,000
DASNY Bonds (2016) Projected Issue	300,000,000
	$850,000,000

Memorial Sloan Kettering Cancer Center (MSKCC) has not provided a letter of interest to date from DASNY for the additional bond financing. The applicant makes the assumption of a 5.25% interest rate for a term of 30 years as it currently has an AA rating according to Moody's and Fitch. If for any unforeseen reason, the bond market cannot be accessed in 2016, the hospital would borrow the money from MSKCC with no final due date, term or interest. $550 million dollars of taxable bonds has already been issued to the facility and is now being appropriated for the stated project.

Feasibility Study

The applicant has provided an internal feasibility study relative to this project. BFA Attachment B presents historical and forecasted results pertaining to the facility in accordance with the Department of Health feasibility criteria for projects proposing bond financing with impact analysis. The following are significant assumptions contained in the internal study:

Market Share Projections (Inpatient & Outpatient Visits)

BFA Attachment C presents historical and forecasted demand for inpatient and outpatient services, based on the following assumptions:

- The number of discharges in 2012 was 24,543, which represents a 78.9% occupancy rate, and is projected to increase to 28,278 discharges or 15% by 2021, based on the feasibility study.
- The number of visits to the facility was 1,171,131 in 2012 and is expected to increase by approximately 50%, or to 1,759,476 visits, by year 2021, based on the feasibility study.
- Memorial has a large service area. An average of 32% of the hospital's inpatient discharges are from patients that reside outside New York State and 53% originate from Kings, New York, Queens, Suffolk, Nassau, and Westchester Counties.

Ratio Analysis:

Presented below are the key ratios which are financial indicators that distill relevant information using quantified data from the certified financial statements. The two year comparison is used as a comparative analysis for years 2011and 2012. Ratio analysis is derived from BFA Attachment A, which are certified financial statements.

Stated Ratios	2011	2012
Days of Cash on Hand	481	571
Debt Ratio	2.9%	3.8%
Net Profit Margin	14.9%	10.8%
Operating Profit Margin	14.9%	10.8%

- Days of Cash of Hand indicates the hospital has excess cash on hand in order to meet its short term obligations.
- Debt Ratio is positive and indicates that the facility is financially healthy from a credit point of view.
- Net Profit Margin indicates the rate of return on assets and is positive.
- Operating Profit Margin measures total operating revenues against total operating expenses and a positive percentage indicates the operation is operationally sound.
- Moody's Investor Service and Fitch rated the facility AA.

Ratio analysis using the certified analytical measures, trend, and benchmarks supports favorable recommendation. Accordingly, the measures used in this application include ratios that support the Department recommendation. The ratio analysis appears positive and reasonable.

Operating Budget

The applicant has submitted an operating budget, in 2013 dollars, for the first and third years, summarized below in (000s):

	Year One (2018)	Year Three (2020)
Revenues:	$3,619,120	$4,076,888
Expenses		
Operating:	3,279,074	$3,690,493
Capital:	248,788	260,873
Total Expenses:	$3,527,862	$3,951,366
Excess Revenues:	$91,258	$125,522
Utilization: (Visits)	1,625,688	1,719,582
Discharges:	26,770	28,278
Capital Cost broken down by depreciation in (000s):	$198,667	$211,700
Interest in (000s):	50,121	49,173

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

	Year One and Three
Medicare Fee-For-Service	34.7%
Medicare Managed Care	0.5%
Medicaid Fee-For-Service	2.7%
Medicaid Managed Care	0.1%
Commercial Fee-For-Service	5.6%
Commercial Managed Care	54.1%
Private	1.8%
Charity Care	0.5%

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

	Year One	Year Three
Medicaid Fee-For-Service	4.72%	4.72%
Medicaid Managed Care	1.44%	1.78%
Medicare Managed Care	0.27%	0.27%
Medicare Fee-For-Service	36.46%	36.46%
Commercial Fee-For-Service	4.42%	4.07%
Commercial Managed Care	51.39%	51.40%
Charity Care	1.30%	1.30%

Expense assumptions are based on staff productivity after the new building project is completed. Accordingly, staff levels will increase slightly due to the implementation of new systems and increased services.

Cabability and Feasibility

The project cost of $1,506,019,991 for the proposal will provide by equity of $150,674,316 and $505,345,675 through operations and philanthropy. The residual will be bond financing of $850,000,000, of which $550,000,000 has already been issued at the stated terms and rates listed above. The facility will apply in 2016 for the rest of the bonds in the amount of $300,000,000 when funds are needed.

BFA Attachment A is the financial summary of MSKCC, which indicates the availability of sufficient funds to meet the equity contribution of $150,674,316. Also, $550,000,000 has been issued in taxable bonds at a blended rate of 4.56% for a term of 40 years, for which an executed bond resolution has been submitted. The facility also projects to seek $300,000,000 in the form of bonds in 2016 through DASNY. In the event the bonds are not attainable at reasonable rates, the hospital has agreed to an inter-corporate unsecured loan with no set payments and interest free with its corporate affiliate, MSKCC. The residual will be paid using philanthropy and operations of $505,345,675. The hospital has historically proven that it can raise contributions for these types of large projects, and according to the 2012 and 2011 certified financial statement, contributions to the facility were approximately $231,159,000 and $301,374,000 for 2012 and 2011, respectively, indicating sufficient funds for appropriation. In the event contributions do not meet the required need, the applicant will use equity from its inter-corporate un-secured loan from Memorial Sloan Kettering Cancer Center, at no interest and no stated term at which payments only have to be made when the facility has excess cash flow or the amount may be provided from operations.

Working capital requirements are estimated at $658,561,000, which appears reasonable based on two months of third year incremental expenses. The applicant will provide equity from operations to meet the working capital requirement. BFA Attachment A are the 2012 certified financial statements of MSKCC, which indicate the availability of sufficient funds to meet the total project cost and the working capital requirements.

The submitted budget indicates an incremental excess of expenses over revenues of $91,258,000 and $125,522,000 during the first and third years respectively. The budget used current utilization data and reimbursement methodologies for the procedures only.

BFA Attachment A is the financial summary of MSKCC. As shown on BFA Attachment A, the entity maintained an average positive working capital position and an average net asset position during the period shown. Also, the facility achieved an average annual excess of operating revenues over expenses of $151,500,000 for the period shown.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Financial Summary, Audited MSKCC
BFA Attachment B	Historical and Forecasted Financial Summary
BFA Attachment C	Detailed Discharge/Visit Analysis
BFA Attachment D	Summary of Detailed Budget

Public Health and Health Planning Council

Project # 132037 C
Memorial Hospital for Cancer and Allied Diseases

County: **New York**
Purpose: **Construction**
Program: **Hospital**
Acknowledged: **July 16, 2013**

Executive Summary

Description
Memorial Hospital for Cancer and Allied Diseases (Memorial), a 514-bed not-for-profit hospital, located in New York County requests approval to construct a Laboratory Building at 327 East 64th Street. Memorial has grown to include new patient care facilities in Manhattan and the surrounding metropolitan area. In 2012, their lab performed 3.9 million laboratory tests with a projected increase in volume to 4.5 million tests by 2016. This lab is being proposed to handle current and future volume.

The proposed facility will create a modern, efficient and patient-centered clinical lab operation, while prioritizing the following goals:

- Consolidate all non-urgent clinical lab services under one roof;
- Repurpose space at the main campus needed for direct patient care;
- Develop expertise in three new programmatic areas: education, innovation and outreach.

It should be noted that two companion projects are being processed simultaneously, 131326 and 132077. These projects are part of Memorial's strategic plan to meet the expanding clinical needs that are projected in the near future.

DOH Recommendation
Contingent Approval

Need Summary
The new structure will replace the hospital's current laboratory that has existed in the same footprint for more that forty years and allow the hospital to consolidate the majority of its laboratory activity in one location.

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

Financial Summary
Project costs of $159,856,790 will be met from the following: $15,985,679 in equity, $30,000,000 in taxable bonds, and philanthropy of $113,871,111.

Incremental Budget:	Revenues:	$ 47,786,000
	Expenses:	51,374,000
	Gain/ (Loss)	($3,588,000)

The loss is mainly due to capital depreciation and interest expense. The loss can be absorbed by operations, as indicated in BFA Attachment A.

Recommendations

Health Systems Agency
There will be no HSA recommendation of this application.

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

Approval conditional upon:
1. The project must be completed within four 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. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
7. The applicant shall complete construction by July 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
December 12, 2013.

Need Analysis

Background
Memorial Hospital for Cancer and Allied Diseases (Memorial) is a 514-bed acute care hospital located at 1275 York Avenue, New York, 10021, in New York County. The applicant seeks approval to construct a laboratory building at 327 East 64th Street, New York, 10065, in New York County.

Analysis
Memorial has the following certified beds and services:

Table 1: Memorial Hospital for Cancer and Allied Services: Certified Beds by Service.

Bed Category	Current Capacity
Intensive Care	20
Medical / Surgical	457
Pediatric	37
Total	514

Memorial is authorized to operate 13 extension clinics in the following counties: Kings, New York, Nassau, Suffolk and Westchester. These clinics provide outpatient services such as diagnostic radiology, medical social services, nursing, pharmaceutical, primary medical care O/P, psychology, nutritional, clinical laboratory, CT scanner, magnetic resonance imaging, physical medicine and rehabilitation, and linear accelerator.

Memorial has 514 total inpatient beds. In 2008, the hospital recorded 22,618 total inpatient discharges; by 2012, these discharges increased by 8.5 percent to 24,534 (Table 3). An average of 32 percent of the hospital's inpatient discharges are for patients that reside outside New York State and 53.0 percent originate from Kings, New York, Queens, Suffolk, Nassau, and Westchester Counties. In 2000, the total census of the aforementioned counties was 9,909,272 residents; by the 2010 census period, the population increased by 2.0 percent to 10,103,290 and is projected to reach 10,327,907 by 2020.

Table 3: Memorial Hospital for Cancer and Allied Services: Total Inpatient Discharges.Source: SPARCS 2008 – 2012.

Category	2008	2009	2010	2011	2012
Total Inpatient Discharges	22,618	23,423	24,381	24,468	24,534

The proposal will allow Memorial to:

- Consolidate all non-urgent clinical laboratory services under one roof and house the following laboratories/programs:
    - Hematology and Hemostasis;
    - Clinical Chemistry;
    - Microbiology and Infectious Disease;
    - Flow Cytometry;
    - Transfusion Medicine;
    - Cell Therapy;
    - Innovation Center;
    - Lab Administration; and
    - Academic Offices.
- Repurpose the space at the Main Campus for direct patient care and retain space for a Rapid Response Laboratory; and
- Develop expertise in three new program areas:
    - Education
    - Innovation
    - Outreach.

The building will support Memorial's clinical services and an academic research and training platform for the next generation of laboratory medicine professionals. It is planned that the Lab will develop a formal

outreach program that will provide proprietary specialized testing to peer institutions as a reference laboratory.

Data from the facility show that its laboratory inpatient and outpatient volume in 2007 was about 2.9 million; by 2012, volume had increased to 3.9 million and is projected to reach approximately 4.5 million in 2016.

The project will allow the hospital to improve its laboratory services and ensure that the needs of its patients are met in a timely manner. The population to be served currently receives cancer care at Memorial's facilities.

Conclusion
The new building will allow the hospital to consolidate all of its non-urgent laboratory services at one location and reallocate the facility's main campus spaces for direct patient care. The laboratory services will serve the entire population of Memorial's Cancer Center patients, across all patient care sites and throughout the continuum of care.

Recommendation
From a need perspective, approval is recommended.

Programmatic Analysis

Program Description
Memorial Hospital for Cancer and Allied Diseases (Memorial) proposes to construct a stand-alone, state-of-the-art laboratory building at 327 East 64th Street, New York, and be certified for clinical laboratory services. Currently, MHCAD's lab space is scattered throughout four separate buildings on their main campus. The new freestanding facility will serve as an anchor for a comprehensive Laboratory Medicine Service, thus allowing for consolidation and collocation of all non-urgent clinical lab services (which, in turn, should improve efficiency and consistency of processing specimens and reduce congestion at the main campus). In addition, the new laboratory building will provide expansion space, allow for repurposing of main campus space for direct patient care use, and provide an academic research and training platform to develop partnerships with area colleges and accredited medical technology programs to generate specialists in the field of medical technology and laboratory medicine.

Staffing will increase by 155.8 FTEs in the first year after completion and to 166.8 FTEs by the third year of operation.

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

Recommendation
From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Cost and Financing:
Total project cost, which is for land acquisition, new construction, and the acquisition of moveable equipment is estimated at $159,856,790, itemized as follows:

Land Acquisition	$ 19,050,000
New Construction	81,337,290
Renovation and Demolition Equipment	1,329,489
Site Development	4,750,465
Temporary Utilities	768,750
Asbestos Abatement and Removal	40,231
Design Contingency	8,266,678
Construction Contingency	4,066,865
Planning Consulting Fees	1,076,250
Architect Engineering Fees	7,057,789
Construction Manager Fees	2,841,813
Other Fees (Consultant)	4,387,751
Moveable Equipment	16,027,441
Telecommunications	4,131,411
Financing Costs	238,800
Interim Interest Expense	3,609,375
Application Fee	2,000
Additional Processing Fees	874,392
Total Project Costs	$159,856,790

Project costs are estimated based on a January 1, 2014 start date and a 30-month construction period.

Project Financing:

Cash	$15,985,679
Taxable Bonds (4.125%, term 40 years)	$30,000,000
Philanthropy	$113,871,111
Total Project Cost	$159,856,790

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

	Year One	Year Three
Revenues:	$30,102,000	$47,786,000
Expenses:		
Operating:	40,817,000	44,276,000
Capital:	7,098,000	7,098,000
Total Expenses:	$47,915,000	$51,374,000
Excess Revenues:	($17,813,000)	($3,588,000)
Utilization: (Procedures)	541,760	797,432

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

Inpatient	Year One and Three
Commercial Fee-For Service	5.08%
Commercial Managed Care	48.98%
Medicare Fee-For-Service	36.49%

Medicare Managed Care	1.87%
Medicaid Fee-For-Service	2.27%
Medicaid Managed Care	3.03%
Private Pay	2.19%
Charity Care	0.09%

Outpatient	Year One and Three
Commercial Fee-For Service	5.61%
Commercial Managed Care	54.12%
Medicare Fee-For-Service	34.78%
Medicare Managed Care	0.32%
Medicaid Fee-For-Service	2.71%
Medicaid Managed Care	0.14%
Private Pay	1.82%
Charity Care	0.51%

Expense and utilization assumptions are based on the hospital's historical experience.

Capability and Feasibility:
Memorial Hospital for Cancer and Allied Diseases will provide equity of $113,871,111 through philanthropy. The remainder will be provided through taxable bonds for $30,000,000 at 4.125% with a fixed interest rate for a 40 year term. The bonds have already been distributed and funds are in the applicant's possession. The residual will be submitted in equity from the hospital in the amount of $15,985,679.

BFA Attachment A is the financial summary of Memorial, which indicates the availability of sufficient funds to meet the equity contribution of $15,985,679. Also, $30,000,000 has been provided in taxable bond equity at a rate of 4.125% for a term of 40 years for which an executed bond resolution has been submitted. The residual will be paid using philanthropy of $113,871,111. The hospital has historically proven that it can raise contributions for these types of large projects and according to the 2012 and 2011 certified financial statement, contributions to the facility were approximately $231,159,000 and $301,374,000 for 2012 and 2011, respectively, indicating sufficient funds for appropriation. In the event contributions do not meet the required need, the applicant will use equity from its inter-corporate un-secured loan from Memorial Sloan Kettering Cancer Center (MSKCC) at no interest and no stated term, for which payments only have to be made when the facility has excess cash flow, or the amount may be provided from operations.

Working capital requirements are estimated at $8,562,333, which appears reasonable based on two months of third year incremental expenses. The applicant will provide equity from operations to meet the working capital requirement. BFA Attachment A are the 2012 certified financial statements of MHCAD, which indicate the availability of sufficient funds to meet the total project cost and the working capital requirements.

The submitted budget indicates an incremental excess of expenses over revenues of $17,813,000 and $3,588,000 during the first and third years respectively. The budget used current utilization data and reimbursement methodologies for the procedures only. The reason for the projected incremental loss is due to depreciation and interest into the newly constructed facility. The loss will be absorbed through operations which the facility can absorb, as indicated on BFA Attachment A. The budget appears reasonable.

BFA Attachment A is a financial summary of Memorial. As shown on BFA Attachment A, the hospital maintained an average positive working capital position and an average net asset position during the period shown. Also, the facility achieved an average annual excess of operating revenues over expenses of $151,500,000 for the period shown.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A – Financial Summary, (2011 and 2012 audited financial statements)
BFA Attachment B – Summary of Detailed Budget

Public Health and Health Planning Council

Project # 132077 C
Memorial Hospital for Cancer and Allied Diseases

County: **Suffolk**
Purpose: **Construction**
Program: **Hospital**
Acknowledged: **August 7, 2013**

Executive Summary

Description
Memorial Hospital for Cancer and Allied Diseases, a not-for-profit hospital located in New York County, requests approval to expand its existing extension clinic located in Commack, Suffolk County. Currently, the extension clinic is 52,638 square feet. The facility is expanding another 38,623 square feet, resulting in 91,261 total square feet.

The extension site will serve principally the population from Long Island. Coupled with the current trend of treating cancer patients as outpatients and the increase in the duration of treatment, the applicant believes expansion will make it more efficient and possible for more outpatient services to be provided due to:

- additional office space for clinicians and physicians for surgical consultations and other office visits;
- increased Chemotherapy infusion bays by 18;
- increased support of pain management in a clinical setting;
- expanded chemistry lab services on-site.

There are two companion projects being processed simultaneously, 131326 and 132037. All of these projects are part of Memorial Hospital for Cancer and Allied Diseases strategic plan to meet the current and future needs of the expanding clinical needs that are projected in the near future.

DOH Recommendation
Contingent Approval

Need Summary
Memorial Hospital for Cancer and Allied Diseases seeks approval increase the scope and capacity of their Suffolk County hospital extension clinic. The expansion is proposed to accommodate the increase in patient visits the facility is experiencing, as well as the projected growth in cancer treatments that the facility anticipates will occur because of the increase in cancer incidence in Suffolk County.

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

Financial Summary
Project costs of $65,192,456 will be met from the following: equity of $6,519,246, philanthropy in the amount of $28,673,210, and taxable bonds in the amount of $30,000,000.

Incremental Budget:	Revenues:	$ 76,030,000
	Expenses:	48,722,000
	Gain/(Loss)	$ 27,308,000

Recommendations

Health Systems Agency
There will be no HSA recommendation of this application.

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

Approval conditional upon:
1. The project must be completed within four 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 submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
3. The applicant shall complete construction by June 30, 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
December 12, 2013.

Need Analysis

Background

Memorial Hospital for Cancer and Allied Diseases (Memorial) is a 514-bed acute care hospital located at 1275 York Avenue, New York, 10021, in New York County. The applicant seeks approval to expand its Memorial Sloan Kettering-Suffolk hospital extension clinic located at 650 Commack Road, Commack, 11725, in Suffolk County.

Analysis

Memorial has the following certified beds and services:
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Bed Category	Current Capacity
Intensive Care	20
Medical / Surgical	457
Pediatric	37
Total	514

The extension clinic provides the following certified services:

CT Scanner	Clinical Laboratory Service O/P
Linear Accelerator	Magnetic Resonance Imaging
Pharmaceutical Service	Radiology - Diagnostic O/P
Radiology-Therapeutic O/P	

Memorial is authorized to operate 13 extension clinics in the following counties: Kings, New York, Nassau, Suffolk and Westchester. These clinics provides out patient services such as diagnostic radiology, medical social services, nursing, pharmaceutical, primary medical care O/P, psychology, nutritional, clinical laboratory, CT scanner, magnetic resonance imaging, physical medicine and rehabilitation, and linear accelerator.

Memorial proposes to expand one of its existing Network sites, Memorial Hospital Sloan Kettering-Suffolk, located in Commack New York. Memorial states that this expansion will allow the hospital to better serve its patients that live in Suffolk County.

Memorial states that the current facility provided the following ambulatory care in 2012:
22,000 clinic visits;
15,000 chemotherapy treatments;
15,000 radiation oncology treatments; and
More than 27,000 radiology studies.

The expanded facility will allow Memorial Hospital Sloan Kettering-Suffolk to offer the following expanded cancer care services:

- Medical oncology clinic and physician office space;
- Radiation oncology clinic and physician office space;
- Surgical oncology clinic and physician office space;
- Additional chemotherapy infusion bays;
- Pain management;
- A procedure suite for low risk Interventional Radiology procedures;
- Expand laboratory medicine, including comprehensive chemistries;
- Retail pharmacy services for the facility's patients;
- Increased local access to clinical trials;
- Laboratory space to accommodate research equipment;
- Workspace for research nurses and study assistants; and
- A dedicated entrance for improved ambulance access.

Additionally, the site will provide multimedia conference space and meeting rooms for health promotion, cancer support services and educational activities for medical providers, businesses, Memorial's patients, their families and the community.

Memorial has 514 total inpatient beds. In 2008, the hospital recorded 22,618 total inpatient discharges. By 2012, these discharges increased by 8.5 percent to 24,534 (Table 3). An average of 7.7 of the hospital's discharges originates from Suffolk County. In 2000, the total census of Suffolk County was 1,419,369 residents; by the 2010 census period, the population increased by 5.2 percent to 1,493,350 and is projected to reach 1,530,550 by 2020.

Table 3: Memorial Hospital for Cancer and Allied Services: Total Inpatient Discharges.Source: SPARCS 2008 – 2012.

Category	2008	2009	2010	2011	2012
Total Inpatient Discharges	22,618	23,423	24,381	24,468	24,534

The overall current patient visits for all of Memorial Hospital's sites totaled 1,171,131. Of these, 3.0 percent, 23.3 percent and 39.6 percent were allocated to magnetic resonance imaging, diagnostic radiology and primary medical care, respectively.

The Memorial Sloan Kettering-Suffolk extension clinic outpatient utilization has shown growth over the last 3 years. Overall clinic visits have increased by 8.6 percent, from 40,684 in 2010 to 44,187 in 2012. Chemotherapy visits recorded at the site increased by 21.9 percent, from 13,042 visits in 2010 to 15,893 in 2012 (Table 12).

Table 4: Trend in Outpatient Patients Visits by Type: Memorial Sloan Kettering-Suffolk.
Source: Memorial Hospital for Cancer and Allied Diseases, 2010 - 2012

Visit Type	2010	2011	2012	% Change '10 vs. 12
Chemotherapy	13,042	14,812	15,893	21.9
Medical Oncology	18,367	18,299	18,749	2.1
Radiation Oncology	6,179	6,375	6,421	3.9
Surgical Oncology	3,096	3,170	3,124	0.9
Total	40,684	42,656	44,187	8.6

During the time interval 1996-2000, the five year average cancer incidences for the residents of Suffolk County was 7,160; by 2006-2010, it increased by 22.1 percent to 8,743. In comparison, during the same periods, cancer incidences in New York State increased by 11.6 percent, from 93,112 to 103,907.

Due to the increase in cancer incidence and the increased longevity of this population, Memorial states that the wait times for the next available appointment at the site have increased over the decade. The proposed expansion in space and in the range of cancer services for the service area population will decrease the length of time that patients have to wait to receive care and allow the facility to meet the needs of the patients in the service area.

In addition to enhancing the patient's experience, another major goal of the expansion is to broaden the array and number of clinical trials available to Memorial's patients from Suffolk County. Memorial states that the site has offered clinical trials to its patients since 2005; however, space constraints limit the scope and number of protocols available to the patients. The current portfolio of clinical trials at the site is about 122. Memorial indicates that the proposed expansion will allow increases in the number of studies offered to a more diverse patient population in Suffolk County.

The project will allow the hospital to improve throughput and ensure that the needs of its patients are met in a timely manner. The population to be served currently receives cancer surgical care at Memorial's main campus.
The proposed expansion will allow the applicant to continue to provide the needed care in the service area as the increase in cancer incidences continues, and the overall population grows.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Program Description
Memorial Hospital for Cancer and Allied Diseases, the clinical division of Memorial Sloan-Kettering Cancer Center, proposes expansion of one its regional network outpatient facilities – Memorial Sloan Kettering Cancer Center Suffolk Outpatient Center (MSK Suffolk) in Commack, NY. The Center is designed specifically for the diagnosis and treatment of cancer and offers multidisciplinary care with all services under one roof. The proposed expansion will provide an additional 18 chemotherapy bays, enhanced surgical, clinical, pharmacy, lab, office and meeting space, and a dedicated entrance for improved ambulance access. Further, the proposal will allow for expansion of MSK Suffolk's radiology program by adding one (1) MR, one (1) diagnostic CT, one (1) ultrasound unit and shell space for additional interventional radiology services, if needed.

Staffing will increase by 74.3 FTEs in the first year after completion and to 100.1 FTEs by the third year of operation. There will be no changes in the existing service complement.

Recommendation
From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Cost and Financing
The total project cost, which is for new construction and the acquisition of moveable equipment, is estimated at $65,192,456, itemized as follows:

New Construction	$27,218,729
Renovation and Demolition Equipment	6,838,051
Site Development	1,491,000
Other Fees	1,560,000
Design Contingency	2,785,604
Construction Contingency	1,716,000
Planning Consulting Fees	173,420
Architect Engineering Fees	3,702,400
Construction Manager Fees	1,040,000
Moveable Equipment	12,049,620
Telecommunications	3,029,621
Financing Costs	238,800
Interim Interest Expense	2,990,625
Application Fee	2,000
Additional Processing Fees	356,586
Total Project Costs	$65,192,456

Project costs are estimated based on a February 17, 2014 start date and a 28-month construction period.

Project Financing

Equity	$6,519,246
Philanthropy	28,673,210
Bonds	30,000,000
Total	$65,192,456

Operating Budget:

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

	Year One	Year Three
Revenues:	$42,489,000	$76,030,000
Expenses:		
Operating:	$25,056,000	$43,693,000
Capital:	5,029,000	5,029,000
Total Expenses:	$30,085,000	$48,722,000
Excess Revenues:	$12,404,000	$27,308,000
Utilization: (Visits)	40,324	66,390

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

	Year One and Three
Medicaid Fee-For-Service	1%
Medicare Managed Care	1%
Medicare Fee-For-Service	43%
Commercial Fee-For-Service	5%
Commercial Managed Care	49%
Charity Care	1%

Expense and utilization assumptions are based on the hospital's historical experience.

Capability and Feasibility

Memorial Hospital for Cancer and Allied Diseases will provide equity of $28,673,210 thru philanthropy. The remainder will be provided through taxable bonds of $30,000,000 at 4.125% with a fixed interest rate for a 40 year term. The bonds have already been distributed and funds are in the applicant's procession. The residual will be submitted in equity from the hospital in the amount of $6,519,246.

BFA Attachment A is the financial summary of Memorial, which indicates the availability of sufficient funds to meet the equity contribution of $6,519,246. Also, $30,000,000 has been provided in taxable bond equity at a rate of 4.125% for a term of 40 years, of which an executed bond resolution has been submitted. The residual will be paid using philanthropy of $28,673,210. The hospital has historically proven that it can raise contributions for these types of large projects, and according to the 2012 and 2011 certified financial statement, contributions to the facility were approximately $231,159,000 and $301,374,000 for 2012 and 2011, respectively, indicating sufficient funds for appropriation. In the event contributions do not meet the required need, the applicant will use equity from its inter-corporate un-secured loan from Memorial Sloan Kettering Cancer Center at no interest and no stated term for which payments only have to be made when the facility has excess cash flow or the amount may be provided from operations.

Working capital requirements are estimated at $8,120,334, which appears reasonable based on two months of third year incremental expenses. The applicant will provide equity from operations to meet the working capital requirement. BFA Attachment A are the 2012 certified financial statements of Memorial, which indicate the availability of sufficient funds to meet the total project cost and the working capital requirements.

The submitted budget indicates an incremental excess of revenues over expenses of $12,404,000 and $27,308,000 during the first and third years respectively. The budget used current utilization data and reimbursement methodologies for the visits.

BFA Attachment A is a financial summary of Memorial. As shown on BFA Attachment A, Memorial maintained an average positive working capital position and an average net asset position during the period shown. Also, the facility achieved an average annual excess of operating revenues over expenses of $151,500,000 for the period shown.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A – Financial Summary, (2011 and 2012 audited financial statements)

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

November 21, 2013

Ambulatory Surgery Centers - Construction **Exhibit # 3**

1.	122206 C	Griffiss Eye Surgery Center (Oneida County)

Public Health and Health Planning Council

Project # 122206-C

Griffiss Eye Surgery

County: **Oneida**
Purpose: **Construction**
Program: **Ambulatory Surgery Center**
Acknowledged: **November 8, 2012**

Executive Summary

Description

Griffiss EC, LLC d/b/a Griffiss Eye Surgery Center, an existing limited liability company, was approved as an ambulatory surgery center for a single specialty of ophthalmology by the Public Health Council on March 12, 2010 and began operation January 3, 2012. The applicant is seeking approval to certify the center as multi-specialty, adding plastic surgery services. Upon CON approval the center will change its name to Griffiss Surgery Center.

The current members of Griffiss Eye Surgery Center are Rome Memorial Hospital, Inc. (30%), John Costello, Jr. D.O. (30%), Patrick Costello, M.D. (20%) and Joseph Femia, M.D. (20%). One plastic surgeon, Carl Krasniak, M.D., will utilize the center to perform his cases upon CON approval as a multi-specialty center. There will not be a need to hire additional personnel or acquire additional medical equipment to accommodate this change.

DOH Recommendation

Contingent Approval

Need Summary

Griffiss Surgery Center projects to perform 195 plastic surgery procedures in year 1 and 204 in year 3.

Griffiss performed 2,807 ophthalmology surgical procedures from March to December 2012, higher than the initial projection of 2,624 in year 1.

The facility is currently operating under a limited life approval with an expiration of January 2, 2017. Approval of this proposal does not alter the limited life.

Program Summary

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

Financial Summary

There are no project costs associated with this application.

Incremental Budget:	
Revenues:	$248,999
Expenses:	61,200
Net Income:	$187,799

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 DBA, acceptable to the Department. [HSP]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department of Health beginning in the second year of operation. These reports should include:
    - Data showing actual utilization including procedures;
    - Data showing breakdown of visits by payor source;
    - Data showing number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
    - Data showing number of emergency transfers to a hospital;
    - Data showing percentage of charity care provided; and
    - Number of nosocomial infections recorded during the year in question. [RNR]
3. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
4. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]

Approval conditional upon:

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

Council Action Date

December 12, 2013.

Need Analysis

Background

Griffiss EC, LLC d/b/a Griffiss Eye Surgery Center, a single-specialty ambulatory surgery center, seeks approval to become a multi-specialty ambulatory surgery center by adding plastic surgery services to its current ophthalmology surgery services at 105 Dart Circle, Rome, 13441, in Oneida County. Griffiss EC also proposes to provide podiatry services. Upon approval, it will operate as Griffiss Surgery Center.

Griffiss EC became operational on January 3, 2012 for a limited life of five years.

Analysis

The service area includes the greater Rome and Utica areas in Oneida County.

The table below provides information on the projected payor mix.

	Projections CON 092062	Projections CON 122206
Medicare FFS:	77%	8%
Medcaid FFS:	10%	0%
Medicaid Managed Care:	0%	5%
Commercial FFS:	10%	10%
Private Pay:	1%	75%
Charity Care:	2%	2%
Total	100%	100%

Griffiss performed 2,624 cases from March to December of 2012. From January to June 2013, there were 2,497 procedures performed. Medicaid was the primary source of payment for 6.16 percent of the cases and the secondary source for 5.55 percent of the procedures. Charity care is 2 percent. Griffiss is a participating provider with Medicaid and with all Medicaid managed care plans in Oneida and Madison Counties.

Griffiss EC is committed to serving all persons in need of surgery regardless of the source of payment.

Based on the current plastic surgery practice, the number of projected procedures is 195 procedures in year 1 and 204 procedures in year 3.

Currently, Oneida County has two single-specialty (ophthalmology and endoscopy) freestanding ambulatory surgery centers, including Griffiss EC. There are no multi-specialty freestanding ASCs in Oneida County.

Ambulatory Surgery Visits, 2012 (SPARCS)	2012
Mohawk Valley Endoscopy Center	5,534

In addition there is one freestanding ASC (interventional pain management services) that has been approved, but is not yet operational.

Conclusion

Currently, Oneida County does not have a freestanding ASC offering plastic surgery services. The proposed project will improve access to such services for the communities of Oneida and Madison Counties.

Recommendation

From a need perspective, contingent approval is recommended with a continuation of the limited life expiring January 2, 2017.

Programmatic Analysis

Project Proposal

Griffiss EC, LLC d/b/a/ Griffiss Eye Surgery, a newly open single-specialty ophthalmology ambulatory surgery center, requests approval to add plastic surgery and thereby become a multi-specialty ambulatory surgery center. Upon approval the Center will change its d/b/a to be known as Griffiss Surgery Center.

Compliance with Applicable Codes, Rules and Regulations

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

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

Financial Analysis

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

	Year One	Year Three
Revenues:	$237,543	$248,999
Operating Expenses:	$59,386	$61,200
Net Income	$178,157	$187,799
Utilization (procedures):	195	204
Cost per procedure:	$304.54	$300.00

The following has been noted regarding the incremental budgets:

- Revenues and expenses reflect only the proposed plastic surgery services that will be performed at the center.
- Expenses are for plastic surgery medical supplies only.
- There is no need for additional staff or medical equipment.
- The plastic surgeon utilizing the center will separately bill for his professional fees.

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

	Year One & Three
Commercial Fee for Service:	10%
Medicare Fee for Service:	8%
Medicaid Managed Care:	5%
Private Pay/Other:	75%
Charity Care:	2%

Expenses and utilization assumptions are based on historical experience of the physician providing outpatient plastic surgery at Rome Memorial Hospital. The physician has provided a letter in support of utilization projections.

Capability and Feasibility

There are no project costs associated with this application.

The submitted incremental budget indicates a net income of $178,157 and $187,799, during the first and third years of operation, respectively. Revenues are based on current reimbursement methodologies for ambulatory surgery centers. The budget appears reasonable.

As shown on BFA Attachment A, financial summary as of December 31, 2012 for Griffiss Eye Surgery Center, the facility has maintained positive working capital and equity and generated a positive net income of $237,917. As of June 30, 2013, the facility has maintained positive working capital and equity and generated a net income of $143,097.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Financial Summary as of December 31, 2012, Griffiss Eye Surgery Center, LLC
BFA Attachment B	Internal Financial Summary as of June 30, 2013, Griffiss Eye Surgery Center, LLC

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

November 21, 2013

Residential Health Care Facilities - Construction **Exhibit # 4**

	Number	Applicant/Facility
1.	122281 C	Meadowbrook Healthcare (Clinton County)

Public Health and Health Planning Council

Project # 122281-C
Meadowbrook Healthcare

County: **Clinton**
Purpose: **Construction**
Program: **Residential Health Care Facility**
Acknowledged: **January 25, 2013**

Executive Summary

Description
CGSR, Inc. d/b/a Meadowbrook Healthcare, a 200-bed proprietary residential health care facility (RHCF) located at 154 Prospect Avenue, Plattsburgh, is seeking approval to construct a two-story 87-bed addition, including converting seven temporary beds to permanent status, bringing the total certified beds to 287. Upon approval of this project, CON #071088, a proposal to construct a new 210-bed RHCF, will be withdrawn.

The applicant states that 54 beds (certified as 42 temporary and 12 permanent) of the 87 bed total will be moved from the Champlain Valley Physicians Hospital Medical Center Skilled Nursing Facility (CVPH-SNF) to Meadowbrook. This brings the total of net new beds for Clinton County to 26 after adjusting for Meadowbrook Healthcare's seven temporary beds. The cost savings between CON #071088 and the current proposal is over $25 million; $40,858,627 compared to $15,528,968.

The construction of Meadowbrook Healthcare's 87-bed addition will encompass a two story 48,730 square foot addition which will contain two neighborhood household units on each floor. The addition will be constructed by Meadowbrook Healthcare's landlord, Meadowbrook Realty Group, LLC, whose members and ownership percentages are identical to the members of Meadowbrook Healthcare.

The members of Meadowbrook Healthcare have ownership interests in two other RHCF facilities located in New York State: Cortlandt Healthcare, LLC (which has been sold under CON 131054, contingently approved on 6/6/2013 by PHHPC) and South Shore NH, Inc. d/b/a South Shore Healthcare.

Financial summaries are presented as BFA Attachments C and D.

DOH Recommendation
Contingent Approval.

Need Summary
Currently there is an unmet need for 126 beds in Clinton County, and the overall utilization rate for facilities in the county is 97.4%.

Program Summary
The expansion of Meadowbrook will provide critically needed nursing home beds to Clinton County. The design shows sensitivity to avoiding "have/have not" comparisons between existing and new nursing units. The new bedrooms will displace the inadequate temporary beds currently operated at CVPH and Meadowbrook, providing the residents greatly improved living areas.

Financial Summary
Meadowbrook Realty Group, LLC will fund the $15,528,968 in total project cost through a $2,489,046 equity contribution from its members and a $13,039,922 taxable HUD insured mortgage pursuant to Section 241/232, with a 30 year term at a 5.5% interest rate.

Budget:	Revenues:	$23,963,200
	Expenses:	23,541,624
	Gain:	$421,576

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 review of this project.

Office of Health Systems Management
Approval contingent upon:
1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fIfty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Withdrawl of CON #071088. [PMU]
3. 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]
4. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
   a) Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
   b) Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
   c) Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; 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 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]
5. Submission and programmatic review and approval of the final floor plans. [LTC]
6. Submission of a loan commitment, acceptable to the Department. [BFA]
7. Submission of an executed building lease, acceptable to the Department. [BFA]
8. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]

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

Council Action Date
December 12, 2013.

Need Analysis

Background

CGSR, Inc. d/b/a Meadowbrook Healthcare is a 200 bed proprietary residential health care facility located at 154 Prospect Avenue, Plattsburgh, 12901, in Clinton County. The facility seeks approval to add an 87-bed addition to the facility.

The 2016 projected bed need for the Clinton County is 126, as shown in Table 1. Clinton County's utilization in 2011 was 97.4% as indicated in Table 2.

Table 1: RHCF Need – Clinton County

2016 Projected Need	616
Current Beds	423
Beds Under Construction	67
Total Resources	490
Unmet Need	126

Meadowbrook Healthcare utilization was slightly lower than that of Clinton County for 2009, 2010 and 2011, as shown in Table 2.

Table 2: RHCF – Meadowbrook Healthcare /Clinton County Occupancy

Facility/County/Region	*2009*	*2010*	*2011*
Meadowbrook Healthcare	96.8%	97.5%	96.2%
Champlain Valley Physicians Hospital Medical	98.9%	99.0%	99.3%
Clinton County	97.6%	98.0%	97.4%

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 or Health Systems Agency percentage, whichever is applicable.

Meadowbrook Healthcare was below the 75 percent planning average for 2010 but above it in 2011. The facility reported Medicaid admissions of 14.49 percent and 22.43 percent in 2010 and 2011, respectively. The 75 percent planning averages for Clinton County for these years were 15.61 percent and 20.42 percent.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Facility Information

	Existing	*Proposed*
Facility Name	Meadowbrook Healthcare	Same
Address	154 Prospect Avenue Plattsburgh, NY 12901	Same
RHCF Capacity	200	287
ADHCP Capacity	N/A	N/A
Type of Operator	Proprietary	Same
Class of Operator	Corporation	Same
Operator	CGSR, Inc.	Same

Meadowbrook Healthcare (Meadowbrook), a 200 bed nursing home located in Plattsburgh, proposes to add 87 beds, which will be located in a new addition to be constructed on the east side of the existing Meadowbrook building. The additional beds will include 42 temporary SNF beds currently located in Champlain Valley Physicians Hospital (CVPH), and 7 temporary beds located at Meadowbrook. The Meadowbrook project has been submitted to supplant a previously approved project, 071088 James Mann Healthcare, which had proposed the construction of a 210-bed nursing home in Clinton County. Clinton County has been severely under-bedded since the closure of Cedar Hedge Nursing Home in 2006. The situation has resulted in the operation of numerous temporary nursing home beds to meet the demand for long term care placements, and alleviate the back-up of hospital patients at CVPH awaiting discharge to a nursing home. The completion of the expansion project will result in the elimination of all temporary SNF beds in Clinton County. CVPH currently operates a 54 bed hospital based nursing home unit, and any proposed changes to the permanent capacity or location of the unit will be the subject of a subsequent CON application.

The existing Meadowbrook facility is configured in an “H” shape in two connected buildings, with the oldest wing dating to the 1970’s and the newer addition on the eastern side constructed in 1987. The site slopes nearly 20 feet from the main entrance located adjacent to Prospect Avenue on the eastern side. The Meadowbrook building contains 200 permanent beds and an additional 7 temporary beds located on the second, third and fourth floors of the original wing. The existing building is in generally good condition and has undergone periodic updating including renovated activity and dining space. Meadowbrook is fully sprinklered and will require no modifications other than the extension to cover the new addition.

The new 87 bed addition will be located at the east end of the existing building, and will connect with and augment the 1987 addition. The new wing consists of two stories, with the shape suggesting a jet aircraft tail. Due to the difference in grade, the ground floor of the new addition will connect to the basement of the 1987 wing and the upper floor will connect to the first floor nursing unit. The new main entrance for the nursing home will be moved to the front of the ground floor of the new building, opening into an entrance area which includes reception and main dining. An elevator provides access to the second floor of the building as well as the adjacent 1987 building. The nursing station is located opposite main dining, as well as the spa bathing suite. Therapy expansion with a training apartment is tucked into the corner past the nursing station, and opens into the existing occupational and physical therapy area of the 1987 wing. The corridor continues into the existing basement area which contains the physical and occupational therapy area and offices. A small addition will be constructed on the south side for a new barber/beauty salon which must be relocated to create the connecting corridor.

The ground floor, or garden level, of the addition will consist of 41 beds divided into 20 and 21 bed neighborhoods bisected by the new main entryway. The floor will be programmed as a short term rehabilitation unit, and all the resident rooms will include showers. The nursing unit will include 27 single occupancy and 7 double occupancy rooms, with most of the latter enhanced doubles employing partitions to separate the beds. One temporary bed will be relocated from the oldest building to create a traditional double with a common headwall.

The second floor will consist of 46 beds divided into two 23 bed neighborhoods. The floor will be programmed as a more traditional general nursing unit with 18 singles and 14 doubles. Eight of the doubles will be configured with the less desirable head to head bed placement in order to accommodate the relocation of 6 temporary beds from the 1970 building. Each neighborhood will contain centrally located dual shower rooms, and individual dining rooms with country kitchen. A separate spa bathing suite serves the floor. Both floors feature a large central living area, and strategically placed parlors where residents may congregate informally. The elevator provides direct access into the 1987 building nursing unit past the nursing station. A large expanded activity space extends into the 1987 nursing unit lounge creating a multi-access area.

Renovations to the existing Meadowbrook building will be limited in nature. In addition to the previously noted expanded spaces in the 1987 building, the third and fourth floor activity rooms in the 1970 building will be expanded through enclosing adjacent under-utilized screened porches. The principal enhancement will be the elimination of the 7 temporary beds in the 1970 building and the return of those rooms to more appropriately sized single bedrooms.

Compliance

Meadowbrook Healthcare is currently in substantial compliance with all applicable codes, rules and regulations.

Conclusion

The expansion of Meadowbrook will provide critically needed nursing home beds to Clinton County. The design shows sensitivity to avoiding “have/have not” comparisons between existing and new nursing units. The new bedrooms will displace the inadequate temporary beds currently operated at CVPH and Meadowbrook, providing the residents greatly improved living areas.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Lease Agreement and Medicaid Capital Reimbursement

The applicant has submitted a draft lease agreement, the terms of which are summarized below:

Date:	September 20, 2013
Premises:	A 287 Bed RHCF located at 154 Prospect Avenue, Plattsburgh, New York 12901
Owner/Landlord:	Meadowbrook Realty Group, LLC
Lessee:	CGSR, Inc. d/b/a Meadowbrook Healthcare
Term:	Ending June 29, 2042
Rent:	Landlord’s principal and interest payments due under any mortgage plus required escrows and reserves under such mortgage which equals approximately for the existing and proposed mortgage $2,973,378 per year or $247,781.50 per month
Provisions:	Triple net lease

Per the applicant, the break out of rent expense is as follows: $1,644,000 for current rent; $67,400 for depreciation on moveable equipment associated with the expansion; $497,800 for depreciation on building improvements and expansion; and $764,178 for construction loan interest.

The lease arrangement between the landlord, Meadowbrook Realty Group, LLC and the operator, CGSR, Inc. d/b/a Meadowbrook Healthcare, is a non-arm’s length agreement as the members’ and ownership interest is identical for both entities.

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 the on 2013 Nursing Home Consolidated Capital (Schedule VI – Property) there is seven years of remaining useful life.

Total Project Cost and Financing

Total project costs for new construction, renovation, and acquisition of moveable equipment is estimated at $15,528,968, broken down as follows:

New Construction	$9,889,087
Renovation & Demolition	391,000
Site Development	350,000
Design Contingency	1,153,520
Construction Contingency	576,760
Planning Consultant Fees	99,300
Architect/Engineering Fees	803,000
Other Fees	85,000
Movable Equipment	578,600
Telecommunications	95,000
Financing Costs	949,602
Interim Interest Expense	471,168
CON Application Fee	2,000
CON Processing Fee	84,931
Total Project Cost	$15,528,968

Project costs are based on a May 1, 2015 start date with a fourteen month construction period. The Bureau of Architectural and Engineering Facility Planning (BAEFP) has determined that the new bed cost of $159,241 is within the applicable geographic per bed cost limitations. The Department is reducing the recommended equity contribution to a combined rate of 16.02841%, for subproject one (15% which is the required minimum) & subproject two (25%). The total project costs are below the reimbursable adjusted maximum bed caps, therefore the recommended equity contribution is reduced by 50 cents for each $1. The approved project costs is below the regional bed caps, and adds back approximately $645,171 in added equity to bring subproject one to the 15% minimum.

The applicant's financing plan appears as follows:

Equity: Meadowbrook Realty Group, LLC members	$2,489,046
HUD Mortgage, FHA insured under section 241/232 (30-year term, 5.5%)	13,039,922
Total	$15,528,968

A letter of interest has been provided by Century Health Capital, Inc.

BFA Attachment A is the members' net worth summaries for Meadowbrook Realty Group, which reveals sufficient resources to meet the equity requirement. BFA Attachment E is Meadowbrook Realty Group, LLC 2012 certified financial summary, which shows an operating surplus of $313,291, a positive working capital position, and a members' deficit of $5,294,221, which is about equal to the $5,294,673 in accumulated depreciation.

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	$182.20	$13,223,500
Medicare	395.85	6,859,700
Commercial	389.86	703,300
Private Pay	392.59	3,118,000
Other (rental, phone, discounts)		58,700
Total Revenues:		$23,963,200

Expenses:	
Operating	$20,304,785
Capital	3,236,839
Total Expenses:	$23,541,624
Net Income:	$421,576
RHFC Utilization (patient days)	99,650
RHFC Occupancy	95.13%

The following is noted with respect to the submitted RHCF operating budget:

- RHCF expenses include lease rental
- RHCF Medicaid revenues are based on the 2012 rates, adjustment for the change in capital component, a 2.0% inflation factor with the first year's rate starting approximately May 1, 2016
- RHCF Medicare revenues were based upon actual 2012 rates
- RHCF private pay revenues are based upon actual rates trended to 2016
- RHCF projected utilization is 95.13%: utilization for the first six months of 2013 averaged 96%, in 2012 averaged 95.27%, and for the period 2007-2011utilization averaged 97.21%
- Breakeven utilization is projected at 93%
- RHCF utilization by payor source is anticipated as follows:

Medicaid Fee-for-Service	72.83%
Medicare Fee-for-Service	17.39%
Commercial Fee-for Service	1.81%
Private/Other	7.97%

Capability and Feasibility

Meadowbrook Realty Group, LLC will fund the total project cost of $15,528,968 through a $2,489,046 equity contribution from its members, and a $13,039,922 insured HUD mortgage at the above stated terms. Review of BFA Attachment A, the members net worth statements, shows there are sufficient liquid resources available for the proposed equity contribution.

The applicant estimates the working capital requirements at $911,213, which is based on two months of the first year's incremental expenses. Working capital will be provided from the members of the operator, CGSR, Inc. d/b/a Meadowbrook Healthcare. As noted above, the members have sufficient liquid assets to meet this obligation.

The submitted budget indicates that net income of $421,576 would be generated in the first year after the addition of 80 new beds and conversion of 7 temporary beds to permanent status, bringing the facilities total certified bed count to 287. The following is a comparison of the 2011 historical and the projected revenue and expense:

Projected Income	$ 23,963,200
Projected Expense	23,541,624
Projected Net Income	$421,576
Annual 2011 Income	$18,311,925
Annual 2011 Expense	18,074,348
Annual 2011 Net Income (Loss)	$237,577
Incremental Net Income (Loss)	$183,999

The applicant anticipates an incremental net increase in patient days of 26,954 on the new 80 beds, a utilization rate of 92.3%, of which 27,253 of patient days will have Medicaid as their payor. Overall, the Medicaid utilization will increase from 62.34% in 2011 to 72.83% by the end of the first year.

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 B, CGSR, Inc., d/b/a Meadowbrook Healthcare, for the years 2010 through 2012, generated an average net surplus of $402,195, had an average positive working capital position of $2,142,928, and had an average positive net asset position of $1,647,769. Average occupancy during this period was 96.32%.

As shown on BFA Attachment C, Cortlandt Healthcare, LLC, for the years from 2010 through 2012, generated an average net surplus of $295,315, had an average positive working capital position of $323,827, and had an average positive net asset position of $652,038. Average occupancy during this period was 94.62%. Under CON 131054 the nursing home license, location, and equipment was sold to Cortlandt Operations, LLC, which was contingently approved by the Public Health and Health Planning Council on June 6, 2013.

As shown on BFA Attachment D, South Shore NH, Inc. d/b/a South Shore Healthcare, for the years from 2010 through 2012, generated an average net surplus of $142,209, had an average positive working capital position of $1,022,090, and had an average positive net asset position of $192,439. Average occupancy during this period was 91.20%. The loss is due to a one-time adjustment for workmen's compensation and retroactive rate adjustments.

Based on the preceding it appears that the applicant has demonstrated the capability to precede 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, CGSR, Inc. d/b/a Meadowbrook Healthcare
BFA Attachment B	Financial Summary, CGSR, Inc., d/b/a Meadowbrook Healthcare
BFA Attachment C	Financial Summary, Cortlandt Healthcare, LLC
BFA Attachment D	Financial Summary, South Shore NH, Inc. d/b/a South Shore Healthcare
BFA Attachment E	Financial Summary, Meadowbrook Realty Group, LLC

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

November 21, 2013

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

	Number	Applicant/Facility
1.	132195 E	Mount Sinai Hospitals Groups, Inc. (New York County)
2.	132204 E	Mohawk Valley Health System (Oneida County)

Public Health and Health Planning Council

Project # 132195-E
Mount Sinai Hospitals Group, Inc.

County: **New York**
Purpose: **Establishment**
Program: **Hospital**
Acknowledged: **October 7, 2013**

Executive Summary

Description
Mount Sinai Hospitals Group, Inc. (MSHG), a not-for-profit corporation, requests approval to become the active parent and co-operator of Mount Sinai Hospital (MSH), Beth Israel Medical Center (BIMC), St. Luke's Roosevelt Hospital Center (SLR) and New York Eye and Ear Infirmary (NYEEI). MSHG is currently the passive parent and the sole corporate member of the hospitals. BFA Attachment A is the organizational chart for Mount Sinai Hospitals Group, Inc., before and after the proposed transaction.

There are no costs associated with the subject application. The facilities will remain separate not-for-profit corporations and maintain separate operating certificates. There will be no change in authorized services or number and type of beds of the facilities. As a contingency of approval, the hospitals must submit their lenders' consent to this proposed transaction.

DOH Recommendation
Contingent Approval

Need Summary
The approval of this application will give Mount Sinai Hospital Group operator powers over the Hospitals. There will be no addition of beds or services with 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
There are no project costs or budgets associated with this application.

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. Approval by the Office of Alcohol and Substance Abuse Services. [ALC]
2. Submission of lenders' consent to this transaction, acceptable to the Department. [BFA]
3. Submission of a photocopy of an executed amendment to the Certificate of Incorporation of Mount Sinai Hospitals Group, Inc., acceptable to the Department. [CSL]

Approval conditional upon:
1. The project must be completed within one year from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Approval granted by the Commissioner of the NYS Office of Mental Health to continue operation of the respective hospitals' OMH licensed and/or funded programs, per MHL Article 31. [OMH]

Council Action Date
December 12, 2013.

Need Analysis

Background
Mount Sinai Hospitals Group Inc. (MSHG) seeks approval to be established as the active parent and co-operator of Mount Sinai Hospital (MSH), Beth Israel Medical Center (BIMC), St. Luke's-Roosevelt Hospital Center (SLR) and New York Eye and Ear Infirmary (NYEEI).

Analysis
The facilities in the system have the following certified beds:

Table 1: Distribution of Certified Beds by Service. Source HFIS, October 2013.

Bed Category	Beth Israel Brooklyn	Beth Israel Petrie	Mount Sinai Hospital	Mount Sinai Queens	NY Eye & Ear Infirmary	St. Luke's Roosevelt St. Luke's	St. Luke's Roosevelt Roosevelt
AIDS			50			31	31
Chemical Depend.- Rehab		30					22
Chemical Depend.- Detox		62					22
Coronary Care	6	8	14			28	
Intensive Care	12	36	72	8		24	33
Maternity		42	74				72
Medical / Surgical	194	504	643	227	69	294	255
Neonatal Continuing Care		14	10				4
Neonatal Intensive Care		5	15				12
Neonatal Intermediate Care		12	10				6
Pediatric		20	64			25	
Pediatric ICU		5	16				
Physical Medicine and Rehabilitation		26	88			15	25
Psychiatric		92	103			61	32
Traumatic Brain Injury			12				
Total	212	856	1,171	235	69	478	514

The hospitals in the group have the following New York State Designations:

Table 2: New York State Designations:

NYS Designation	Beth Israel Medical Center/ Brooklyn	Beth Israel Medical Center Petrie	Mount Sinai Hospital	NY Eye and Ear Infirmary	St Luke's Roosevelt - Roosevelt	St Luke's Roosevelt - St Luke's	Mount Sinai Hospital - Queens
AIDS Center		√	√		√	√	
Level 3 Perinatal Center		√			√		
Regional Perinatal Ctr.			√				
Regional Trauma Center						√	
Safe Center		√	√		√		
Stroke Center	√	√	√		√	√	√

Combined, the hospitals in the system have a total of 46 clinics that operate in the New York metropolitan area. These clinics include diagnostic and treatment centers, ambulatory surgery centers, hospital extension clinics and school based hospital extension clinics.
Prior to this application, BIMC, NYEEI and SLR were organized under the passive parent holding company model with Continuum Health Partners Inc. (Continuum). Continuum was reorganized, and MSHG became the passive parent of the former Continuum Hospitals and Mount Sinai Hospital. This proposal will establish MSHG as the active parent of the above mentioned facilities and accomplish the following goals:

- maintain and grow a comprehensive, integrated system that is prevention oriented;
- achieve the triple aim;
- expand access; and
- improve quality and more efficient operations in the communities served by the organization.

MSHG plans to achieve its goals by expanding primary medical care, specialty care, screening and diagnostic services, urgent care and other ambulatory services that promote and improve public health. The new system will have the ability to manage population health through Mount Sinai's Accountable Care Organization, launched in July 2012, and its commitment to advance models of care such as health homes and keep care at the community level.

The system will be developed with the belief that the patient will be provided with the appropriate level of care regardless of the point of entry. The system will have a primary care network with over 430 full and part-time physicians and 12 ambulatory care centers. Its ambulatory care network is designed to prevent hospital readmissions and emergency department visits, thereby reducing cost and improving outcomes.

Displayed in Table 3 below are the inpatient utilization statistics for the seven (7) hospital divisions. In 2011, the hospitals recorded 160,274 total inpatient discharges; by 2012 these discharges increased by 9.4 percent, to 175,288. During the same period, total emergency department visits at the aforementioned facilities increased by 6.9 percent, from 452,399 in 2011 to 483,800 in 2012.

Table 3: Select New York State Hospitals: Inpatient Utilization, by Major Service Category.
Source: SPARCS 2011 - 2012.

	Discharges		Average Daily Census		Average Length of Stay		Occupancy Based on Current Beds		Current Beds
Service	2011	2012	2011	2012	2011	2012	2011	2012	
PFI = 1324: Beth Israel Medical Center/Beth Israel Brooklyn									
Medical/Surgical	8,557	11,191	146	187	6.2	6.1	69.1	88.0	212
Pediatric	0	1	0	0	0.0	2.0	0.0	0.0	0
Obstetric	27	30	0	0	2.1	1.7	0.0	0.0	0
General Psychiatric	53	80	1	1	5.4	6.0	0.0	0.0	0
Chemical Dependency	37	59	1	1	4.9	3.9	0.0	0.0	0
Total	8,674	11,361	148	189	6.2	6.1	69.7	89.0	212
PFI = 1439: Beth Israel Medical Center/Petrie Campus									
Medical/Surgical	24,837	29,750	343	425	5.0	5.2	59.8	74.0	574
Pediatric	964	1,135	7	9	2.5	2.9	26.4	35.6	25
Obstetric	4,104	4,424	32	34	2.8	2.8	75.7	81.0	42
General Psychiatric	1,473	1,919	69	84	17.1	15.9	75.2	91.1	92
Chemical Dependency	5,217	5,078	75	69	5.3	5.0	81.8	75.3	92
High Risk Neonates	291	280	12	14	14.7	17.8	37.7	44.2	31
Subtotal	36,886	42,586	538	635	5.3	5.4	62.8	74.1	856
Healthy Newborns	3,622	3,938	24	26	2.4	2.4			

Table 3: Select New York State Hospitals: Inpatient Utilization, by Major Service Category.
Source: SPARCS 2011 - 2012.

	Discharges		Average Daily Census		Average Length of Stay		Occupancy Based on Current Beds		Current Beds
Service	2011	2012	2011	2012	2011	2012	2011	2012	
Grand Total	40,508	46,524	562	661	5.1	5.2			
PFI = 1456 Mount Sinai Hospital									
Medical/Surgical	39,958	40,130	650	652	5.9	5.9	74.0	74.2	879
Pediatric	2,304	2,300	30	28	4.7	4.5	36.9	35.1	80
Obstetric	6,521	7,168	57	58	3.2	3.0	76.4	78.8	74
General Psychiatric	2,100	2,220	89	84	15.4	13.9	85.9	81.9	103
Chemical Dependency	194	238	3	4	5.8	5.5	0.0	0.0	0
High Risk Neonates	699	632	38	31	20.0	18.1	109.4	89.4	35
Subtotal	51,776	52,688	866	858	6.1	5.9	74.0	73.3	1,171
Healthy Newborns	5,556	6,116	41	43	2.7	2.6			
Grand Total	57,332	58,804	907	901	5.8	5.6			
PFI = 1460: NY Eye and Ear Infirmary									
Medical/Surgical	636	514	4	3	2.5	2.3	6.2	4.6	69
Pediatric	142	94	1	0	1.4	1.3	0.0	0.0	0
Total	778	608	5	4	2.3	2.1	7.1	5.1	69
PFI = 1466: St Luke's Roosevelt Hospital Center - Roosevelt Hospital Division									
Medical/Surgical	10,979	13,030	159	184	5.3	5.1	46.2	53.4	344
Pediatric	448	470	3	3	2.3	2.4	0.0	0.0	0
Obstetric	7,186	7,154	54	55	2.8	2.8	75.6	75.7	72
General Psychiatric	592	903	27	34	16.8	13.6	85.3	105.0	32
Chemical Dependency	1,210	1,594	40	41	11.9	9.3	89.8	92.3	44
High Risk Neonates	437	533	22	23	18.4	15.7	100.5	104.5	22
Subtotal	20,852	23,684	305	339	5.3	5.2	59.3	65.9	514
Healthy Newborns	6,122	5,917	38	36	2.3	2.2			
Grand Total	26,974	29,601	343	375	4.6	4.6			
PFI = 1469: St Luke's Roosevelt Hospital - St Luke's Hospital Division									
Medical/Surgical	12,625	15,156	199	227	5.8	5.5	50.8	58.0	392
Pediatric	565	532	5	4	2.9	3.0	18.0	17.6	25
Obstetric	60	71	1	1	3.1	2.8	0.0	0.0	0
General Psychiatric	723	987	44	51	22.0	18.9	71.5	83.9	61
Chemical Dependency	2,009	1,979	25	22	4.5	4.1	0.0	0.0	0
High Risk Neonates	3	1	1	0	56.3	1.0	0.0	0.0	0
Subtotal	15,985	18,726	273	305	6.2	6.0	57.1	63.9	478
Healthy Newborns	0	0	0	0	0.0	0.0			
Grand Total	15,985	18,726	273	305	6.2	6.0			
PFI = 1639: Mount Sinai Hospital - Mount Sinai Hospital Of Queens									
Medical/Surgical	9,859	9,492	156	152	5.8	5.8	66.6	64.6	235
Pediatric	0	1	0	0	0.0	2.0	0.0	0.0	0
Obstetric	46	52	0	0	2.1	2.2	0.0	0.0	0

Table 3: Select New York State Hospitals: Inpatient Utilization, by Major Service Category. Source: SPARCS 2011 - 2012.									
	Discharges		Average Daily Census		Average Length of Stay		Occupancy Based on Current Beds		Current Beds
Service	2011	2012	2011	2012	2011	2012	2011	2012	
General Psychiatric	43	38	1	1	6.4	5.3	0.0	0.0	0
Chemical Dependency	75	81	1	1	4.1	4.4	0.0	0.0	0
Total	10,023	9,664	158	154	5.8	5.8	67.4	65.4	235

Conclusion
This proposal will give Mount Sinai Hospital Group active powers over the Hospitals. It will bring the Hospitals together and allow MSHG to produce a health system that will focus on improving the quality, safety and efficiency of care for the population served.

Recommendation
From a need perspective, approval is recommended.

Programmatic Analysis

Program Description
Establish Mount Sinai Hospitals Group, Inc. (MSHG) as the active parent and co-operator of the following licensed healthcare facilities: Mount Sinai Hospital (MSH); Beth Israel Medical Center (BIMC); St. Luke's-Roosevelt Hospital (SLR); and the New York Eye and Ear Infirmary (NYEEI). Mount Sinai Hospitals Group, Inc., currently operating as a passive parent, is the sole corporate member of the aforementioned hospitals. Being established as the active parent will allow MSHG to exercise active powers and oversight with respect to the affiliated entities' day-to-day operations. There are no costs associated with this project and no change in authorized services or number or types of beds as a result of this proposed change in governance structure.

MSHG is an existing health care organization with three (3) directors who will comprise the governing board pending approval. Subsequent to final approval, MSHG will add up to 42 additional individuals, all of whom currently serve on the boards of three (3) or more of the four (4) hospitals involved in this project.

Character and Competence
The Board of Trustees of Mount Sinai Hospitals Group (MSHG) is:

Name	Position/Experience
Peter W. May	Chairman of MSHS and MSHG Boards. Member of The Mount Sinai Board of Trustees since 1989 and Chairman of the Board since 2002.
Steven Hochberg	Senior Vice Chairman of the MSHS and MSHG Boards. Member of the Continuum Board since 2005 and Chairman of the Board since 2011.
Blaine V. Fogg	Board Member. Member of the MSHS Board of Trustees since 1987.

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.

Mr. Hochberg disclosed the following settlements and pending investigations which occurred during his affiliation with the entities noted below:

In the first half of 2002, by letter to the Department of Health and Human Services, Beth Israel reported misstatements in Medicare cost reports filed for 1995 through 1999. Subsequently, beginning in October 2002, the United States Attorney's Office for the Southern District of New York subpoenaed Beth Israel and requested information related to cost reports for 1991 through 2001. On November 30, 2005, Beth Israel and the US Attorney's Office, on behalf of the Office of Inspector General of the Department of Health and Human Services, entered into a Stipulation and Order of Settlement and Dismissal related to the Medicare cost reports and billing from 1992 to 2001. Beth Israel did not admit to any wrongdoing, but agreed to pay $72.9 million to Medicare in a settlement of the issues.

On November 29, 2005, Beth Israel Medical Center and the Office of Inspector General of the Department of Health and Human Services entered into a corporate integrity agreement in connection with the resolution of the aforementioned disclosed Medicare cost report misstatement and a related investigation. (The agreement expired around November 29, 2010.)

In February 2012, following receipt of a subpoena from the United States Attorney for the Southern District of New York requesting information regarding Beth Israel Medical Center's outlier payments and the setting of its charges from 1997 through 2003, Beth Israel entered into a settlement agreement and made payment to the United States for $13,031,355 in March 2012.

In January 2013, St. Luke's Roosevelt Hospital agreed to pay $1,258,115 to the United States and $1,066,885 to the State of New York to settle claims brought by the United States and New York State in regard to billing for outpatient psychiatric services from 1998 through 2010, and certain issues related to inpatient reimbursement for the period 1998-2002.

In May 2013, New York Eye and Ear Infirmary (NYEE) received a Civil Investigative Demand (CID) from the U.S. Attorney's Office under the False Claims Act related to allegations of false claims for payment submitted to the Center for Medicare and Medicaid Services in connection with post-surgical pathology.

In June 2013, Continuum Health Partners received a Civil Investigative Demand from the U.S. Attorney's Office requesting the production of documents relating to approximately $871,000 in overpayments from Medicaid for services furnished by Continuum hospitals to Healthfirst, Inc. Insureds.

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.

St. Luke's Roosevelt Hospital was fined $4,000 in September 2006 following an investigation into the care rendered to a patient who presented with a brain malformation. It was determined that the patient was not fully educated on his post-discharge care and did not receive an appropriate prescription for medication.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Capability and Feasibility
There are no significant issues of capability or feasibility associated with this application.

BFA Attachment B is the financial summary of Mount Sinai Hospital for the period 2011 through 2012. As shown, the facility has maintained an average positive working capital position and average positive net asset position from 2011 through 2012. Also, the facility achieved an average operating income of $79,669,000 from 2011 through 2012.

BFA Attachment C is the financial summary of Beth Israel Medical Center and Affiliates during the period 2011 through 2012. As shown, the facility has maintained an average positive working capital position and an average positive net asset position during the period 2011 through 2012. Also, the facility achieved an average operating income of $25,220,000 during the period 2011 through 2012.

BFA Attachment D is the financial summary of St. Luke's Roosevelt Hospital Center and Affiliates during the period 2011 through 2012. As shown, the facility had maintained an average positive working capital position and an average negative net asset position from 2011 through 2012. The applicant has indicated that the reason for the negative net asset position is the facility experienced a loss on refinancing; a required accounting recognition of minimum pension liabilities; loss on interest rate swaps and equity loss in its captive malpractice insurance program. Most of these items were non-cash actions or one time, extraordinary events. Also, approximately half of the 2012 negative fund balance is attributable to a subsidiary corporation that operates a staff housing residence, and the liabilities of that entity have no recourse to any of the other assets of St. Luke's Roosevelt, apart from the staff housing residence. Also, the facility achieved an average operating income of $13,475,000 during the period 2011 through 2012.

BFA Attachment E is the financial summary of the New York Eye and Ear Infirmary and Affiliates during the period 2011 through 2012. As shown, the facility had maintained an average positive working capital position and an average positive net asset position during the period 2011 through 2012. Also, the facility achieved an operating income of $14,797,000 during the period 2011 through 2012.

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	Organizational Chart of Mount Sinai Hospital Group, Inc.
BFA Attachment B	Financial Summary- The Mount Sinai Hospital
BFA Attachment C	Financial Summary- Beth Israel Medical Center
BFA Attachment D	Financial Summary- St. Luke's Roosevelt Hospital Center
BFA Attachment E	Financial Summary- The New York Eye and Infirmary

Public Health and Health Planning Council

Project # 132204-E
Mohawk Valley Health System

County: **Oneida**
Purpose: **Establishment**
Program: **Hospital**
Acknowledged: **October 10, 2013**

Executive Summary

Description
Faxton-St. Luke's Healthcare (FSL), St. Elizabeth Medical Center (SEMC), and St. Lukes Home, through this application, are requesting approval for Mohawk Valley Network Inc. (MVN), which is currently the passive parent of FSL, to become the active parent of the facilities. Upon approval, Mohawk Valley Network, Inc. will change its name to Mohawk Valley Health System (MVHS). In addition to the above listed facilities, MVHS will also serve as the active parent of Visiting Nurse Association of Utica and Oneida County, Inc. (VNA), Mohawk Valley Home Care, LLC (MVHC) and Senior Network Health, LLC (SNH). MVN is currently the sole member of each of these entities.

FSL is a not-for-profit hospital with 370 licensed acute care beds and is a designated Stroke Center . FSL also operates 16 extension clinics throughout the region and operates a dental residency program.

SEMC is a not-for-profit community hospital located in Utica, New York. The facility is certified to operate 201 beds. SEMC is the only New York State designated Level 2 trauma center in the community. SEMC also provides community based services at 14 certified hospital extension clinics.

SEMC also provides educational programs, including: SEMC's College of Nursing, Family Medicine Residency program, fellowship in Minimally Invasive Gynecologic Surgery, and fellowship in Hospital Medical programs.

SEMC is sponsored by Partners in Franciscan Ministries, Inc. (PFM), which is a not-for-profit charitable tax-exempt corporation sponsored by the Congregation of the Sisters of St. Francis of the Neumann Communities in Syracuse (SOSF). PFM and SOSF are affiliated with the Roman Catholic Church.

The main reason put forth for this proposed affiliation is to address the increasingly challenging financial conditions the facilities are encountering, and the associated threat to the on-going provision of quality care at the facilities. The proposed active parent model is intended to reduce these concerns through the combined improvement efforts of FSL and SEMC. Overall, the active parent is intended to strengthen the facilities' quality improvement and performance initiatives and programs in a way that is not possible without this arrangement.

Some of the current financial issues that are being faced by FSL and SEMC include:

- SEMC has suffered unsustainable operating losses of almost $2 million through June, 2013.
- FSL has lost approximately $3.5 million from operation through June 2013.
- The shift in the payer mix away from commercially insured patients towards Medicaid and uninsured patients, which negatively impacts the hospitals' revenue.
- Changes in Medicare and Medicaid reimbursement have also reduced revenue.
- Declining inpatient and outpatient patient base.
- Sequestration.

Without the active parent the applicant indicates that SEMC's expected survival time is limited to only a few months. The main goal of this active parent is to keep these needed facilities operating.

BFA Attachment A shows the organizational chart for VHS providers under the active parent structure.

DOH Recommendation
Contingent Approval

Need Summary
This CON seeks to transition Mohawk Valley Network, Inc. (MVN) from the passive parent of Faxton-St Luke's Healthcare (FSL) to the active parent and co-operator of FSL, St. Elizabeth Medical Center, and St. Lukes Home. The joining of these entities under a common active parent will create a health system that will be able to respond to the evolving needs of the community.

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

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

Incremental Budget	
Revenues:	$11,096,232
Expenses	($875,083)
Gain/ (Loss)	$11,971,315

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. Submission of Approval from the Office of Mental Health. [PMU]
2. Submission of a photocopy of the fully executed Restated Certificate of Incorporation of Mohawk Valley Network, Inc., acceptable to the Department. [CSL]
3. Submission of a photocopy of the amended bylaws of Mohawk Valley Network, Inc. t/b/k/a Mohawk Valley Health System, acceptable to the Department. [CSL]
4. Submission of a photocopy of the fully executed Restated Certificate of Incorporation of St. Elizabeth Medical Center, acceptable to the Department. [CSL]
5. Submission of a photocopy of the amended bylaws of St. Elizabeth Medical Center, acceptable to the Department. [CSL]
6. Submission of a photocopy of the fully executed Restated Certificate of Consolidation of Faxton-St. Luke's Healthcare, acceptable to the Department. [CSL]
7. Submission of a photocopy of the amended bylaws of Faxton-St. Luke's Healthcare, acceptable to the Department. [CSL]
8. Submission of a photocopy of the fully executed Restated Certificate of Incorporation of St. Lukes Home Residential Health Care Facility, Inc., acceptable to the Department. [CSL]
9. Submission of a photocopy of the amended bylaws of St. Lukes Home Residential Health Care Facility, Inc., acceptable to the Department. [CSL]
10. Submission of a photocopy of the fully executed Restated Certificate of Incorporation of Visiting Nurse Association of Utica and Oneida County, Inc., acceptable to the Department. [CSL]
11. Submission of a photocopy of the amended bylaws of Visiting Nurse Association of Utica and Oneida County, Inc., acceptable to the Department. [CSL]
12. Submission of a photocopy of the executed Articles of Organization of Mohawk Valley Home Care, LLC, and any amendments thereto, acceptable to the Department. [CSL]
13. Submission of a photocopy of the amended and executed operating agreement of Mohawk Valley Home Care, LLC, acceptable to the Department. [CSL]

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]

Council Action Date

December 12, 2013.

Need Analysis

Project Description
Mohawk Valley Health System seeks approval to become the active parent and co-operator of Faxton-St. Luke's Healthcare, St. Elizabeth Medical Center, St. Lukes Home Residential Health Care Facility, Visiting Nursing Associating of Utica and Oneida County, and Mohawk Valley Home Care.

Background/Analysis
Faxton-St Luke's Healthcare is a 370-bed acute care hospital located at 1656 Champlain Avenue Utica, 13502, in Oneida County, and St Elizabeth Medical Center is a 201-bed acute care hospital located at 2209 Genesee Street Utica, 13501, in Oneida County.

The facilities have the following certified beds and services:

Table 1: Certified Beds: Faxton-St Luke's Healthcare St Luke's Division and St. Elizabeth Medical Center. Source: HFIS, October 2013.

Bed Category	Faxton-St. Luke's Healthcare St. Luke's Division	St. Elizabeth Medical Center
Coronary Care	8	0
Intensive Care	22	20
Maternity	26	0
Medical / Surgical	238	149
Neonatal Continuing Care	4	0
Neonatal Intermediate Care	8	0
Pediatric	14	8
Physical Medicine and Rehabilitation	24	0
Psychiatric	26	24
Total	370	201

Table 2: Certified Services: Faxton-St Luke's Healthcare St Luke's Division and St. Elizabeth Medical Center. Source: HFIS, October 2013.

Service	Faxton-St Luke's Healthcare St Luke's	St Elizabeth Medical Center
Ambulatory Surgery - Multi Specialty	√	√
Cardiac Catheterization - Adult Diagnostic	√	√
Cardiac Catheterization - Electrophysiology (EP)		√
Cardiac Catheterization - Percutaneous Coronary Intervention (PCI)	√	√
Cardiac Surgery - Adult		√
Clinic Part Time Services	√	√
Clinical Laboratory Service	√	√
Coronary Care	√	√
Dental O/P	√	
Emergency Department	√	√
Health Fairs O/P	√	√
Intensive Care	√	√
Maternity	√	

Table 2: Certified Services: Faxton-St Luke's Healthcare St Luke's Division and St. Elizabeth Medical Center. Source: HFIS, October 2013.		
Service	Faxton-St Luke's Healthcare St Luke's	St Elizabeth Medical Center
Medical Social Services	√	√
Medical/Surgical	√	√
Neonatal Continuing Care	√	
Neonatal Intermediate Care	√	
Nuclear Medicine - Diagnostic	√	√
Nuclear Medicine - Therapeutic		√
Pediatric	√	
Pediatric O/P	√	
Pharmaceutical Service	√	√
Physical Medical Rehabilitation	√	
Podiatry O/P	√	
Prenatal O/P	√	
Primary Medical Care O/P	√	√
Psychiatric	√	√
Psychology O/P	√	√
Radiology - Diagnostic	√	√
Renal Dialysis - Acute	√	√
Therapy - Occupational O/P	√	√
Therapy - Physical O/P	√	√
Therapy - Speech Language Pathology O/P		√
Transfusion Services - Limited	√	

Faxton-St Luke's Healthcare is authorized to operate 16 hospital extension clinics in Herkimer and Oneida Counties. These facilities provide outpatient services such as primary medical care, psychology, radiology – diagnostic, renal dialysis - chronic, linear accelerator and pediatric.

St Elizabeth Medical Center is authorized to operate one certified Home Health Agency, one school based hospital extension clinic, and 13 hospital extension clinics in Herkimer and Oneida Counties. These facilities provide outpatient services such as home health aide, medical social services, medical supplies equipment and appliances, nursing, nutritional, occupational therapy, physical therapy, speech language pathology, primary medical care, diagnostic radiology, and clinical laboratory service.

The facilities have the following New York State Designations:
Faxton-St Luke's Healthcare St Luke's Division:

- Level 2 Perinatal Center; and
- Stroke Center;

St Elizabeth Medical Center:

- Area Trauma Center.

The primary service area of the two facilities is Herkimer and Oneida Counties. In 2000, the combined population of these counties was 299,896 residents; by the 2010 census, it declined slightly 299,397 and is projected to reach 294,268 residents by 2020. The 2012 population estimates for the two counties was 298,064 residents.

Displayed in Table 3 below are the total inpatient discharges and emergency department visits for the two facilities.

Table 3: Inpatient Discharges and Emergency Department Visits: St Luke's Memorial Hospital Center and St Elizabeth Medical Center Utilization. Source: SPARCS 2011 and 2012.		
Hospital	2011	2012
Total Discharges		
St Luke's Memorial Hospital Center	16,775	17,354
St Elizabeth Medical Center	11,879	11,503
Total	28,654	28,857
Total Emergency Department		
St Elizabeth Medical Center	40,273	40,110
St Luke's Memorial Hospital Center	34,494	36,598
Total	74,767	76,708

Abortion services and patient care patterns in the service area are well established. Planned Parenthood Mohawk Hudson (PPMH) is located in the service area and is authorized to provide abortion services. The majority of abortions in the service area are performed by PPMH-Utica. Late term abortions up to 19 weeks 6 days are referred to PPMH-Schenectady. If there is a need for an in-hospital abortion, the patient is referred to Albany Medical Center. Over the last two years, Faxton-St. Luke's performed fewer than 10 in-hospital abortions allocated to APR-DRG Abortion w/o D&C, Aspiration Curettage or Hysterectomy.

Approval of the proposed active parent will bring operational collaboration and clinical integration between the two hospitals. The system is expected to achieve the following benefits:

- elimination of administrative redundancy in support and clinical functions;
- coordination of service and clinical programs in order to enhance operational efficiencies and programmatic development;
- improvement in the capacity of the local health system to respond to evolving community needs in a more efficient manner;
- streamlining of services as needed;
- strengthening of the facilities' quality improvement and performance initiatives, staff and programs;

Upon approval of the active parent, the two hospital systems plan a comprehensive review of their clinical practices in order to determine the areas with superior or best practices that could be transferred between the two hospitals.

Conclusion

As the active parent, MCHS will continue to offer the range of services in the community where MVN and SEMC already provide services. The combined resources of the two organizations will allow MVHS to develop more effective programs than the facilities could achieve alone, thereby improving health care in the community.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Program Proposal
Mohawk Valley Network (MVN) seeks approval to become the active parent and co-operator of Faxton-St. Luke's Healthcare (FSL), St. Elizabeth Medical Center (SEMC), St. Luke's Home (SLH), Visiting Nursing Association of Utica and Oneida County (VNA), and Mohawk Valley Home Care (MVHC). Upon approval, MVN will be renamed the Mohawk Valley Health System (MVHS). The active parent will allow SEMC and FSL to eliminate redundancy in support and clinical functions and streamline services. The applicant does not anticipate any change in the overall complement of services offered.

Character and Competence
The proposed board members for MVHS are as follows:

Name	
Domenic Aiello, M.D.	Physician
Catherine Cominsky	Manager, Higher Education
Joan Compson	Retired CPA/Chief Financial Officer
Thomas Dennison, PhD	Professor and former nursing home administrator
Gregory Evans	President/CEO of Manufacturing Company
Maria Gesualdo, D.O.	Physician
Harrison Hummel, III	President/CEO of Office Supply Company
Todd Hutton, PhD	President/CEO of Utica College
Andrew Kowalczyk, III, JD	Attorney
Gregory McLean	President, Investment Company
Scott Perra	President/CEO of Faxton-St. Luke's
Norman Siegel, JD	Judge, Oneida County
John Sperling, MD	Physician
Stephen Sweet	Owner, Distribution Company
Richard Tantillo	Vice President of Communications & Development at Hamilton College
Symeon Tsoupelis	Owner, Symeon's Restaurant
Mark Warfel, D.O.	Physician
Bonnie Woods	Trust Executive at Bank of America
Eric Yoss, MD	Physician
Richard Zweifel	Partner, CPA Firm

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.

Ms. Cominsky, Drs. Warfel and Yoss, and Messrs. Evans, Hummel, Kowalczyk, Tsoupelis, Siegel and Zweifel each disclosed the following actions which occurred during their affiliation with the entities noted below:

Around December 2007, St. Elizabeth Medical Center (SEMC) was included in a nationwide investigation conducted by the U.S. Attorney General's Office into billing for kyphoplasty procedures. It was determined that certain procedures billed as inpatient should have been billed as outpatient, therefore, SEMC entered into an agreement to pay back $195,976 plus interest.

In March 2013, St. Elizabeth Medical Center received a citation for alleged violations relating to an employee allegation of overexposure to carbon monoxide. The citation and $8,500 penalty are currently being contested.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

In June 2007, during a recertification survey of St. Elizabeth Medical Center's Home Care, deficiencies were noted. In 2008, St. Elizabeth settled with the Department of Health (DOH). As part of the settlement, St. Elizabeth admitted to the existence of substantial evidence of violations in the following areas: policies and procedures of service delivery, patient assessment and plan of care and governing authority. A $10,000 civil penalty was assessed of which $5,000 was paid and the remaining $5,000 was suspended providing St. Elizabeth did not violate certain terms and regulations within 3 years.

In January 2005, St. Elizabeth Medical Center was fined $4,000 based on an investigation of a patient admitted to the hospital for a coronary artery bypass graft. An incision was made in the left leg to harvest a vein for bypass when it was discovered that the vein was not present due to a previous harvest.

In November 2005, Presbyterian Home was fined $1,000 based on deficient practices relating to quality of care (specifically, pressure sores) noted during an inspection conducted in February 2005.

In January 2010, Presbyterian Home was fined $10,000 based on deficient practices relating to quality of care (specifically, accidents) noted during an inspection conducted in October 2008.

In November 2011, Sitrin Health Care Center was fined $6,000 based on deficient practices relating to quality of care (specifically, accidents and supervision, menus not meeting resident need, and administration) noted during an inspection conducted in August 2010.

During recent recertification inspections conducted in 2013, Presbyterian Home was issued a harm level deficiency and St. Luke's Home was issued an Immediate Jeopardy level deficiency for deficient practices relating to Advanced Directives/CPR/DNR and failure to provide continuous oxygen. The DOH will review both matters for a potential future enforcement action.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Business Plan of Efficiencies

In order to effect the change, a Business Plan of Efficiencies (BPOE) has been developed in order to define and develop the opportunities that come with the affiliation of Faxton-St. Luke's Healthcare (FSL) and St. Elizabeth Medical Center (SEMC) to create Mohawk Valley Health System (MVHS).
These opportunities can be grouped into two categories: Confirmed and Validated Opportunities (opportunities that have been identified and validated as opportunities which can be achieved as part of the affiliation) and Non-Validated Opportunities (Although identified, these opportunities will require additional discussion and validation post-transaction). In order to determine these opportunities, several distinct steps were undertaken:

- Assessment of the MVHS administrative of organization to identify functions that will become corporate or remain at the hospital level
- Development of individual departmental integration plans with the guidance and assistance of hospital senior leadership
- Development of detailed departmental assessments
- Quantitative assessment of hospital departments utilizing databases to identify opportunities for operational efficiency
- Qualitative interviews to identify opportunities to achieve potential integrative synergies

Once the report was developed the main areas that were determined to be impacted are as shown:

- Administrative functions: The geographic proximity of the two facilities will allow for consolidation of administrative functions.
- Support Services Functions:
  - The ability to centralize management in select support departments affords MVHS the ability to standardize policies and procedures system-wide while reducing unnecessary redundant functions and expense
  - Joint contracting for select support services provides MVHS the ability to renegotiate contracts and standardize functions between the two hospitals
- Clinical Service/Function Integration:
  - Clinical coordination, program alignment and the maximization of existing organizational resources
  - Redistribution of services among the existing Faxton, St. Luke's and St. Elizabeth campuses

Upon implementing the BPOE, it is expected that each of the three areas will have significant savings over the course of the first five to six years under the active parent. Each year is shown to have a confirmed savings, with an additional amount of possible savings. The total confirmed savings for the first five to six years, by function, is shown below:

- Administrative Functions: $5.628 million confirmed savings / $18.352 million possible savings.
- Support Functions: $428,740 confirmed savings / $4.339 million possible savings
- Clinical Functions: no confirmed savings / $27.477 million possible savings

Operating Budget

The applicant has submitted the Inpatient and Outpatient operating budget, in 2013 dollars:

	Current Year FSL & SEMC	*First Year Incremental*	*Cumulative Year 1*	*Third Year Incremental*	*Cumulative Year 3*
Revenues:					
Inpatient	$260,288,215	$1,559,789	$261,848,004	$12,526,551	$272,814,766
Outpatient	231,735,205	1,388,684	233,123,889	11,152,419	242,887,624
Other Operating Revenue (A)	15,074,046	7,074,079	22,148,125	7,646,224	22,720,270
Non-Operating Revenue (B)	7,226,228	1,073,680	8,299,908	1,260,845	8,487,073
Total Revenue	$514,323,694	$11,096,232	$525,419,926	$32,586,039	$546,909,733
Expenses:					
Operating	$483,704,492	($2,510,710)	$481,193,782	$5,166,945	$488,871,437
Capital	32,028,220	1,635,627	33,663,847	791,944	32,820,164
Total Expenses	$515,732,712	($875,083)	$514,857,629	$5,958,889	$521,691,601
Excess Revenue over Expenses	($1,409,018)	$11,971,315	$10,562,297	26,627,150	$25,218,132

Other Operating and Non-Operating Revenues:

(A) Other Operating Revenues:	*Current Year*	*Year 1 Incremental*	*Cumulative Year 1*	*Year 3 Incremental*	*Cumulative Year 3*
Tuition Revenue	$2,439,641	1,144,896	$3,584,537	1,237,494	$3,677,135
Managed Care Incentive Revenue	530,544	248,978	779,522	269,116	799,660
Cafeteria Sales	1,113,892	522,737	1,636,629	565,015	1,678,907
Parking Garage fees	127,438	59,805	187,243	64,642	192,080
Grant Revenue	2,788,409	1,308,569	4,096,978	1,414,405	4,202,814

Electronic Health Information Revenue	3,089,004	1,449,635	4,538,639	1,566,880	4,655,884
Miscellaneous Income	1,768,339	829,861	2,598,200	896,980	2,665,319
Rents	1,327,942	623,188	1,951,130	673,591	2,001,533
Assets Released From Restriction	817,979	383,868	1,201,847	414,915	1,232,894
Joint Venture Revenue	438,531	205,798	644,329	222,442	660,973
Sold Services	360,887	169,360	530,247	183,058	543,945
Foundation Events	271,440	127,384	398,824	137,686	409,126
Total Other Operating Revenue	$15,074,046	$7,074,079	$22,148,125	$7,646,224	$22,720,270
(B) Non-Operating Revenue:	*Current Year*	*Year 1 Incremental*	*Cumulative Year 1*	*Year 3 Incremental*	*Cumulative Year 3*
Investment Income	$3,377,312	$2,948,820	$6,326,132	$3,075,976	6,453,288
Contributions	3,848,916	(1,875,140)	1,973,776	(1,815,131)	2,033,785
Total Non-Operating Income	$7,226,228	1,073,680	$8,299,908	$1,260,845	$8,487,073

Inpatient and outpatient utilization by payor source as of the current year and the first and third year is shown below. The applicant assumes utilization at the current levels:

Payor	Inpatient	Outpatient
Medicaid Fee-for-Service	17.98%	21.13%
Medicaid Managed Care	5.91%	4.55%
Medicare Fee-for-Service	43.50%	24.16%
Medicare Managed Care	5.83%	11.02%
Commercial Fee-for-Service	22.03%	34.36%
Commercial Managed Care	.17%	1.25%
Private	1.43%	1.56%
Other	3.15%	1.97%

Capability and Feasibility

There are no project costs associated with this application.

With respect to feasibility, it is noted that the applicant indicates they cannot sustain present structural inefficiencies or the resulting operating deficits, over the long-term.

The applicant indicates that by implementing the proposed active parent structure under MVHS, and obtaining the described economies of scale, as well as eliminating some duplicative areas within their operations, they will be able to return their operations to a sustainable performance level within the next several years. Their budget appears reasonable.

Working capital for the merged entities (MVN) and (SEMC) will be derived from the net assets of the combined operation. MVHS shall have a budget and sufficient operating funds to function independently in order to accomplish its corporate purposes, mission, vision, and values. The hospitals intend that MVHS will receive funds for ongoing operations from any one or a combination of sources, consistent with the requirements of the Code applicable to tax exempt organizations, including, without limitation: (a) MVHS's operations; (b) contributions from FSL, SEMC, any FSL Affiliate, or any SEMC Affiliate; and (c) assessment of reasonable corporate fees for the value of services rendered to FSL, SEMC, the FSL Affiliates, and the SEMC Affiliates. MVHS shall determine and assess contributions from FSL, SEMC, the FSL Affiliates, and the SEMC Affiliates in a fair and equitable manner at all times.

BFA Attachment M is MVHS' pro-forma balance sheet that shows operations will start off with $177,964,498 in positive equity.

BFA Attachment B is the 2009-2012 certified financial statements for Mohawk Valley Network, Inc. and Subsidiaries. The statement shows that MVN was operating with a positive average working capital and a positive average net asset position and generated an average net operating loss of $1,347,711 and an average net income of $7,435,471, for the period 2009-2012. MVN, however, experienced a loss in 2010. The explanation for the loss is detailed below. The average net income that is shown is due to MVN selling off its wholly owned for-profit subsidiary, Faxchil Realty, Inc., and its wholly owned for-profit subsidiary, Centrex Clinical Laboratories, Inc. The overall gain in connection with the sale was approximately $30,762,000 in 2009 and $792,000 in 2010. If this sale did not happen MVN would have recorded a loss of $1,619,050 in 2009 and $3,044,883 in 2010.

BFA Attachment C is the internal financial statement through 8/31/2013 for Mohawk Valley Network, Inc. and Subsidiaries. The statement shows MVN was operating with a positive working capital and a positive net asset position and generated a net operating loss of $5,441,401 for the period 1/1/2013-8/31/2013 and a net income of $499,461. The explanation for the loss is detailed below.

BFA Attachment D is the 2009-2012 certified financial statements for Faxton-St. Luke's Healthcare and Consolidated Subsidiaries. The statement shows that the facility was operating with an average positive working capital and an average positive net asset position and generated an average net operating income of $369,111 and an average net income of $9,213,989 for the period 2009-2012. The facility however, experienced a loss in 2010. The explanation for the loss is detailed below.

The sale referenced in BFA Attachment B is also shown in the financials for Faxton-St. Luke's Health Care as FSL is a subsidiary of MVN. The facility would have also have had a net loss in 2009 of $906,398 and in 2010 of $2,625,101 without the sale. The average net operating income for the period 2009-2012, without the sale, is $369,111.

BFA Attachment E is the internal financial statement through 8/31/2013 for Faxton-St. Luke's Healthcare and Consolidated Subsidiaries. The statement shows that the facility was operating with a positive working capital and a positive net asset position and generated a net operating loss of $3,031,870 for the period 1/1/2013-8/31/2013. The explanation for the loss is detailed below.

BFA Attachment F is the 2009-2012 certified financial statements for St. Elizabeth Medical Center. The statement shows that the facility was operating with an average positive working capital and an average positive net asset position and generated average net operating income of $11,436 for the period 2009-2012. The facility, however, experienced a loss in both 2010 and 2012. The explanation for the losses are detailed below.

BFA Attachment G is the internal financial statement through 8/31/2013 for St. Elizabeth Medical Center. The statement shows that the facility was operating with a positive working capital and a negative net asset position and generated a net operating loss of $4,484,263 for the period 1/1/2013-8/31/2013. The explanation for the loss is detailed below.

BFA Attachment H is the 2009-2012 certified financial statements for St. Luke's Home Residential Health Care Facility, Inc. The statement shows that the facility was operating with an average positive working capital and an average positive net asset position and generated an average net operating loss of $1,216,320 for the period 2009-2012. The explanation for the loss is detailed below.

BFA Attachment I is the internal financial statement through 8/31/2013 for St. Luke's Home Residential Health Care Facility, Inc. The statement shows that the facility was operating with a positive working capital and a positive net asset position and generated a net operating loss of $1,039,411 for the period 1/1/2013-8/31/2013. The explanation for the loss is detailed below.

BFA Attachment J is the 2009-2012 certified financial statements for Visiting Nurse Association of Utica and Oneida County, Inc. The statement shows that the facility was operating with an average positive working capital and an average positive net asset position and generated an average net operating loss of $302,537 for the period 2009-2012. The explanation for the loss is detailed below.

BFA Attachment K is the internal financial statement through 8/31/2013 for Visiting Nurse Association of Utica and Oneida County, Inc. The statement shows that the facility was operating with a negative working capital and a positive net asset position and generated a net operating loss of $750,862 for the period 1/1/2013-8/31/2013. The explanation for the loss is detailed below.

BFA Attachment L is the internal financial statement through 8/31/2013 for Mohawk Valley Home Care. The statement shows that the facility was operating with a positive working capital and a positive net asset position and generated a net operating income of $22,551 for the period 1/1/2013-8/31/2013. The previous years financial statements are included in the overall financial position of MVN, no separate financial statements were created for Mohawk Valley Home Care.

A primary cause of the deterioration in the hospital finances is revenue stagnation. The combined net patient revenue for FSL and SEMC rose from about $454 million to $457 million from 2010 to 2012. This is an increase of less than one percent over two years. There are numerous causes of this stagnation.

- Both hospitals have experienced a shift in their payor mix away from commercially insured patients towards Medicaid and uninsured patients.
- SEMC experienced a 13% decrease in acute care commercial discharges from 2010 to 2012, compared to a 2.7% decline in acute care Medicaid discharges. During this same period, acute care charity discharges at SEMC almost doubled.
- Similarly, FSL experienced a 17% decline in acute care commercial discharges and a 6% increase in acute care Medicaid discharges from 2010 to 2012.
- FSL estimates that reductions in payments for Medicare and Medicaid dual eligibles reduced revenues to FSL by $1 million between 2010 and 2012.
- Medicaid reimbursement reductions further reduced revenues to FSL by $600 thousand between 2010 and 2012, and Sequestration has resulted in approximately 3.5 million in additional reductions in Medicare reimbursements in 2013.
- At SEMC, Medicaid reductions resulted in reduced revenues of $1 million, and Sequestration has resulted in an additional reduction in Medicare reimbursements of $1 million.

According to the applicant, increased outpatient facility competition is also having an impact on the hospitals. Recent outpatient facility entry in the region includes a gastrointestinal ambulatory surgery center (ASC), a urology clinic in Utica specializing in radiation oncology services, and an eye care ASC in Rome. FSL estimates these facilities led to revenue declines of nearly $6 million from 2011 to 2012. While SEMC does not provide radiation oncology services, it estimates that its revenue decline from these facilities was $3.2 million from 2011 to 2012.

Sequestration has added additional strain to the financial situation in 2013. Overall, FSL has lost $3.5 million from operations through June, which is an annualized loss of $7 million. SEMC expects losses similar to 2012. SEMC lost more than $2 million through June 2013, which is an annualized loss of over $4 million.

St. Luke's Home (SLH) has experienced losses primarily due to less than optimal occupancy rates, and a higher Medicaid payer mix than years past. SLH, as a result of the HEAL 20 Grant for $8,008,000 (to decertify 82 skilled nursing beds: 40 beds at St. Luke's Home and 42 beds at Allen Calder Skilled Nursing, adding 10 ADHCP slots, and renovations to convert space and expand the staff cafeteria and dining area), is debt free. As a result of this, SLH can expect positive cash flow even with an annual $800,000 operating loss.

FSL and SEMC have taken action over the past four years in an attempt to make the facilities profitable, or at least break. These include the following:

St. Elizabeth Medical Center

2011:

- Eliminated 24 FTE positions, including layoffs
- Froze the defined benefit Pension Plan for Non-Union employees
- Additional supply chain savings: $470,000

2012:

- Eliminated 53 FTE positions, including layoffs
- Froze the defined benefit Pension Plan for UFCW Union employees
- Additional supply chain savings: $825,000
- Capital Purchases frozen
- Confirmed plan to close School of Radiography in 2014

2013:

- Eliminated 67 FTE positions, including layoffs
- Froze the defined benefit Pension Plan for NYSNA Union employees

Faxton-St. Luke's Healthcare

2010 to 2012:

- Achieved total annual savings of $15.7 million
- Eliminated 256 FTE positions
- Implemented weekly review process for all staffing requests

2013:

- January to June: achieved $5.5 million in annualized savings
- Additional staffing reductions and benefit changes
- Supply pricing and utilization improvements
- July to December: Initiated plan to save additional $10.2 million in annualized savings
- 91.3 FTE reductions
- Non-salary expenses improvements

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Organization Chart, Mohawk Valley Health System.
BFA Attachment B	2009-2012 Financial Summary for Mohawk Valley Network, Inc. and Subsidiaries
BFA Attachment C	1/1/2013-8/31-2013 Internal Financial Summary for Mohawk Valley Network, Inc. and Subsidiaries
BFA Attachment D	2009-2012 Financial Summary for Faxton-St. Luke's Healthcare
BFA Attachment E	1/1/2013-8/31/2013 Internal Financial Summary Faxton St. Luke's Healthcare and Subsidiaries
BFA-Attachment F	2009-2012 Financial Summary for St. Elizabeth Medical Center
BFA-Attachment G	1/1/2013-8/31/2013 Internal Financial Summary for St. Elizabeth Medical Center
BFA-Attachment H	2009-2012 Financial Summary for St. Luke's Home Residential Healthcare Facility, Inc.
BFA-Attachment I	8/31/2013 Internal Financial Summary for St. Luke's Home Residential Healthcare Facility, Inc.
BFA-Attachment J	2009-2012 Financial Summary for Visiting Nurse Association of Utica and Oneida County, Inc.
BFA-Attachment K	8/31/2013 Internal financial summary for Visiting Nurse Association of Utica and Oneida County, Inc.
BFA-Attachment L	8/31/2013 Internal Financial Summary for Mohawk Valley Home Care
BFA-Attachment M	Pro-forma Balance Sheet for Mohawk Valley Health Systems.

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

November 21, 2013

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

	Number	Applicant/Facility
1.	112086 B	1504 Richmond, LLC d/b/a Richmond Surgery Center (Richmond County)
2.	131069 E	Meadowbrook Endoscopy Center (Nassau County)
3.	131192 B	Abaco North, LLC d/b/a Manhattan Multi-Specialty Ambulatory Surgery Center (New York County)
4.	131296 B	Westmoreland ASC, LLC (Oneida County)
5	132108 B	Niagara ASC, LLC d/b/a Ambulatory Surgery Center of Niagara (Niagara County)

Public Health and Health Planning Council

Project #112086-B
1504 Richmond, LLC d/b/a Richmond Surgery Center

County: **Richmond**
Purpose: **Establishment and Construction**
Program: **Ambulatory Surgery Center**
Acknowledged: **August 15, 2011**

Executive Summary

Description
1504 Richmond, LLC d/b/a Richmond Surgery Center, a to-be-formed proprietary limited liability company, requests approval for the establishment of a single specialty ambulatory surgery center to serve the residents of Richmond County. The Center will provide the following surgical services in two operating rooms; plastic surgery, gastroenterology, gynecology, ophthalmology, orthopedics, otolaryngology and urology. The space will be leased space located at 1504 Richmond Road, Staten Island, New York.

The proposed members of Richmond Surgery Center, and their ownership percentages, are as follows:

Scott Vitolo	35%
Todd Vitolo	35%
Noreen Vitolo	25%
Michael Costes, M.D.	5%

DOH Recommendation
Contingent Approval with an expiration of the operating certificate five (5) years from the date of issuance.

Need Summary
The number of projected procedures is 1,980 in year 1 and 2,183 in year 3. These projections are based on the actual experience of the proposed surgeons who will be utilizing the proposed center. The procedures are currently done in out-of-hospital settings or at area hospitals.

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

A transfer and affiliation agreement is expected be provided by North Shore/Staten Island University Hospital

Financial Summary

Budget:		
	Revenues:	$ 2,376,790
	Expenses:	$1,858,376
	Gain/ (Loss)	$ 518,414

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 for limited life of five years from the date of the issuance of an operating certificate is recommended contingent upon:

1. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the DOH beginning in the second year of operation. Said reports should include:
   - Data showing actual utilization including procedures;
   - Data showing breakdown of visits by payor source;
   - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
   - Data showing number of emergency transfers to a hospital;
   - Data showing percentage of charity care provided, and
   - Number of nosocomial infections recorded during the year in question. [RNR]
2. 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]
3. Submission by the governing body of the ambulatory surgery center of an organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
5. Submission of a working capital loan commitment, acceptable to the Department. [BFA]
6. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
7. Submission of a signed and dated first page of Schedule 1A, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's Articles of Organization, acceptable to the Department. [CSL]
9. Submission of a photocopy of a fully executed and dated Certificate of Amendment to the applicant's Articles of Organization, acceptable to the Department. [CSL]
10. Submission of a photocopy of a fully executed and dated amendment to the applicant's Operating Agreement, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's revised Certificate of Doing Business under an Assumed Name, acceptable to the Department. [CSL]
12. Submission of a photocopy of a fully executed, dated and revised Lease Agreement, acceptable to the Department. [BFA, CSL]
13. Submission of documentation verifying the list of the applicant's managers, acceptable to the Department. [CSL]
14. Submission of documentation regarding the relocation or dissolution of Landmark Surgical, PLLC (Landmark PLLC) as applicable, acceptable to the Department. [CSL]
15. Submission of a signed 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 the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate. [CSL]
16. Submission of a photocopy of any and all fully executed and dated documents pursuant to which the applicant will acquire the operating assets of Landmark PLLC, acceptable to the Department. [CSL]

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. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
7. The applicant shall complete construction by October 30, 2014 in accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date
December 12, 2013.

Need Analysis

Background

1504 Richmond, LLC d/b/a Richmond Surgery Center is seeking approval to establish and construct a diagnostic and treatment center to provide multi-specialty ambulatory surgery services. The proposed freestanding ambulatory surgery center will be located at 1504 Richmond Road, Staten Island, 10304, in Richmond County and will provide plastic surgery, gastroenterology, gynecology, ophthalmology, orthopedics, otolaryngology, and urology surgical procedures.

Analysis

The primary service area of the proposed project is Richmond County. Richmond County does not have any single specialty or multi-specialty freestanding ASCs. There are four hospitals in Richmond County that provide multi-specialty ambulatory surgical services.

The table below provides data on the number of total ambulatory patients in Richmond County hospitals.

Ambulatory Surgery Patients	Total Patients 2012
Richmond University Medical Center	3,764
Staten Island Hospital-North	12,754
Staten Island Hospital-South	4,030
Staten Island Hospital-Concord Div.	0

SPARCS 2012

The number of projected procedures is 1,980 in year 1 and 2,183 in year 3.

The applicant is committed to serving all persons in need of surgical care without regard to their ability to pay or the source of payment.

Conclusion

The proposed ASC will provide residents of the borough with access to ambulatory surgery in a freestanding, non-hospital Article 28 setting; and will bring some procedures performed in non-Article 28 settings into an Article 28 environment.

Recommendation

From a need perspective, contingent approval with an expiration of the operating certificate five (5) years from the date of its issuance.

Programmatic Analysis

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

Proposed Operator	1504 Richmond, LLC
Doing Business As	Richmond Surgery Center
Site Address	1504 Richmond Road, Staten Island
Surgical Specialties	Multi-Specialty, including: Plastic Surgery Gastroenterology Gynecology Ophthalmology Orthopedics Otolaryngology Urology
Operating Rooms	2
Procedure Rooms	0
Hours of Operation	Monday through Friday from 8:00 am to 6:00 pm (Extended as necessary to accommodate additional procedures).
Staffing (1st Year / 3rd Year)	15.75 FTEs / 16.50 FTEs
Medical Director(s)	Michel Costes
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by North Shore/Staten Island University Hospital 8.15 miles/14 minutes
On-call service	Patients will be provided with surgeon contact information as well as the facility's on-call service during hours when the facility is closed.

Character and Competence
The members of the LLC are:

Todd Vitolo	35%
Scott Vitolo	35%
Noreen Vitolo	25%
Michel Costes, MD	5%

Todd Vitolo is an attorney currently employed as a licensed associate broker for a real estate company. He worked four years as a medical malpractice and health care litigation attorney and, besides general liability and product liability cases, he was involved in every aspect of medical malpractice defense litigation for both physicians and hospitals. He feels that this experience has allowed him to learn the inner workings of the health care system, including hospital and physician practices. Additionally, he feels it has allowed him to define the line between good and inadequate care and the processes which hospitals and physicians should have in place to insure the delivery of the necessary standard of care to the public. Mr. Vitolo feels he has developed a solid understanding and respect for the ethics, rules, regulations and laws that define the standard of care and conduct for patient care. In 2004, he started another career in residential real estate sales where he founded the Columbia Group which manages the sale and purchase of multi-million dollar properties. Mr. Vitolo feels this business experience will be useful as the operator of an ambulatory surgery center.

Scott Vitolo is currently the practice manager and administrator for an office based surgical (OBS) practice. Previously, he was a certified Emergency Medical Technician (EMT) who worked as a New York City Emergency Medical Service 911 EMT. He has also worked in the construction field. Mr. Vitolo is now, and has been, a medical practice manager for over 19 years, overseeing the planning, construction, and opening of an office based surgery center accredited by a national accrediting organization.

Mr. Vitolo acted as the general contractor and project manager for not only the OBS practice, but has also been involved in the development of several restaurant projects. He feels his intimate involvement in the construction and initiation of the OBS practice gave him extensive experience and knowledge of the Life Safety aspect of health care facilities. He also feels his experience as a practice manager and OBS administrator has given him an understanding of the ethical, moral, health and procedural standards required to operate an ambulatory surgery center. Mr. Scott Vitolo will be the center's administrator.

Noreen Vitolo, a licensed esthetician, is the owner/operator of a skin care business. She previously worked in a multi-location medical practice in the areas of operations, sales and customer service. She had also worked at an advertising agency prior to founding her own company which specialized in medical marketing. Her firm focused primarily on consumer medical education for physicians and hospitals in the tri-state area and her firm won a Telly award. Ms. Vitolo has traveled to Armenia to produce awareness videos for a children's open heart surgery center staffed by American volunteer surgeons, nurses and physicians in an effort to raise money for this charitable cause. Additionally, Ms. Vitolo actively fundraises for the American Cancer Society, and she is a member of the Staten Island Mental Health Society, the Women's Guild Committee and the Staten Island Chamber of Commerce. She opened her current business in 2003 and feels that her extensive experience running small businesses will be beneficial to the operation of the center. While Ms. Vitolo's role in the center will be all encompassing, she will act as Chief Business Officer and Director of Community Outreach and Education. She intends on ensuring that the center provides charitable care to the uninsured and reduced fees to those in need, especially those in traditionally underserved populations.

Dr. Michel Costes is a practicing physician who will serve as the facility's medical director.

It should be noted that Dr. Robert Vitolo, the father of Todd, Scott, and Noreen, is the current owner of an office based surgery practice at the proposed location. The proposal does not include any reference to Dr. Vitolo being a member of the applicant nor being in any management position at the center. He has signed an affidavit indicating he will have no ownership, managerial, or operational role in the center. Dr. Vitolo's only role will be as a participating/practicing surgeon.

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

Should any patients present themselves at the center in need of primary care services, the center hopes to work with Staten Island University Hospital (SIUH) to provide such services. The proposed operators indicate that they have reached out to SIUH in an effort to establish a mutual network relationship. Additionally, the operators intend to participate in community health events and local religious institution events to make sure the community is aware of their services.

The center intends on utilizing electronic medical records and hopes to integrate in the regional health information organization (RHIO) or health information exchange (HIE). A sliding fee scale will be in place for those without insurance, and provisions will be made for those who cannot afford services.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Lease Rental Agreement

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

Premises:	5,760 square feet located at 1504 Richmond Road, Staten Island, New York, Richmond County
Lessor:	Landmark 1504, LLC
Lessee:	1504 Richmond, LLC d/b/a Richmond Surgery Center
Rental:	$96,000 annually/$8,000 monthly ($16.67 per sq. ft.)
Term:	(5) year term
Provisions:	The lessee is responsible for paying 100% of the property taxes.

The applicant has provided two letters indicating the rent reasonableness. The applicant has indicated that the lease agreement will be an arms length lease agreement and provided an affidavit indicating the disclosure.

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	$2,163,352	$2,376,790
Expenses:		
Operating	$1,562,995	$1,750,376
Capital	108,000	108,000
Total Expenses	$1,670,995	$1,858,376
Net Income	$492,357	$518,414
Utilization: (Procedures)	1,980	2,183
Cost Per Visit	$843.94	$851.29

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

Commercial Fee-for-Service	20.11%	20.18%
Commercial Managed Care	19.15%	19.22%
Medicare Fee-for-Service	38.31%	38.44%
Medicaid Fee-for-Service	5.27%	5.29%
Medicaid Managed Care	10.06%	10.09%
Charity Care	3.94%	3.60%
Private Pay	3.16%	3.18%

Expense and utilization assumptions are based on projected need study by the applicant and current reimbursement methodologies.

Capability and Feasibility

There is no project cost associated with this application.

Working capital requirements, estimated at $309,730, which appear reasonable based on two months' of third year expenses. The proposed members will provide equity in the amount of $154,865 to meet the working capital requirement. BFA Attachment A is a summary net worth statement of the proposed members of Richmond Surgery Center, LLC, which indicates the availability of sufficient funds for the stated equity levels. The residual $154,865 will be provided by a bank to 1504 Richmond, LLC at a rate of 7% for a term of (5) years. A letter of interest from Capital One Bank has been submitted.
BFA Attachment B is the pro-forma balance sheet of Richmond Surgery Center, which indicates a positive shareholders' equity position of $154,865 as of the first day of operation.

The submitted budget projects a net income of $492,357 and $518,414 during the first year and third year of operation, respectively. Revenues are based on current reimbursement methodologies for ambulatory surgery services.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statement- 1504 Richmond, LLC
BFA Attachment B	Pro-forma Balance Sheet- Richmond Surgery Center
BFA Attachment C	Detailed Budget of Richmond Surgery Center
BHFP Attachment	Map

Supplemental Information

Outreach

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas. There follows a summary of the applicant's response to DOH's request for information on the proposed facility's volume of surgical cases, the sources of those cases, and on how staff will be recruited and retained by the ASC.

Facility: Richmond University Medical Center
355 Bard Avenue
Staten Island, NY 10310

Operating Room utilization at Richmond University Medical Center (RUMC):

Current OR Use	Surgery Case Proportion[1]		Ambulatory Cases by Applicant Physician	Reserved OR Time for Applicant Physicians
	Ambulatory	**Inpatient**		
60%-90%	85%	15%	164	Not specified

[1] The hospital did not furnish the number of surgical cases. The percentages show the distribution of cases between inpatient and ambulatory surgery at each site.

RUMC opposes the application but does not specify the number of cases from the applicant surgeons that may be lost to the proposed ASC, nor does it attach a dollar amount to any expected loss of ambulatory surgical volume. The hospital states that its current surgical revenues help support vital services, such as its primary care and subspecialty clinics, its 911 ambulance and trauma services and its CPEP psychiatric coordination. The hospital does not quantify the impact that a loss of surgical revenues to the proposed ASC would have on these or any other of its services or operations.

RUMC had a working capital ratio of 1.1 in both 2009 and 2010. In 2009, RUMC had an operating gain of $7.2 million on revenues of 304.9 million. In 2010, the facility had an operating gain of $6.5 million on revenues of $305.5 million. In 2009, RUMC provided charity care of $23.4 million and experienced bad debt of $16.4 million. In 2010, the facility provided $18.3 million in charity care and had $16.0 million in bad debt.

Facility: Staten Island University Hospital
475 Seaview Avenue
Staten Island, NY 10305

Operating Room utilization at Staten Island University Hospital (SIUH) by Location:

Current OR Use		Surgery Case Proportion[2]				Amb. Surg. Cases by Applicant Physician	Reserved OR Time for Applicant Physicians
		Ambulatory		**Inpatient**			
North Campus (inpt. only)	69%						
South Campus	55%	South Campus	87%	South Campus	13%	458	Yes[3]
Ctr. for Amb. Surgery	72%	Ctr. for Amb. Surgery	99%	Ctr. for Amb. Surgery	1%		

[2] The hospital did not furnish the number of surgical cases. The percentages show the distribution of cases between inpatient and ambulatory surgery at each site.
[3] Four of the seven applicant physicians who performed ambulatory surgery cases at the hospital in 2011 have OR block time.

The hospital opposes the application, based on its assumption that all 458 cases performed by applicant physicians at SIUH in 2011 would be transferred to the proposed ASC. The hospital projects that this would result in a loss of $1 million in revenues, which would put “great pressure” on the facility’s $5.3 million worth of community health improvement services, such as health education events, chronic disease screening, flu vaccinations, smoking cessation programs, and similar activities. The hospital does not specify the specific impact that the projected loss would have on any individual service.

SIUH had working capital ratios of 1.7 and 1.8 in 2009 and 2010, respectively. In 2009, the hospital had an operating gain of $18.8 million on operating revenue of $700.8 million. In 2010, the facility’s operating gain was $24.4 million on operating revenue of $757.8 million. SIUH provided uncompensated care at established charges of approximately $56,880,000 and $56,169,000 in 2011 and 2010, respectively. This amount consisted of charity care of $51,080,000 and $49,619,000 in 2011 and 2010, respectively, and uncollectible charges written off as bed debt of $5,800,000 and $6,550,000 for 2011 and 2010, respectively.

Supplemental Information from Applicant

Need and Sources of Cases: The applicant states that the projected volume of cases is based on the actual experience of the physicians who have expressed an interest in performing procedures at the proposed facility. The vast majority of these cases (85 percent) are currently performed in office-based settings. The applicant also expects the demand for ambulatory surgical services to continue to grow. The applicant further expects that patients will be attracted to the proposed ASC because of its convenience in scheduling and the fact that it will be located in an out-of-hospital setting.

Office-Based Cases: As noted, 85 percent of the cases projected for the proposed ASC are currently performed in an office-based setting.

Staff Recruitment and Retention: The applicant expects to employ existing staff of the current office-based practice. To the extent that additional staff is needed, the proposed operators are committed to not actively seeking staff from local hospitals.

OHSM Comment

Although two hospitals oppose this application, their objections seem not to be cognizant of the fact that 85 percent of the cases projected for the proposed ASC are currently performed in an office-based setting, not in hospitals or hospital-based ambulatory surgery centers. In addition, neither hospital furnished information on its current annual number of ambulatory surgery cases. The Department does not find the comments of the two hospitals sufficient to warrant reversal or modification of the recommendation for five-year limited life approval of the proposed ASC based on public need, financial feasibility and operator character and competence.

Public Health and Health Planning Council

Project # 131069-E
Meadowbrook Endoscopy Center

County: **Nassau County**
Purpose: **Establishment**
Program: **Ambulatory Surgery Center**
Acknowledged: **February 15, 2013**

Executive Summary

Description
Gastro Operating Company, LLC d/b/a Meadowbrook Endoscopy Center, an existing proprietary Article 28 diagnostic and treatment center (D&TC) is requesting approval to extend their limited life approval for one year. The original application, CON 061004, was for the establishment and construction of a single specialty freestanding ambulatory surgery center (FASC) specializing in gastroenterology, which was contingently approved by the Public Health Council on November 10, 2006, for a five year limited life from the issuance of its operating certificate.

Gastro Operating Company LLC d/b/a Meadowbrook Endoscopy Center is located at 865 Merrick Avenue, Westbury, New York, and continues to operate under the original lease, which will expire in March, 2020.

The members of Gastro Operating Company LLC d/b/a Meadowbrook Endoscopy Center are as follows:

Pradeep Bansal, M.D.	14%
Michael Barth, M.D.	14%
Jules Garbus, M.D.	2%
Harold Lipsky, M.D.	14%
Dean Pappas, M.D.	14%
Gautam Reddy, M.D.	14%
Bradley Rieders, M.D.	14%
Charnjit Singh M.D.	14%

DOH Recommendation
Contingent Approval for a limited life extension of one year from Public Health and Health Planning Council approval.

Need Summary
Meadowbrook Endoscopy Center did not reach its projected number of cases in its first three years of operation. The projected number of cases for year 1 was 3,899 and the actual was 3,258. The projection for year 3 was 4,890 cases while the actual number was 4,548. Meadowbrook also did not meet its projection for serving Medicaid patients or providing charity care.

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

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

Budget	Revenues	$8,633,806
	Expenses	4,537,775
	Gain/Loss	$4,096,031

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 for a limited life extension of one year from Public Health and Health Planning Council approval is recommended, contingent upon:

1. Submission of an annual report to the Department that includes corrective measures implemented and progress made in submitting date to SPARCS. [RNR]
2. Submission of an executed Certificate of Incorporation, acceptable to the Department. [CSL]
3. Submission of a Second Amended and Restated Operating Agreement, acceptable to the Department. [CSL]
4. Submission of site control that, acceptable to the Department. [CSL]

Approval conditional upon:

1. Continuation of an agreement with an outside independent entity to provide annual reports to the Department. [RNR]

Council Action Date
December 12, 2013.

Need Analysis

Background

The Gastro Operating Co, LLC, d/b/a Meadowbrook Endoscopy Center (MEC), requests approval of certification for an additional year. MEC was approved for a limited life of five years through CON 061004, with an operating certificate effective October 15, 2008 through October 15, 2013. MEC operates at 865 Merrick Avenue, Westbury, 11590, in Nassau County.

Analysis

Meadowbrook Endoscopy Center's service area includes approximately 28 zip codes in Nassau County.

MEC projects approximately 9,000 visits in the first year following approval of this project and 9,700 visits in the third year. These projections are based on the current practices of participating physicians, who expect to perform more of their cases at MEC rather than at their respective offices.

The table below presents information on the payor projections that were included in MEC's original CON application (061004) and those that are proposed in the current application.

Payor	*CON 061004*	*CON 131069*
Medicare	35%	20%
Medicaid	10%	5%
Commercial	50%	71%
Charity Care	5%	3%
Department of Defense	--	1%
Total	100%	100%

The applicant believes that these revised projections for Medicaid and charity care are reasonable and achievable for the following reasons:

- Since the approval of MEC, there have been significant changes with respect to Medicaid reimbursement. In 2006, the Medicaid reimbursement rate was lower than other payors; now it is competitive.
- Access to care for Medicaid patients has improved because health care providers in Nassau County are aggressively seeking relationships with Medicaid Managed Care plans.
- Nassau County is a mandatory Medicaid managed care county. There are currently six plans that are available to Medicaid recipients. MEC has a working relationship with four of the six approved Medicaid managed care plans.
- The Affordable Care Act will improve access to health care coverage for everyone.
- In order to improve its charity care commitment, MEC is re-focusing its efforts on reaching targeted populations through marketing, advertising, public relations, and other efforts.

In 2012 MEC had 5,453 visits. The payer mix of visits was:

Charity Care	0.9%
Medicaid	2.8%
Medicare	21.9%
DOD	0.8%
Blue Cross	32.4%
Commercial	41.3%
Self-Pay	0.0%

MEC experienced low Medicaid volume in its initial years, with noticeable increases in Medicaid visits not occurring until 2011-2012. The applicant reports that this was due principally to MEC's inability to obtain Medicaid certification until 2011. This in turn was due largely to the need to correct structural defects in the facility, identified upon an approval inspection, which caused a temporary shutdown of the facility. MEC was unable to bill Medicaid for nearly two and a half years of its initial limited life period.

MEC also reports that software problems caused underreporting of its Medicaid and charity care activities to SPARCS. Since September 2013 MEC has been working with SPARCS and the software vendor to correct and resolve this issue.

In the meantime, MEC's data for 2012 shows Medicaid visits as 2.8% of total visits, the highest level of the facility's four years of operations. However, data for the first nine months of 2013 show Medicaid visits at 4.9% of MEC's volume, a rate 75% higher than that of 2012. This is a favorable development and may indicate that MEC's outreach to underserved populations is beginning to bear fruit. Nevertheless, MEC now expects to serve a lower volume of Medicaid clients than the 10% projected in its original 2006 application. We again note the projected payor mix for the first year of MEC's proposed three-year extension, and compare it to 2012:

Utilization by Payor Source	2012	One Year Extension
Medicaid	2.8%	5.0%
Medicare	21.9%	20.0%
Commercial	73.3%	71.0%
Department of Defense	0.7%	1.0%
Charity	1.3%	3.0%

Meadowbrook 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.

Meadowbrook indicates it serves all persons in need of surgery regardless of their ability to pay or the source of payment.

Conclusion

From 2008 to 2012, MEC served an increasing number of patients each year and will continue providing needed services to the communities of Nassau County and surrounding areas. MEC has improved its efforts to serve Medicaid and needy populations. However, MEC's ability to serve a significant number of Medicaid and charity care clients on a sustained basis has not yet been demonstrated. Accordingly, a limited life extension for one year as requested in this application is warranted.

Recommendation

From a need perspective, contingent approval for a limited life of one additional year is recommended.

Programmatic Analysis

Background

Meadowbrook Endoscopy Center, an existing ambulatory surgery center, is seeking approval for permanent life.

Character and Competence

The members of the LLC are:

Name			
Pradeep Bansal, MD	14%	Dean Pappas, MD	14%
Michael Barth, MD	14%	Gautam Reddy, MD	14%
Jules Garbus, MD	2%	Bradley Rieders, MD	14%
Harold Lipsky, MD	14%	Charnjit Singh, MD	14%

All of the members are practicing surgeons/gastroenterologists, with Dr. Singh serving as 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.

Dr. Garbus has one (1) pending malpractice claim and Dr. Rieders has two (2) pending malpractice claims. Dr. Lipsky disclosed one (1) settled malpractice suit.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Operating Budget

The applicant has submitted an operating budget, in 2013 dollars, for the current year and the first and third years of operations subsequent to receiving approval of this project, as summarized below:

	Current Year	Year One	Year Three
Revenues			
Operating	$6,288,473	$8,548,693	$8,633,506
Non-Operating *	672,276	300	300
Total Revenues	$6,960,749	$8,548,993	$8,633,806
Expenses			
Operating	$3,459,512	$3,786,683	$3,936,133
Capital	787,455	627,356	601,642
Total Expenses	$4,246,967	$4,414,039	$4,537,775
Net Income or (Loss)	$2,713,782	$4,134,954	$4,096,031
Utilization (visits)	5,453	9,000	9,700
Utilization (procedures)	5,841	9,600	10,500
Cost per Procedure	$727.10	$459.80	$432.17

* Settlement income received in 2012

Projected utilization is based upon operating the existing four procedure rooms each week, Monday through Friday, and an average of approximately 36 to 38 cases per day in the first and third years, respectively. The applicant is estimating that the participating physicians will perform more cases at the facility in years one and three. Expenses are based on historical experience as adjusted for utilization and rising costs.

Below is the comparison of CON 061004 projected and actual utilization for the first and third years.

Utilization (procedures)	2009	2011
Projected	3,899	4,889
Actual	3,553	4,929

During the review process the applicant discovered that the statistics report to SPARCS was an inaccurate representation of Meadowbrook's performance, due to a malfunction in their software. The applicant's staff has been working with SPARCS and the vendor to correct the problem. In the interim, Meadowbrook manually retrieved and reported the data from 2008 through September 2013. There is a slight difference between the data collected through the Statewide Planning & Research Cooperative System (SPARCS), and those by the applicant. According to the applicant the results differed when multiple procedures were performed on the same patient.

Below is the comparison of CON 061004 projected third year utilization by payor source compared to actual payments.

Utilization by Payor Source	Projected	Actual
Medicaid	10%	2.2%
Medicare	35%	24.2%
Commercial	50%	70.9%
Self-Pay	0%	1.1%
Charity/other*	5%	1.6%

*Includes Colon Cancer Screening Initiative Outreach Program

The applicant states CMS did not approve their Medicare certification until 2010, when a construction issue was corrected. Their Medicaid certification came in 2011, but was backdated to 2008, when CMS recognized the application was caught in a government error.

In addition, the applicant has outlined a number of factors that have impacted its original payor mix projections. They included: a competition for the Medicaid patients; improvements in the Medicaid reimbursement rates; Nassau County becoming a mandatory Medicaid manage care county; health care providers in Nassau County (hospitals, D&TCs, ASCs, private practitioners) aggressively seeking relationships with the six plans available to the Medicaid recipients, which has had a positive impact on the Medicaid patients' access to care; the Affordable Care Act; and the finite number of Medicaid and Medicaid-eligible residents in Nassau County. Currently, Meadowbrook Endoscopy Center has a working relationship with four of the approved Medicaid managed care plans serving Nassau County.

Below is the utilization by payor source for the current year of 2012, and the first and third years subsequent to receiving approval of this project.

Utilization by Payor Source	2012	Year One of Extension
Medicaid	2.8%	5.0%
Medicare	21.9%	20.0%
Commercial	73.3%	71.0%
Department of Defense	0.7%	1.0%
Charity	1.3%	3.0%

The applicant states approximately 15% of procedures in 2012 were performed on patients residing in the neighborhoods that were included in the Colon Cancer Outreach Initiative. They also state that the absolute number, as well as the overall percentage of procedures performed at no cost to the patients, has increased in each consecutive year. It should be noted that the applicant has found the lack of healthcare insurance was not as much of a barrier to accessing their healthcare services as cultural barriers within the minority communities. Over the past five years the center has worked with Nassau County's healthcare providers and community-based organizations to promote colon cancer awareness, screening, and early detection. Some of the organizations are: Winthrop University Hospital, South Nassau Communities Hospital, Rota-Care, Grace Cathedral International, L.I. Inter-Denominational Conference of Clergy, and Latin/African American Chaplain Association. Also, the facility maintains an open access program and free transportation. During the first nine months of 2013, Medicaid represented approximately 4.9% of the center's overall activity (which compares unfavorably to the initial 10% commitment as projected in the 2006 CON). The applicant states a 10% Medicaid commitment is not achievable, and thus reduced its Medicaid commitment to 5%.

The applicant states while they have succeeded in reaching the minority communities with their Colon Cancer Outreach Program, they overestimated the percentage of uninsured within these communities and fell short of their 5% commitment. In an effort to address this shortfall they are working with a public relations firm to refocus on the targeted populations. Currently charity care is approximately 2%, and they believe that charity care of 3% is a reasonable and achievable projection.

Capability and Feasibility

There are no project costs associated with this application. Gastro Operating Company, LLC d/b/a Meadowbrook Endoscopy Center, projects an operating excess of $4,134,954 and $4,096,031 in the first and third years, respectively. Revenues are based on current and projected federal and state governmental reimbursement methodologies, while commercial payers are based on experience. The budget appears reasonable.

Presented as BFA Attachment A and B are Gastro Operating Company, LLC, d/b/a Meadowbrook Endoscopy Center's 2011 and 2012 certified financial summaries, which show an average negative working capital of $211,471, an average positive equity position of $619,338, and an average positive net income of $2,268,115. The applicant states working capital will turn positive during the current fiscal year.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Financial Summary for 2011, Gastro Operating Company, LLC, d/b/a Meadowbrook Endoscopy Center
BFA Attachment B	Financial Summary for 2012, Gastro Operating Company, LLC, d/b/a Meadowbrook Endoscopy Center

Public Health and Health Planning Council

Project # 131192 B
Abaco North, LLC d/b/a Manhattan Multi-Specialty Ambulatory Surgery Center

County: **New York**
Purpose: **Establishment and Construction**
Program: **Ambulatory Surgery Center**
Submitted: **April 10, 2013**

Executive Summary

Description
Abaco North, LLC d/b/a Manhattan Multi-Specialty Ambulatory Surgical Center , a proposed limited liability company, requests approval for the establishment of a multi-specialty freestanding ambulatory surgery center to provide services in the specialties of oral and maxillary surgery, podiatry, plastic surgery, obstetrics and gynecology, and pain management. The center will be located in approximately 7,000 square feet on the first floor of an existing building located at 508-534 West 26th Street. The center will consist of four operating rooms, fourteen recovery/pre-op bays, one exam room, ancillary space and appropriate support space. The center will be staffed with three board certified obstetrician-gynecologists; one board certified anesthesiologist; three board certified podiatrists; two board certified physicians in plastic surgery; one board certified physician in oral and maxillary surgery and two physicians in pain management.

The sole proposed member of Abaco North, LLC is Pasquale J. Malpeso, DMD.

DOH Recommendation
Contingent approval with an expiration of the operating certificate five (5) years from the date of its issuance.

Need Summary
The number of projected surgical procedures to be performed is 2,746 in the first year of operation and 3,577 in the third year of operation.

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

A transfer and affiliation agreement is expected to be provided by Lenox Hill Hospital

Financial Summary
Total project costs of $5,201,645, will be met with a $4,681,481 bank loan and $520,164 in member equity.

Budget:		
	Revenues:	$3,200,000
	Expenses:	2,589,101
	Net Income:	$610,899

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 certificates five (5) years from the date of its issuance, contingent upon::

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fIfty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the DOH beginning in the second year of operation. Said reports should include:
   - Data showing actual utilization including procedures;
   - Data showing breakdown of visits by payor source;
   - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
   - Data showing number of emergency transfers to a hospital;
   - Data showing percentage of charity care provided, and
   - Number of nosocomial infections recorded during the year in question. [RNR]
3. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
4. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of an executed construction loan commitment, acceptable to the Department. [BFA[
7. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
8. Submission of an executed building lease,acceptable to the Department. [BFA, CSL]
9. Submission of a photocopy of the applicant's executed Articles of Organization, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's executed Operating Agreement, acceptable to the Department. [CSL]
11. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]

Approval conditional upon:

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

5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
7. The applicant shall complete construction by May 31, 2014. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date
December 12, 2013.

Need Analysis

Background
Abaco North, LLC, d/b/a Manhattan Multi-Specialty Ambulatory Surgery Center, is seeking approval to establish and construct an Article 28 diagnostic and treatment center to provide multi-specialty ambulatory surgery services at 508 West 26th Street, New York, 10001, in New York County.

Analysis
The service area includes zip codes 10001, 10011, 10018, 10019, 10020, and 10036.

The 12 physicians involved in this project currently perform approximately 2,955 procedures per year. The number of projected surgical procedures to be performed is 2,746 in the first year of operation and 3,577 procedures in the third year.

New York County has a total of seven freestanding multi-specialty ASCs and eight freestanding single-specialty ASCs.

Existing Ambulatory Surgery Centers: New York County (Source: SPARCS 2012)

ASC Type	Name	Total Patients 2012
Gastroenterology	Carnegie Hill Endo, LLC	7,357
Multi-Specialty	Center for Specialty Care	4,585
Gastroenterology	East Side Endoscopy	8,811
Multi-Specialty	Fifth Avenue Surgery Center	2,051
Multi-Specialty	Gramercy Park Digestive Disease	8,577
Multi-Specialty	Gramercy Surgery Center, Inc	2,136
Endoscopy	Kips Bay Endoscopy Center LLC	9,401
Gastroenterology	Manhattan Endoscopy Center, LLC	9,857
Ophthalmology	Mid Manhattan Surgi-Center	3,888
Multi-Specialty	Midtown Surgery Center, LLC	2,860
Ophthalmology	Retinal Ambulatory Surgery Ctr	1,718
Multi-Specialty	Surgicare of Manhattan,LLC	3,993
Gastroenterology	West Side GI	3,652
Multi-Specialty	Roosevelt SC (Opened April 1, 2013)	N/A
Gastroenterology	Yorkville Endoscopy Center (Opened February 22, 2013)	N/A
Total		68,886

Additionally, there are two freestanding ASCs, one single-specialty ASC and one multi-specialty ASC, which have been approved, but are not yet operational.

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 legal counsel. This statement is acceptable to the Department.

The applicant is committed to serving all persons without regard to their ability to pay or the source of payment.

Conclusion
Approval of the proposed ASC would bring under Article 28 regulation an additional provider of ambulatory surgery to serve the communities of New York County.

Recommendation
From a need perspective, contingent approval is recommended.

Programmatic Analysis

Project Proposal
Establish and construct a multi-specialty ASC

Proposed Operator	Abaco North, LLC
Doing Business As	Manhattan Multi-Specialty Ambulatory Surgery Center
Site Address	508 West 26th Street, New York, NY 10001
Surgical Specialties	Multi-Specialty: Oral & Maxillary Surgery; Podiatry; Plastic Surgery; Obstetrics & Gynecology; and Pain Management
Operating Rooms	4
Procedure Rooms	0
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)	10.6 FTEs / 11.1 FTEs
Medical Director(s)	Pasquale J. Malpeso, DMD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Lenox Hill Hospital 4 miles and 15 minutes
On-call service	Contact for the surgeon, Center and back-up hospital when the Center is closed, as well as an after-hours contact number.

Character and Competence
The member of the LLC is:

Name
Pasquale J. Malpeso, DMD 100%

Dr. Malpeso is a practicing oral surgeon.

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.

Integration with Community Resources
The Center plans to serve patients that are referred by their community based physician, however, should patients require primary care services, the Center will expand its Transfer and Affiliation Agreement to include primary and other specialty services, as needed. The Center will integrate with the community by participating in community health events and local religious institutions in an effort to educate them about the services offered at the Center. Additionally, patients will not be excluded based on ability to pay as a sliding fee scale will be developed for patients without health insurance and charity care will be provided at no charge or reduced charge for those patients who are unable to pay full charges or not eligible for covered benefits or private insurance.

The applicant indicates interest in becoming part of an Accountable Care Organization (ACO), including that of Lenox Hill Hospital. The physicians who have expressed an interest to be affiliated with the Center are all community-based physicians.

The applicant intends on utilizing an Electronic Medical record System and is investigating the potential of affiliating with a regional health information organization (RHIO) in the area.

Recommendation
From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Lease Rental Agreement

The applicant will lease approximately 7,000 square feet on the first floor of an existing building located at 526 West 26th Street, New York under the terms of the proposed lease agreement summarized below:

Landlord:	West Chelsea Realty Co., LLC
Lessee:	Abaco North, LLC
Term:	10 years with the option to renew for an additional 10 years.
Rental:	$420,000/year ($60 per sq. ft.)
Provisions:	The lessee will be responsible for utilities and leasehold improvements.

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. Other non-related parties occupy the remainder of the building.

Total Cost and Financing

Total project costs for renovations and movable equipment are estimated at $5,201,645, broken down as follows:

Renovation & Demolition	$3,118,358
Design Contingency	311,836
Construction Contingency	311,836
Fixed Equipment	45,000
Planning Consultant Fees	25,000
Architect/Engineering Fees	249,468
Consultant Fees	85,000
Movable Equipment	654,200
Telecommunications	75,000
Financing Costs	211,075
Interim Interest Expense	84,430
Application Fee	2,000
Additional Processing Fee	28,442
Total Project Cost	$5,201,645

Project cost is based on a December 1, 2013 construction start date and a five month construction period.

The applicant's financing plan appears as follows:

Bank Loan (10yrs, 6%)	$4,681,481
Member's Equity	$ 520,164

A letter of interest from Capital One has been submitted by the applicant.

Operating Budget

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

	Year One	Year Three
Revenues:	$2,456,079	$3,200,000
Expenses:		
Operating	1,305,933	1,429,294
Capital	1,139,101	1,159,807
Total Expenses:	$2,445,034	$2,589,101
Net Income:	$11,045	$610,899
Utilization: (procedures)	2,746	3,577
Cost per procedure	$890.40	$723.82

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

	Year One	Year Three
Commercial Fee for Service	26%	24%
Commercial Managed Care	22%	25%
Medicare Fee for Service	20%	16%
Medicare Managed Care	15%	20%
Medicaid Fee for Service	2%	0%
Medicaid Managed Care	8%	8%
Self Pay	5%	5%
Charity Care	2%	2%

Expenses and utilization assumptions are based on the historical experience of the physician's private practices.

Upon CON approval the physicians will continue to operate their private practices. Each physician has provided a letter in support of utilization projections.

Capability and Feasibility

Total project costs of $5,201,645 will be met through a loan from Capital One for $4,681,481 at stated terms, with the remaining $520,164 from the proposed member's equity. BFA Attachment A is the net worth statement of the proposed member, which indicates the availability of sufficient funds.

Working capital needs are estimated at $431,517 based on two months of third year expenses. The applicant will finance $215,758 of working capital at an interest rate of 7% over 3 years, for which a letter of interest has been provided by Capital One. The remaining $215,759 will be provided as equity by the proposed member. BFA Attachment B is the pro-forma balance sheet of Abaco North, LLC as of the first day of operation, which indicates positive member's equity of $215,758.

The submitted budget indicates a net income of $11,045 and $610,899 during the first and third years of operation, respectively. Revenues are based on current reimbursement methodologies for ambulatory surgery centers. The budget appears reasonable.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth Statements 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 Department's request for information on the proposed facility's volume of surgical cases, the sources of those cases, and on how staff will be recruited and retained by the ASC.

Facility: NYU Langone Medical Center -- **No Response**
550 First Avenue
New York, NY 10016

Facility: New York Presbyterian Hospital-
New York Weill Cornell Medical Center -- **No Response**
525 East 68th Street
New York, NY 10032

Facility: Bellevue Hospital Center -- **No Response**
First Avenue at 27th Street
New York, NY 10016

Facility: Beth Israel Medical Center -- **No Response**
Petrie Division
First Avenue at 16th Street
New York, NY 10003.

Supplemental Information from Applicant

Need and Source of Cases: The applicant states that the volume projected for the proposed ASC is based on the actual experience of the proposed physicians who have expressed an interest in performing procedures at the facility. The applicant also expects that ongoing and projected growth in ambulatory surgery in general will be a source of cases for the proposed facility, as will convenience in scheduling and the location of the ASC in an out-of-hospital setting.

Staff Recruitment and Retention: The applicant plans to recruit necessary staff through a hiring program. To the extent that additional staff may be needed, the proposed operators are committed not to actively seeking to attract staff from local hospitals. Measures to retain staff will include competitive salaries and benefits, opportunities for continuing education, a small and close-knit working environment, and elective work schedules and focused hours of operation.

Office-Based Cases: The applicant states that approximately 25 percent of the procedures projected for the proposed ASC are currently performed in office-based settings. The remaining procedures have traditionally been performed in the inpatient setting.

OHSM Comment

In the absence of comments from area hospitals, the Department finds no reason to consider reversal or modification of the recommendation for five-year limited life approval of the proposed ASC based on public need, financial feasibility and operator character and competence.

Public Health and Health Planning Council

Project #131296-B

Westmoreland ASC, LLC

County: **Oneida**
Purpose: **Establishment and Construction**
Program: **Ambulatory Surgery Center**
Acknowledged: **June 10, 2013**

Executive Summary

Description

Westmoreland ASC, LLC, a proposed limited liability company, requests approval for the establishment of a multi-specialty freestanding ambulatory surgery center to provide services in the specialties of orthopedic surgery, plastic surgery, and pain management. The center will be located in approximately 15,690 square feet of a newly built single story building located at 5299 Route 233, Westmoreland. The center will consist of four operating rooms, two procedure rooms, six pre-operative patient prep areas, 14 post-operative patient care areas, staff lounge and locker rooms, soiled utility room, ancillary space and appropriate support space. The center will be staffed with eight board certified orthopedic surgeons, one board certified plastic surgeon and one physician board certified in anesthesiology and pain management.

The proposed members of Westmoreland ASC, LLC are as follows:

Proposed Member	Membership
Oneida Health Systems, Inc.	20%
Ivan Gowan, M.D.	10%
Raymond J. Meeks, M.D.	10%
Michael Zahn, M.D.	10%
Rudolph Buckley, M.D.	10%
David Patalino, M.D.	10%
James Dennison, M.D.	10%
Greg Orlando, M.D.	10%
Nameer Haider, M.D.	10%

DOH Recommendation

Contingent approval with an expiration of the operating certificate five (5) years from the date of issuance.

Need Summary

The number of projected surgical procedures to be performed is 3,497 in Year 1. Orthopedic, plastic surgery, and pain management procedures will be provided.

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.

A transfer and affiliation agreement will be provided by Oneida Health Systems.

Financial Summary

Total project costs of $1,784,815, will be met with a $1,550,000 bank loan and $234,815 in member's equity.

Budget:		
	Revenues:	$5,371,220
	Expenses:	4,522,943
	Net Income:	$848,277

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

Recommendations

Health Systems Agency

The HSA has no recommendation of this application.

Office of Health Systems Management

<u>Approval with an expiration of the operating certificate five (5) years from the date of issuance, contingent upon:</u>

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 the CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the DOH beginning in the second year of operation. Said reports should include:
   - Data showing actual utilization including procedures;
   - Data showing breakdown of visits by payor source;
   - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
   - Data showing number of emergency transfers to a hospital;
   - Data showing percentage of charity care provided, and
   - Number of nosocomial infections recorded during the year in question. [RNR]
3. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
4. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
5. Submission of an executed construction loan, acceptable to the Department. [BFA]
6. Submission of an executed working capital loan, acceptable to the Department. [BFA]
7. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
8. Submission of a photocopy of a finalized and executed lease agreement between Westmoreland Development Company of NY, LLC and Westmoreland ASC, LLC, acceptable to the Department. [BFA, CSL]
9. Submission of a photocopy of an executed Certificate of Amendment of the Articles of Organization of Westmoreland ASC, LLC, acceptable to the Department. [CSL]
10. Submission of a photocopy of an executed amended operating agreement of Westmoreland ASC, LLC, acceptable to the Department. [CSL]
11. Submission of a photocopy of an executed Certificate of Amendment of the Certificate of Incorporation of Oneida Health Systems, Inc., acceptable to the Department. [CSL]

<u>Approval conditional upon</u>:

1. The project must be completed within three 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. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
7. The applicant shall complete construction by June 1, 2014. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date
December 12, 2013.

Need Analysis

Background
Oneida Health Systems, Inc. and eight physicians are seeking approval to establish and construct a diagnostic and treatment center to provide multi-specialty ambulatory surgery services at 5299 Route 233, Westmoreland, 13323, in Oneida County.

Analysis
The service area includes Oneida and Madison Counties; it will also serve communities of the surrounding areas.

Oneida County has two freestanding single-specialty ASCs as follows:

Existing Ambulatory Surgery Centers: Oneida County (Source: SPARCS 2012)

ASC Type	Name of the Facility	Total Patients 2012
Ophthalmology	Griffis Eye Surgery Center (Opened Jan 3, 2012)	0
Endoscopy	Mohawk Valley Endoscopy Center	5,534

The participating surgeons currently perform approximately 4,668 procedures per year. The number of projected surgical procedures to be performed is 3,497 in Year 1 and 4,231 procedures in Year 3. These projections are based on the current practices of the participating surgeons.

Oneida Healthcare Systems (OHS) has experienced problems providing adequate emergency department coverage for orthopedic services. Currently, OHS's one orthopedic surgeon can provide emergency department coverage one out of five nights. In the last four years, OHS did not have success in recruiting orthopedic surgeons and believes that the proposed ASC will improve opportunities for the recruitment of orthopedic personnel. OHS plans to recruit two orthopedic surgeons to provide adequate emergency department coverage for these services.

Currently, OHS has four (4) operating rooms. These ORs are operating at full capacity. In 2012, OHS had a total of 8,040 surgical patients (inpatient cases = 998, ambulatory surgery patients = 7,042), for a total of 2,010 patients per OR per year. Upon approval of the proposed ASC, OHS and the proposed ASC will have a total of eight (8) operating rooms. Assuming a volume of 1,200 procedures per OR per year, the hospital and the ASC will have a combined capacity to perform 9,600 procedures per year. The distribution of the hospital's current 8,040 cases per year across these eight ORs would yield an average of 1,005 procedures per OR per year, which would leave additional capacity for growth in surgical volume from the recruitment of additional orthopedists to the service area.

OHS, at present, does not provide pain management services. The proposed ASC will provide this service.

The applicant is committed to serving all persons without regard to their ability to pay.

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 legal counsel. This statement is acceptable to the Department.

Conclusion
Approval of the proposed ambulatory surgery center will improve opportunities to recruit orthopedic surgeons for OHS, easing the lack of emergency department coverage by orthopedic surgeons at the hospital. The ambulatory surgery centers will also allow OHS to relieve overcrowding in its ORs and use the hospital's operating rooms primarily for inpatients.

Recommendation

From a need perspective, contingent approval with an expiration of the operating certificate five (5) years from the date of issuance is recommended.

Programmatic Analysis

Background

Oneida Health Systems, Inc. and eight (8) physicians seek approval to establish and construct a freestanding multi-specialty ambulatory surgery center to be located at 5299 Route 233, Westmoreland, New York.

Proposed Operator	Westmoreland ASC, LLC
Site Address	5299 Route 233, Westmoreland
Surgical Specialties	Multi-Specialty: Orthopedic Surgery Plastic Surgery Pain Management
Operating Rooms	4
Procedure Rooms	2
Hours of Operation	Monday through Friday from 7:00 am to 5:00 p.m.
Staffing (1st Year / 3rd Year)	26.6 FTEs/31.0 FTEs
Medical Director(s)	Ivan Gowan, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Will be provided by Oneida Health Systems 15 miles/15 minutes
On-call service	At discharge, patients will receive a 24/7 phone number. After hours calls will be responded to by the physician on-call.

Character and Competence

The members of the LLC are:

Name	Percentage
Ivan Gowan, MD	10%
Raymond J. Meeks, MD	10%
Michael Zahn, MD	10%
Rudolph Buckley, MD	10%
David Patalino, MD	10%
James Dennison, MD	10%
Greg Orlando, MD	10%
Nameer Haider, MD	10%
Oneida Health Systems, Inc.	20%

Eight of the members of Westmoreland ASC are practicing surgeons. The ninth member of the LLC is Oneida Health Systems, Inc.

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. Meeks, Buckley, and Gowan 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 local area physicians and hospital based clinics. Outreach to the underserved will include working with hospital emergency rooms and hospital-based clinics so all patients have access to high quality orthopedic and pain management services. Provisions will be made for those who cannot afford services, and charity care will be provided.

The applicant intends on utilizing an Electronic Medical Record but has not yet identified the specific system it will be using. The facility is open to becoming part of an Accountable Care Organization or medical home based on regulatory and market demands. The center's goal is to integrate into a Regional Health Information Organization (RHIO)/Health Information Exchange (HIE).

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Lease Rental Agreement

The applicant will lease approximately 15,690 square feet in a newly constructed one story building located at 5299 Route 233, Westmoreland under the terms of the proposed lease agreement summarized below:

Landlord:	Westmoreland Development Company of NY, LLC
Lessee:	Westmoreland ASC, LLC
Term:	15 years
Rental:	$627,600 years 1-5; $706,062 years 6-10; and $784,500 years 11-15
Provisions:	The lessee will be responsible for utilities, maintenance, insurance and taxes.

The applicant has indicated there is a relationship between the landlord and operating entity, therefore the lease arrangement is a non- arm's length agreement and letters of opinion from Licensed Commercial Real Estate Brokers have been submitted indicating rent reasonableness.

Total Cost and Financing

Total project costs for movable equipment are estimated at $1,784,815, itemized as follows:

Planning Consultant Fees	$50,000
Consultant Fees	190,000
Movable Equipment	1,533,064
Application Fees	2,000
Additional Processing Fee	9,751
Total Project Cost	$1,784,815

Project cost is based on a January 1, 2014 construction start date and a five month construction period.
The applicant's financing plan appears as follows:

Bank Loan (7yrs, 3.5%)	$1,550,000
Member's equity	$234,815

A letter of interest from Oneida Savings has been submitted by the applicant.

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

	Year One	Year Three
Revenues:	$4,438,143	$5,371,220
Expenses:		
Operating	3,041,263	3,609,110
Capital	922,088	913,833
Total Expenses:	$3,963,351	$4,522,943
Net Income:	$474,792	$848,277
Utilization: (procedures)	3,497	4,231
Cost per procedure:	$1,133.36	$1,069.00

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

	Years One & Three
Commercial Managed Care	52.4%
Medicare Fee-for-Service	17.5%
Medicaid Managed Care	5.8%
Private Pay	0.7%
Workers' Compensation	21.6%
Charity Care	2.0%

Expenses and utilization assumptions are based on the historical experience of the physician's private practices. Upon CON approval, the physicians will continue to operate their private practices. Each physician has provided a referral letter in support of utilization projections.

Capability and Feasibility
Total project costs of $1,784,815 will be met through a bank loan from Oneida Savings for $1,550,000 at stated terms, with the remaining $234,815 from proposed member's equity. BFA Attachment A is the net worth statement of the proposed members, which indicates the availability of sufficient funds. Dr. Patalino has submitted a letter of interest from NBT Bank for a personal loan to satisfy his proportionate share of equity contribution. BFA Attachment B is the financial summary of Oneida Health Systems, Inc., which indicates the availability of sufficient funds.

BFA Attachment B, financial summary for Oneida Health Systems, Inc., indicates the facility has maintained positive working capital and positive net assets and experienced a negative net income of $2,513,273. As of June 30, 2013 the facility has maintained positive working capital and positive net assets and experienced a negative net income of $1,388,889. The applicant has indicated that the reasons for the loss were due to overtime expenses and the recently implemented electronic medical records that added approximately $700,000 of depreciation expense in 2012, and approximately $1,400,000 of depreciation expense in 2013. To improve operations, the applicant indicates that the hospital staff has been reduced by 57 FTEs since 2012, and that the collaboration with physicians in the development of this ASC will strengthen the organization.

Working capital needs are estimated at $753,824 based on two months of third year expenses. The applicant will finance $375,000 of working capital at an interest rate of 4% over 5 years, for which a letter of interest has been provided by Oneida Savings. The remaining $378,284 will be provided as equity by the proposed members. BFA Attachment D is the pro-forma balance sheet of Westmoreland ASC, LLC as of the first day of operation, which indicates positive member's equity of $613,639.

The submitted budget indicates a net income of $474,792 and $848,277 during the first and third years of operation, respectively. Revenues are based on current reimbursement methodologies for ambulatory surgery centers. The budget appears reasonable.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth Statements of Proposed Members
BFA Attachment B	Financial Summary, Oneida Health Systems, Inc.
BFA Attachment C	Financial Summary as of June 30, 2013, Oneida Health Systems, Inc.
BFA Attachment D	Pro-forma Balance Sheet

Supplemental Information

Outreach

Below are summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas. There follows a summary of the applicant's response to DOH's request for information on the proposed facility's volume of surgical cases, the sources of those cases, and on how staff will be recruited and retained by the ASC.

Facility: Rome Memorial Hospital
1500 N. James Street
Rome, New York 13440

Current OR Use (% of capacity)	Surgery Cases		Amb. Surg. Cases by Applicant Physicians	Reserved OR Time for Applicant Physicians
	Ambulatory	**Inpatient**		
42%	2,524	805	None	NA

The hospital states that the proposed ASC would be located in Oneida County, less than six miles from Rome Memorial, and that the facility is expected to perform 4,231 procedures annually. Citing SPARCS data, the hospital points out that residents of Oneida County, where Rome Memorial is located, underwent 4,500 orthopedic-related ambulatory surgery procedures in 2012. According to the hospital, this means that the ASC would draw heavily from the current ambulatory surgery caseload of Rome Memorial and the other hospitals in Oneida County. The hospital states that such a shift of cases to the new ASC would have a crippling effect on Rome Memorial and the other hospitals in Oneida County, which depend on margins from outpatient services to fund essential inpatient and emergency services and which provide charity care to the most vulnerable residents of the community. A loss of revenues to the proposed ASC would exacerbate Rome Memorial's consolidated loss that totaled $3.4 million through the first six months of 2013.

However, Rome Memorial acknowledges that none of the ASC's applicant physicians currently provide services at the hospital.

Rome Memorial also states that the low utilization of its operating rooms (42%) demonstrates that sufficient surgical capacity is already available in the area; therefore, the proposed ASC is not needed.

In 2012, Rome Memorial experienced an operating loss of $223,135 on revenue of $96.2 million. In 2011, the hospital had a loss of $1.3 million on revenue of $93.1 million. The hospital's current assets in 2012 were $22.8 million and current liabilities were $21.2 million, for a working capital ratio of 1.1 to 1.0. In 2011, Rome Memorial's current assets were $22.1 million, and current liabilities $20.5 million, for a working capital ratio of 1.1 to 1.0. In 2012, Rome Memorial incurred bad debt costs of $8,197,000 and provided charity care of $848,000. In 2011, Rome Memorial incurred bad debt costs of $7,715,000 and provided charity care of $604,000.

Facility: Faxton St. Luke's Healthcare
1656 Champlin Avenue
Utica, New York 13502

Current OR Use (% of capacity)	Surgery Cases		Amb. Surg. Cases by Applicant Physicians	Reserved OR Time for Applicant Physicians
	Ambulatory	**Inpatient**		
50%	7,200	3,000	None	NA

The hospital states that, given the under-utilization of 14 operating suites at Faxton St. Luke's Healthcare, including six at its Faxton campus ambulatory surgery suite, there is no need for additional operating room capacity in the area.

The hospital acknowledges that none of the physicians associated with the proposed ASC currently practice at Faxton St. Luke's facilities. Faxton St. Luke's Healthcare also states that the proposed ASC will not adversely affect the hospital's community-oriented services. However, Faxton St. Luke's Healthcare believes that the establishment of the proposed multi-specialty ASC does open the door for the migration of Faxton St. Luke's medical staff to the ASC and also will affect the hospital's ability to recruit new physicians. The hospital points out that Faxton St. Luke's Healthcare has lost approximately $3 million annually in operating profits as more than 4,000 cases were transferred from its facilities to the Mohawk Valley Endoscopy Center, which opened in 2011. Faxton St. Luke's Healthcare also notes that more than 1,000 of its ophthalmological cases have been transferred to an office based ophthalmological practice in Rome, representing a loss in profitability of over $250,000 annually. The hospital states that it is already in serious financial distress, losing more than $3.5 million in operations through July, 2013. Therefore, it could ill afford to lose additional revenues to the proposed ASC.

In 2012, Faxton St. Luke's Healthcare incurred expenses of $279.3 million on patient service revenue of $278.7 million. In 2011, the hospital had expenses of $271.8 million on revenue of $273.6 million. The hospital's current assets in 2012 were $141.3 million and current liabilities were $59.8 million, for a working capital ratio of to 2.4 to 1.0. In 2011, Faxton St. Luke's Healthcare's current assets were $118.1 million, and current liabilities were $46.6 million, for a working capital ratio of 2.5 to 1.0. In 2012, Faxton St. Luke's Healthcare incurred expenditures for bad debt of $8.9 million and incurred charity care costs of $340,000. In 2011, Faxton St. Luke's Healthcare incurred expenditures for bad debt of $9.0 million and incurred charity care costs of $657,000.

Facility: St. Elizabeth Medical Center
2209 Genesee Street
Utica, New York 13501

Current OR Use (% of capacity)	Surgery Cases		Amb. Surg. Cases by Applicant Physicians	Reserved OR Time for Applicant Physicians
	Ambulatory	**Inpatient**		
59.5%	5,212[1]	2,779	838	Yes

[1] Does not include endoscopy

St. Elizabeth's Medical Center (SEMC) wrote that they did not object to the proposed ASC, but recognized the appropriateness of responding to the Department's letter inviting area hospitals to comment on the facility.

The hospital states that the 2012 ambulatory surgery volume of the physicians from the proposed ASC contributed $1.1 million to SEMC's bottom line. The hospital also notes that if additional orthopedic and pain management physicians in the area were to take their cases to the ASC, this would result in an additional loss of $692, 347 to SEMC. If the ASC's currently proposed services were to be expanded in the future to include additional ambulatory surgical services (ENT, GYN, etc.), the hospital projects that the negative impact on SEMC would be up to $7,559,931 per year. The hospital does not describe the impact of any of these losses on its community-oriented services.

In 2012, SEMC incurred expenses of $199.9 million on net patient service revenue of $189.8 million. In 2011, the hospital had expenses of $196.5 million on net patient revenue of $191.4 million. The hospital's current assets in 2012 were $59.8 million and current liabilities were $39.5 million, for a working capital ratio of to 1.5 to 1.0. In 2011, SEMC's current assets were $54.3 million, and current liabilities were $38.7 million, for a working capital ratio of $1.4 to 1.0. In 2012, SEMC incurred bad debt costs of $3.3 million and charity care costs of $1.0 million. In 2011, SEMC incurred bad debt costs of $3.7 million and charity care costs of $839,000.

Facility: Community Memorial Hospital -- **No Response**
150 Broad Street
Hamilton, New York 13346

Supplemental Information from Applicant

Need and Sources of Cases: The applicant states that cases will come from the caseload of the four physician members' private practice, which recently opened a second site and which added two new physicians in September, 2013. The applicant anticipates that these expansions will triple the number of surgeries being performed by the practice. The proposed caseload will include cases currently being performed by one of the member physicians at an ASC in Syracuse some 30-40 miles away. The applicant also expects that the proposed ASC's more convenient geographic access and the cost-effectiveness and quality of ASC services preferred by insurers and patients will bring cases to the facility. The applicant also anticipates that increased insurance coverage as a result of the Affordable Care Act will raise the demand for surgical services in the area.

Staff Recruitment and Retention: The proposed ASC will recruit employees from accredited schools and training programs and through advertisements in local newspapers and professional publications. In view of recent layoffs from area hospitals, it is anticipated that former hospital employees may seek employment at the proposed facility. Staff will be retained though competitive salaries and benefits, incentives for good performance and good human resource and communication systems within the organization.

Office-Based Cases: The applicant states that “a portion” of the 1,124 pain management procedures currently performed by one of the member physicians in an office-based setting will be performed in the proposed ASC.

DOH Comment

None of the physicians associated with the proposed ASC currently practice at two of the hospitals that submitted comments on the application, Rome Memorial and Faxton-St. Luke’s Healthcare. Thus, while the potential exists for the ASC’s physicians to draw from the patient base of each of these facilities, the anticipated impact of the ASC in the specific terms described by these hospitals must be considered speculative. As for the third commenting hospital, St. Elizabeth’s Medical Center, where the applicant physicians do practice, the Department acknowledges that SEMC’s anticipated loss of cases to the ASC could have an adverse impact on the hospital. However, the health care market in Oneida County, as elsewhere, cannot be held static, and it is incumbent upon any institution to adapt to changing circumstances, including the entry of new providers. Indeed, the Department sees the proposed collaborative relationship between SEMC and Faxton-St. Luke’s Medical Center under the Mohawk Valley Health System active parent arrangement (CON #132204) as just such an adaptation, and it seems likely that the efficiencies and savings to be gained from that partnership will enable SEMC to remain competitive with the proposed ASC and with other providers in the region.

Based on these considerations, the Department finds no basis for reversal or modification of the recommendation for five-year limited life approval of the proposed ASC based on public need, financial feasibility and operator character and competence.

Public Health and Health Planning Council

Project # 132108 B
Niagara ASC, LLC d/b/a Ambulatory Surgery Center of Niagara

County: **Niagara**
Purpose: **Establishment and Construction**
Program: **Ambulatory Surgery Center**
Acknowledged: **August 27, 2013**

Executive Summary

Description
Niagara ASC, LLC d/b/a Ambulatory Surgery Center of Niagara, a to-be-formed limited liability company, requests approval for the establishment and construction of a single-specialty freestanding ophthalmology ambulatory surgery center. The center will be located at 600 Porter Road, Niagara. The center will consist of two operating rooms, seven pre-op/recovery bays, clean and soiled workrooms, equipment storage, staff locker and break rooms, public toilets and appropriate support space. The center will be staffed with three board certified ophthalmologists.

The proposed members of Ambulatory Surgery Center of Niagara are Thomas R. Elmer, Jr., M.D. (45%), Michael J. Endl, M.D. (45%) and Peter Emmett Hurley, M.D. (10%). BFA Attachment A is the organizational chart.

DOH Recommendation
Contingent Approval with an expiration of the operating certificate five (5) years from the date of its issuance.

Need Summary
The number of projected surgical procedures to be performed is 2,243 in year 1 and 2,796 in year 3. The majority of the projected cases are currently being performed by the members at a for-profit surgery center in Buffalo.

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.

A transfer and affiliation agreement is expected to be provided by Niagara Falls Memorial Medical Center.

Financial Summary
Total project costs of $2,347,565 will be met with a $1,485,000 construction bank loan, $529,760 equipment bank loan and $332,805 in member's equity.

Budget:		
	Revenues:	$2,823,027
	Expenses:	1,804,974
	Net Income:	$1,018,053

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

Recommendations

Health Systems Agency
There will be no HSA recommendation for this application.

Office of Health Systems Management
Approval with an expiration of the operating certificate five (5) years from the date of its issuance is recommended, contingent upon:
1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of the CON fees. [PMU]
2. Submission of an executed construction loan commitment, acceptable to the Department. [BFA]
3. Submission of an executed equipment loan commitment, acceptable to the Department. [BFA]
4. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
5. Submission of a signed agreement with an outside independent entity, acceptable to the Department, to provide annual reports to the DOH beginning in the second year of operation. Said reports should include:
   - Data showing actual utilization including procedures;
   - Data showing breakdown of visits by payor source;
   - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
   - Data showing number of emergency transfers to a hospital;
   - Data showing percentage of charity care provided, and
   - Number of nosocomial infections recorded during the year in question. [RNR]
6. 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]
7. 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]
8. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
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 project must be completed within three 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. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
7. The applicant shall complete construction by October 30, 2014 in accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date
December 12, 2013.

Need Analysis

Project Description

Niagara ASC, LLC d/b/a Ambulatory Surgery Center of Niagara is seeking approval to establish and construct an Article 28 diagnostic and treatment center to provide single-specialty ambulatory surgery services specializing in ophthalmology surgeries, to be located at 600 Porter Road, Niagara Falls, 14304, in Niagara County.

Analysis

Niagara ASC has three members who are ophthalmologists: Dr. Thomas R. Elmer, Jr., Dr. Michael J. Endl, and Dr. P. Emmett Hurley. They currently practice at Fitchte Endl and Elmer Eye Surgery, P.C. in Amherst. The primary service area will include the service areas of the three members' medical practice.

The number of projected surgical procedures to be performed is 2,243 in Year 1 and 2,796 in Year 3.

The three member ophthalmologists currently perform approximately 90 percent of their surgical procedures at ASC of Western New York, a privately owned, freestanding multi-specialty ASC in Erie County. The remaining cases are being performed at Niagara Falls Memorial Medical Center or Mount St. Mary's Hospital and Health Center.

Niagara County has the following five hospitals that 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

There are no freestanding ambulatory surgery centers in Niagara County. In August 2011, PHHPC approved the construction of a multi-specialty ambulatory surgery center at the existing extension clinic of Eastern Niagara Hospital Health Center in Lockport. In October 2012, the Endoscopy Center of Niagara County, a single-specialty (gastroenterology) ambulatory surgery center in Niagara Falls was approved. These two projects are not yet complete.

Ambulatory Surgery Patients: Niagara County (Source: SPARCS 2012)

ASC Type	Facility	2012 Patients
Multi-Specialty	Degraff Memorial Hospital	4,194
Multi-Specialty	Eastern Niagara Hospital-Lockport Division	4,018
Multi-Specialty	Eastern Niagara Hospital-Inter Comm.	1,131
Multi-Specialty	Mount St. Marys Hospital and Health Center	8,091
Multi-Specialty	Niagara Falls Memorial Medical Center	5,442
Total		22,876

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.

Recommendation

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

Programmatic Analysis

Project Proposal

Niagara ASC, LLC d/b/a Ambulatory Surgery Center of Niagara seeks approval to establish and construct a freestanding single-specialty ophthalmology ambulatory surgery center.

Proposed Operator	Niagara ASC, LLC
Doing Business As	Ambulatory Surgery Center of Niagara
Site Address	600 Porter Road, Niagara, NY
Surgical Specialties	Single Specialty: Ophthalmology
Operating Rooms	0
Procedure Rooms	2
Hours of Operation	Open 5 days per week, 7:00 am – 3:00 pm (Weekend and/or evening surgery will be available, if needed, to accommodate patient scheduling issues.)
Staffing (1st Year / 3rd Year)	10.0 FTEs /11.0 FTEs
Medical Director(s)	Michael Endl, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Niagara Falls Memorial Medical Center 6.5 miles/11 minutes
On-call service	The patient will be instructed to call his or her surgeons service and will be directed to him or another ophthalmologist on call.

Character and Competence

The members of the LLC are:

Name	Percentage
Michael J. Endl, MD	45%
Thomas R. Elmer, Jr., MD	45%
P. Emmett Hurley, MD	10%

All three members are board-certified ophthalmologists who currently perform procedures at a for-profit ambulatory surgery center located in the Buffalo area.

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 applicant indicates that it is the practice of the physicians who will be members of the Facility's medical staff to require their patients, whenever possible, to have a medical clearance appointment with a primary care physician prior to surgery. If the patient does not have a relationship with a primary care physician, the members will encourage the establishment of one. The facility plans to reach out to primary care physicians in its service area both to inform them of the facility and its capabilities and to facilitate the coordination of care for common patients. Patients will not be excluded based on ability to pay and charity care will be provided.

The facility will strongly consider becoming a part of an Accountable Care Organization or Health Home if one were to develop in the service area. The facility will use an electronic medical record system and will consider participating in a Regional Health Information Organization and/or Health Information Exchange.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Financial Analysis

The applicant will lease approximately 6,850 square feet of space in a newly built one story building located at 600 Porter Road, Niagara under the terms of the executed lease agreement:

Date:	August 19, 2013
Landlord:	Cataract Real Estate Holdings, LLC
Lessee:	Niagara ASC, LLC
Term:	Fifteen years with the option to renew for two additional five year terms.
Rental:	$160,975 per year (23.50 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 members will continue their private practice, which is located in the same building as the proposed center.

Total Project Cost and Financing

Total project costs for new construction and movable equipment are estimated at $2,347,565, broken down as follows:

New Construction	$1,297,388
Design Contingency	129,739
Construction Contingency	64,869
Architect/Engineering Fees	129,739
Consultant Fees	30,000
Movable Equipment	656,000
Interim Interest Expense	25,000
Application Fee	2,000
Additional Processing Fee	12,830
Total Project Cost	$2,347,565

Project cost is based on an April 1, 2014 construction start date and a seven month construction period.

The applicant's financing plan appears as follows:

Construction Loan (15yrs., 6%)	$1,485,000
Equipment Loan (5 yrs., 6%)	$529,760
Member's Equity	$332,805

Letters of interest from M & T Bank have been submitted by the applicant.

Operating Budget

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

	Year One	Year Three
Revenues:	$2,220,850	$2,823,027
Expenses:		
Operating	$1,259,903	$1,335,497
Capital	493,268	469,477
Total Expenses:	$1,753,171	$1,804,974
Net Income	$467,679	$1,018,053
Utilization: (procedures)	2,243	2,796
Cost per procedure:	$781.62	$645.56

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

	Year One & Three
Commercial Managed Care	47%
Medicare Managed Care	47%
Medicaid Managed Care	4%
Charity Care	2%

Expenses and utilization assumptions are based on the historical experience of the existing private practice. Each physician has provided a referral letter in support of utilization projections.

Capability and Feasibility

Total project cost of $2,347,565 will be met though a $1,485,000 construction loan at stated terms, a $529,760 equipment loan at stated terms and the remaining $332,805 from proposed member's equity. BFA Attachment B is the net worth statement of the proposed members, which indicates the availability of sufficient funds.

Working capital contributions are estimated at $300,829 based on two months of third year expenses, and will be satisfied with a working capital loan in the amount of $150,000 at an interest rate of 6% for five years, for which a letter of interest has been provided by M&T Bank. The remaining $150,829 will be provided as equity from the proposed members. BFA Attachment C is the pro-forma balance sheet of Ambulatory Surgery Center of Niagara as of the first day of operation, which indicates positive member's equity position of $483,634.

The submitted budget indicates a net income of $467,679 and $1,018,053 during the first and third years of operation, respectively. Revenues are based on current reimbursement methodologies for ambulatory surgery centers. The budget appears reasonable.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Organizational Chart
BFA Attachment B	Net worth statement of proposed members
BFA Attachment C	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: Niagara Falls Memorial Medical Center -- **No Response**
621 Tenth Street
Niagara Falls, New York 14302

Facility: DeGraff Memorial Hospital -- **No Response**
445 Tremont Street
North Tonawanda, New York 14120

Facility: Mount St. Mary's Hospital and Health Center -- **No Response**
5300 Military Road
Lewiston, New York 14092

Supplemental Information from Applicant

Need and Sources of Cases: The applicants cite the projected growth in the 65 years and older population of Erie and Niagara counties as a major source of cases, in the form of individuals needing cataract surgery. The applicants also state that 90 percent of the participating physicians' cases are currently performed at the Ambulatory Surgery Center of Western New York, LLC, a multi-specialty ASC located in Amherst, New York. Because of the easier scheduling that will be available at the proposed ASC and because of its location more central to the physicians' Erie and Niagara County patient bases (51% of the patients come from Niagara County), the applicants believe that their patients will prefer to have surgeries performed at the proposed facility.

Staff Recruitment and Retention: The applicants state that employees will be recruited from accredited schools and training programs, as well as through advertisements in local newspapers and professional publications. The proposed ASC also plans to offer competitive salary and benefits and will maintain good human resource and communication systems. In addition, the ASC will provide a positive work environment and flexible working hours.

Office-Based Cases: The applicants state that only a small number of cases are currently being performed in an office setting. As noted, the vast majority of the procedures projected for the ASC are currently being performed at the Ambulatory Surgery Center of Western New York. The applicant physicians will continue to perform procedures at Niagara Falls Memorial Medical Center and Mount St. Mary's Hospital, to serve on their medical staffs, and to take ophthalmology call.

DOH Comment

In the absence of comments from area hospitals, the Department finds 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.

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

November 21, 2013

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

	Number	Applicant/Facility
1.	132011 B	Parkmed NYC, LLC (New York County)

Public Health and Health Planning Council

Project #132011-B

Parkmed NYC, LLC

County: **New York County**
Purpose: **Establishment and Construction**
Program: **Diagnostic and Treatment Center**
Acknowledged: **July 16, 2013**

Executive Summary

Description

Parkmed NYC, LLC, a limited liability company, requests approval to establish and construct an Article 28 diagnostic and treatment center, for the provision of abortion, family planning, primary medical care and diagnostic radiology services to be located at 800 Second Avenue in Manhattan. The 7,850 sq. ft. center will include a waiting room, reception area, six exam rooms, two treatment rooms, four nurses' stations, an ancillary area and adequate support space to accommodate the current and future needs of the community.

The proposed sole member of Parkmed NYC, LLC is Michael M. Molaei, M.D.

DOH Recommendation

Contingent Approval

Need Summary

Parkmed NYC, LLC, projects that there will be 17,883 visits in year 1 and 18,242 in year 3 of the D&TC's in operation.

Program Summary

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

A transfer and affiliation agreement is expected to be provided by Bellevue Hospital.

Financial Summary

Project costs will be met with $482,646 in cash.

Budget:	Revenues:	$6,896,820
	Expenses:	$5,067,490
	Gain:	$1,829,330

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

Recommendations

Health Systems Agency
There will be no HSA recommendation of this application.

Office of Health Systems Management
Approval contingent upon:
1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fIfty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed building lease that is acceptable to the Department of Health. [BFA, CSL]
4. Submission of Articles of Organization acceptable to the Department. [CSL]
5. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]

Approval conditional upon:
1. The 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. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
7. The applicant shall complete construction by September 30, 2014 with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date
December 12, 2013.

Need Analysis

Background

Parkmed NYC, LLC, an office-based private physician practice, is seeking approval to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC) at 800 Second Avenue, New York, 10017, in New York County. The proposed services are family planning, abortion, primary medical care, and radiology-diagnostic services.

Analysis

Parkmed NYC currently provides comprehensive reproductive services, including abortion services. In 2012, Parkmed NYC performed 6,802 abortions and over 7,659 gynecology and family planning visits. Parkmed NYC's service area is New York City.

The projected number of visits is 17,883 in Year 1 and 18,242 in Year 3.

New York County has a total of 54 freestanding D&TCs providing family planning, abortion, primary medical care, and/or radiology-diagnostic services. These 54 D&TCs include two D&TCs providing abortion services, 19 providing family planning, 49 providing primary medical care, and 21 providing radiology-diagnostic services. None of these D&TCs are in zip code 10017, the site of the proposed D&TC.

The applicant is committed to serving patients in need of health care services regardless of their ability to pay.

Conclusion

The proposed D&TC will improve access to primary care and other outpatient services for the communities of New York City.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Project Proposal

Parkmed NYC, an office-based physician practice that provides reproductive health services including abortion, located at 800 Second Avenue in Manhattan, requests approval to establish and construct a diagnostic and treatment center.

Proposed Operator	Parkmed NYC, LLC
Site Address	800 Second Avenue, New York, NY
Specialties	Primary Medical Abortion Family Planning Radiology – Diagnostic
Hours of Operation	Tuesday through Saturday, 7:00 am – 6:00 pm
Staffing (1st Year / 3rd Year)	26.0 FTEs / 26.0 FTEs
Medical Director(s)	Michael Molaei, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Bellevue Hospital, 221 Canal St, New York, NY 3 miles/17 minutes away
On-call service	The Center's phone lines will be forwarded to an after-hours call service and a person will direct calls to the (24/7) on-call provider.

Character and Competence

The sole member of the LLC is:

Name	
Michael Molaei, MD	100%

Dr. Molaei, a practicing physician, is the current owner/operator of Parkmed NYC.

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. Molaei disclosed two (2) settled and two (2) pending malpractice cases.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Lease Agreement

The applicant has submitted a draft lease for approximately 7,850 gross square feet space on the sixth floor, Suite #605, at 800 Second Avenue in Manhattan, New York, under the terms of the lease agreement summarized below:

Lessor:	Good Care Medical, PC
Lessee:	Parkmed NYC,LLC
Term:	Ten Years with an option to renew for ten additional years.
Rental:	$33,424.58/month (51.10/ sq. ft.) with a yearly increase of approximately 3% a year.
Provisions:	Tenant shall be responsible for utilities, maintenance, and pro-rated share of property taxes and insurance.

The lease will be an arm's length lease arrangement. The entire building houses a variety of physician and medical specialty practices. The applicant has submitted letters of opinion from real estate brokers attesting to the reasonableness of the per square foot rental.

Total Project Cost and Financing

Total project costs for the renovation and acquisition of movable equipment is estimated at $482,646, broken down as follows:

Renovation & Demolition	$100,000
Planning Consultant Fees	30,000
Architect/Engineering Fees	30,000
Movable Equipment	$ 318,017
Application Fee	2,000
Additional Processing Fee	2,629
Total Project Cost	$482,646

The applicant will finance the total project costs through proposed members' equity. BFA Attachment A is the net worth statement of the proposed member, which shows sufficient equity.

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:	$6,761,047	$6,896,820
Expenses:		
Operating	$4,280,311	$4,574,191
Depreciation and Rent	469,698	493,299
Total Expenses	$4,750,009	$5,067,490
Net Income	$2.001.038	$1,829,330
Utilization: (visits)	17,883	18,242
Cost Per Visit	$265.2	$277.79

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

Commercial-Fee-For-Service	35.2%
Medicaid Managed Care	48.6%
Self Pay	14.2%
Charity Care	2.0%

Cost per visit increases in year three are due to costs projected to increase more rapidly than visit volume. Expense and utilization assumptions are based on the historical experience of the proposed physician private practice.

Capability and Feasibility

Total project costs of $482,646 will be financed through equity of the proposed member of Parkmed NYC, LLC. BFA Attachment A is the net worth statement of the proposed member of Parkmed NYC, LLC. , which shows there are sufficient funds available.

Working capital requirements, estimated at $844,582, appear reasonable based on two months of third year expenses and will be provided through equity of the proposed member. BFA Attachment B is the pro-forma balance sheet of Parkmed NYC, LLC based on the first day of operation, which indicates positive member's equity position of $1,327,228.

The submitted budget indicates a net income of $2,011,038 and $1,829,330 during the first and third years of operation, respectively. Revenues are based on current reimbursement methodologies for D&TC services. The budget appears reasonable.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Net Worth Statement of Proposed Members
BFA Attachment B	Pro-forma Balance Sheet of Parkmed NYC, LLC

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

November 21, 2013

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

	Number	Applicant/Facility
1.	132034 B	Brooklyn United Methodist Church Continuum Services (Kings County)
2.	132067 B	Elizabethtown Center, LLC (Essex County)

Public Health and Health Planning Council

Project # 132034 B
Brooklyn United Methodist Church Continuum Services

County: **Kings County**
Purpose: **Construction**
Program: **Diagnostic and Treatment Center**
Acknowledged: **July 19, 2013**

Executive Summary

Description
Brooklyn United Methodist Church Continuum Services, Inc (BUMCCS), a to-be-formed not-for-profit corporation, requests approval to establish and construct a 12-station chronic renal dialysis Diagnostic and Treatment Center (D&TC). The D&TC will lease space on the first floor from its corporate affiliate, Brooklyn United Methodist Church Home (BUMCH), a 120-bed residential health care facility (RHCF) located at 1485 Dumont Avenue, Brooklyn, New York.

Brooklyn United Methodist Church Health Services, Inc. (BUMCHS), an existing New York not-for-profit corporation, is the sole passive parent of Brooklyn United Methodist Church Continuum Services, Inc. and Brooklyn United Methodist Church Home.

DOH Recommendation
Contingent Approval

Need Summary
There is currently a need for 365 dialysis stations to treat the residents of Kings County. Brooklyn United Methodist Church Continuum Services, Inc. will add an additional 12 stations to treat the residents of the attached nursing home and the public.

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

Financial Summary
The $1,925,400 project cost will be met with equity of $145,502 from the applicant's corporate affiliate, Brooklyn United Methodist Church Home, and the remaining balance of $1,779,898 will come from the applicant's unused New York City Industrial Development Agency Series 2000 construction account.

Budget:	Revenues:	$2,790,213
	Expenses:	$2,396,019
	Gain:	$394,194

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

Recommendations

Health Systems Agency
There will be no HSA recommendation for this application.

Office of Health Systems Management
Approval contingent upon:

1. Submission of a 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 the CON fees. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed building lease, acceptable to the Department. [BFA, CSL]
4. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
4. Submission of a photocopy of an executed Certificate of Incorporation, acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date
December 12, 2013.

Need Analysis

Background
Brooklyn United Methodist Church Continuum Services, Inc., a to-be-formed not-for-profit corporation, is seeking approval to establish and construct a 12 station chronic renal dialysis diagnostic and treatment center to be located within the existing 120 bed Brooklyn United Methodist Church residential health care facility at 1485 Dumont Ave, Brooklyn, 11208, in Kings County.

Analysis
The primary service area for Brooklyn United Methodist Church Continuum Services is Kings County, which had a population estimate of 2,565,635 for 2012. The percentage of the population aged 65 and over was 11.5%, above the state average of 13.7%. The non-white population percentage was 64.3%, which is above the state average of 42.0%. These are the two population groups that are most in need of end stage renal dialysis service. Comparisons between Kings County and New York State are listed below.

Ages 65 and Over:	11.5%	State Average:	13.7%
Nonwhite:	64.3%	State Average:	42.0%

Source: U.S. Census 2011

Capacity
The Department's methodology to estimate capacity for chronic dialysis stations is specified in Part 709.4 of Title 10 and is as follows:

One free standing station represents 702 treatments per year. This is based on the expectation that the center will operate 2.5 patient shifts per day at 6 days per week, which can accommodate 15 patients per week (2.5 x 6 x 15 x 52 weeks). This projected 702 treatments per year is based on a potential 780 treatments x 52 weeks x 90% utilization rate = 702. The estimated average number of dialysis procedures each patient receives per year is 156.

One hospital based station is calculated at 499 treatments per year per station. This is the result of 2.0 shifts per day x 6 days per week x 52 weeks x 80% utilization rate. One hospital based station can treat 3 patients per year.

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

There are currently 667 free standing chronic dialysis stations operating in Kings County and there are 130 stations in pipeline.

Based upon DOH methodology, the 797 free standing stations in Kings County could treat a total of 3,587 patients annually.

Projected Need

Table 1

	2011		2016	
	Total Patients Treated	Total Residents Treated	***Projected Total Patients Treated	***Projected Residents Treated
	3954	4507	4584	5225
Free Standing Stations Needed	879	1002	1019	1162
Existing Stations	667	667	667	667
Total Stations (Including Pipeline)	797	797	797	797
Net new stations from this project	12	12	12	12
Total Stations After Approval (Including Pipeline)	809	809	809	809
Unmet Need With Approval	70	193	210	353

***Based upon a estimate of a three percent annual increase

The data in the first row, "Free Standing Stations Needed," comes from the DOH methodology of each station being able to treat 4.5 patients, and each hospital station being able to treat 3 patients annually. The data in the next row, "Existing Stations," comes from the Department's Health Facilities Information System (HFIS). "Unmet Need" comes from subtracting needed stations from existing stations. "Total Patients Treated" is from IPRO data from 2011.

Conclusion

There is currently a need for 365 dialysis stations to treat the residents of Kings County. This project will help meet the need for dialysis stations as well as provide easier access to dialysis care for residents of the Brooklyn United Methodist Church Home RHCF. The remaining need will then be 353 stations.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Program Description

Brooklyn United Methodist Church Continuum Services, Inc. requests approval to establish and construct a 12-station chronic renal dialysis diagnostic and treatment center to be located in self-contained space on the first floor of Brooklyn United Methodist Church Home (BUMCHS).

Proposed Operator	Brooklyn United Methodist Church Continuum Services, Inc.
Site Address	1485 Dumont Avenue, Brooklyn, NY (Kings County)
Stations	12
Hours of Operation	2.5 shifts per day, 6 days a week
Staffing (1st Year / 3rd Year)	13.4 FTEs /14.8 FTEs
Medical Director(s)	William D. Shilkoff, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Brooklyn Hospital Center 7.1 miles/23 minutes

Character and Competence

The proposed operator will be Brooklyn United Methodist Church Continuum Services, Inc. (BUMCCS). Brooklyn United Methodist Services, Inc. will be the passive parent of BUMCCS. Brooklyn United Methodist Church Home (BUMCH) will have the same board members as BUMCCS. The proposed members of BUMCCS are:

Name	Title
Rev. John Cole	President
Rev. Robert W. Emerick	Vice President
Rev. Charles Straut	Secretary/Treasurer

Each of the aforementioned individuals has experience operating a health care facility in that each also serves as a member of the Board of Directors of BUMCH, a not-for-profit 120-bed Residential Health Care Facility and 60-registrant Adult Day Health Care Program (located at the same address as the proposed 12-station chronic dialysis D&TC). During their tenure as BUMCH Board members, they have been responsible for the operation of BUMCH which provides 24-hour skilled nursing care to debilitated and chronically ill residents and has an operating revenue in excess of $13.7 million.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Lease Rental Agreement

The applicant has submitted a draft lease agreement for the proposed site:

Date:	June 21, 2013
Premises:	3,200 sq. ft. on the first floor of a RHCF located at 1485 Dumont Avenue, Brooklyn, New York 11208
Landlord:	Brooklyn United Methodist Church Home
Lessee:	Brooklyn United Methodist Church Continuum Services, Inc.
Rental:	$70,400 ($22 per sq. ft.)
Term:	Ten year terms ending December 31, 2023
Provisions:	Utilities

The applicant has provided an affidavit stating the proposed lease is a non-arm's length arrangement. Realtor letters have been provided attesting to the rental rate as being of fair market value.

Total Project Cost And Financing

Total project costs for renovation and the acquisition of moveable equipment is estimated at $1,925,400:

Renovation & Demolition	$1,258,400
Design Contingency	125,840
Construction Contingency	125,840
Architect/Engineering Fees	78,650
Other Fees	18,150
Movable Equipment	305,999
CON Application Fee	2,000
CON Processing Fee	10,521
Total Project Cost	$1,925,400

Project costs are based on a July 1, 2014 start date with a twelve month construction period.

The applicant's financing plan appears as follows:

Cash Equity - (Applicant's corporate affiliate - Brooklyn United Methodist Church Home)	$145,502
Cash Equity - (Applicant's unused New York City Industrial Development Agency Series 2000 construction account)	1,779,898
Total	$1,925,400

On May19, 2000, the New York City Industrial Development Agency (IDA) privately placed $7,150,000 in 30-year Variable Rate Demand Civic Facility Revenue Bonds, Series 2000, for the benefit of Brooklyn United Methodist Church Home. To date, the bond proceeds have been used to: (1) finance construction of an adult day health care center and make renovations to the RHCF; (2) finance costs incurred in connection with the issuance of the bonds; and (3) refinance Brooklyn United Methodist Church Home then-existing indebtedness. The current unspent proceeds are $1,799,898. As of September 1, 2013, the unpaid bond balance was $4,115,000 and carries a variable interest rate of 0.05%, which is based on the five (5)-day period.

Operating Budget

The applicant has submitted first and third years operating budgets, in 2013 dollars:

	Year One	Year Three
Revenues	$2,423,060	$2,790,213
Expenses:		
Operating	$1,916,508	$2,187,059
Capital	208,960	208,960
Total Expenses	$2,125,468	$2,396,019
Net Income or (Loss)	$297,592	$394,194
Utilization: (procedures)	7,999	9,246
Cost Per Procedure	$265.72	$259.14

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

Medicaid Managed Care	6.8%
Medicare Fee-For-Service	73.8%
Commercial Fee-For-Service	6.8%
Commercial Manage Care	12.6%

Utilization and expense assumptions are based on local population demographics, the census of Brooklyn United Methodist Church Home, and the experience of other dialysis facilities in New York City, as well as anticipated future growth. The breakeven point is approximately 87.7% of the first year's projected utilization, or 7,017 procedures and approximately 85.9% of the third year's projected utilization, or 7,940 procedures

Capability and Feasibility

The total project cost of $1,925,400 will be satisfied by a $145,502 equity contribution from the applicant's corporate affiliate, Brooklyn United Methodist Church Home, with the $1,779,898 remainder coming from the applicant's unused New York City Industrial Development Agency Series 2000 construction account.

Working capital requirements are estimated at $399,337, which appears reasonable based on two months of third year expenses, and will be provided by the applicant's corporate affiliate, Brooklyn United Methodist Church Home. Attachment A is Brooklyn United Methodist Church Home 2012 certified financial summary, which indicates there are sufficient liquid resources to meet the equity and working capital requirements.

BFA Attachment B is Brooklyn United Methodist Church Continuum Services, Inc., pro-forma balance sheet, which shows operations will start off with $2,324,737 in positive equity.

Brooklyn United Methodist Church Continuum Services, Inc., projects an operating excess of $297,592 and $394,194 in the first and third years, respectively. Revenues are based on current and projected federal and state governmental reimbursement methodologies, while commercial payers are based on the experience of other dialysis facilities in New York City. The budget appears reasonable.

Review of BFA Attachment A shows that for 2011 and 2012, Brooklyn United Methodist Church Home had both a positive working capital position and net asset position. The facility also generated an average net income of $184,177. In 2011, the facility however, generated a loss of $204,747, which was due to retroactive adjustments to the rates based on Medicaid overpayments.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Financial Summary for 2011 and 2012, Brooklyn United Methodist Church Home
BFA Attachment B	Pro-forma Balance Sheet for Brooklyn United Methodist Church Continuum Services, Inc.
BFA Attachment C	Organizational Chart for Brooklyn United Methodist Church Continuum Services, Inc.

Public Health and Health Planning Council

Project # 132067-B
Elizabethtown Center, LLC

County: **Essex (Elizabethtown)**
Purpose: **Establishment and Construction**
Program: **Diagnostic and Treatment Center**
Acknowledged: **July 26, 2013**

Executive Summary

Description

Elizabethtown Center, LLC, a limited liability company, requests approval to operate a diagnostic and treatment center certified to operate as an eight-station renal dialysis center with transfusion services. This application represents a change in ownership of the CVPH-Elizabethtown Community Hospital (ECH) dialysis unit located within ECH. The Center will be located within the hospital at 75 Park Street, Elizabethtown, New York under the terms of a lease.

The proposed members of Elizabethtown Center, LLC are as follows:

American Renal Associates, LLC (ARA)	51.0%
Plattsburgh Medical Office Management, Inc.	36.5%
Laura Carbone, MD.	12.5%

Plattsburgh Medical Office Management, Inc. is solely owned by Craig Hurwitz, MD. ARA is entirely owned by American Renal Holdings, Inc., a national provider of kidney dialysis centers. ARH owns and operates 132 dialysis clinics treating 8,942 patients in 21 states and the District of Columbia.

In conjunction with the acquisition, the applicant has committed to construct a new blood borne infection isolation room. Cost of the project is estimated at $66,000 plus applicable CON fees. Due to the fact that the Center is located within ECH, construction cannot commence until closing on the acquisition. For this reason, the applicant requests that the establishment aspect and the relatively minor construction element be bifurcated.

Under a companion application, Plattsburgh Associates, LLC, was approved to operate a 24-station chronic renal dialysis currently owned and operated by Champlain Valley Physician Hospital. The ownership structure of Plattsburgh Associates, LLC is the same as that of Elizabethtown Center, LLC.

DOH Recommendation

Contingent Approval.

Need Summary

Because there will be no change in the number of stations or the location of the existing 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

Total project cost of $106,069 will be met via equity by the proposed members. The purchase price for both facilities is $2,600,000, of which is allocated as follows: $181,874 for this application and $2,418,126 for the CVPH transaction. The purchase price will be met as follows: Equity of $540,000 from the proposed members and a loan of $2,060,000 from American Renal Associates, LLC, at an interest rate of 5% for a five year term.

Budget:	
Revenues	$996,160
Expenses	942,124
Net Income	$54,036

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 recommendation for this project.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all sponsors whose construction applications require review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed asset purchase agreement, acceptable to the Department. [BFA, CSL]
4. Submission of an executed lease rental agreement, acceptable to the Department. [BFA, CSL]
5. Submission of a loan commitment, acceptable to the Department. [BFA]
6. Submission of a resolution of the members of Elizabethtown Center, LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of the Certificate of Amendment of the Articles of Organization of Elizabethtown Center, LLC, acceptable to the Department. [CSL]
8. Submission of a photocopy of the Operating Agreement of Elizabethtown Center, LLC, acceptable to the Department. [CSL]
9. Submission of a photocopy of the Certificate of Amendment to the Certificate of Incorporation of Plattsburgh Medical Office Management, Inc., acceptable to the Department. [CSL]
10. Submission of a photocopy of the Bylaws of Plattsburgh Medical Office Management, Inc., acceptable to the Department. [CSL]
11. Submission of a photocopy of the Application for Authority of American Renal Associates LLC, acceptable to the Department. [CSL]
12. Submission of a photocopy of the limited liability company agreement of American Renal Associates LLC, acceptable to the Department. [CSL]
13. Submission of a photocopy of the Certificate of Incorporation of American Renal Holdings, Inc., acceptable to the Department. [CSL]
14. Submission of a photocopy of the Bylaws of American Renal Holdings, Inc., acceptable to the Department. [CSL]
15. Submission of a photocopy of the Articles of Organization of American Renal Holdings, Inc., acceptable to the Department. [CSL]
16. Submission of a photocopy of the Operating Agreement of American Renal Holdings Intermediate Associates LLC, acceptable to the Department. [CSL]
17. Submission of a photocopy of the Certificate of Incorporation of the American Renal Associates Holdings, Inc., acceptable to the Department. [CSL]
18. Submission of a photocopy of the Bylaws of American Renal Associates Holdings, Inc., acceptable to the Department. [CSL]
19. Submission of a photocopy of the Partnership Agreement of Centerbridge Capital Partners L.P., acceptable to the Department.[CSL]
20. Submission of a photocopy of an amended and executed Administrative Services Agreement, acceptable to the Department.[BFA, CSL]
21. Submission of a photocopy of the Application for Authority of American Renal Management, LLC, acceptable to the Department.[CSL]

Approval conditional upon:

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

State Council Recommendation
December 12, 2013

Need Analysis

Elizabethtown Center, LLC seeks approval to be established as the new owner/operator of CVPH Elizabethtown Community Hospital dialysis unit, an 8-station chronic renal dialysis unit located within the Hospital at 75 Park Street, Elizabethtown, 12932, in Essex County.

Because there will be no change in the number of stations or the location of the existing facility, no need review is required for this application.

Recommendation
From a need perspective, approval is recommended.

Programmatic Analysis

Establish Elizabethtown Center, LLC, as the operator of chronic renal dialysis services within leased space in Elizabethtown Community Hospital (ECH) and construct an isolation room. (This application represents a change in ownership of the dialysis unit located within ECH.)

Proposed Operator	Elizabethtown Center, LLC.
Site Address	Elizabethtown Community Hospital 75 Park Street Elizabethtown (Essex County), NY
Approved Services	Chronic Renal Dialysis (8 Stations)
Shifts/Hours/Schedule	Open 6 days per week, 2.5 shifts per day
Staffing (1st Year / 3rd Year)	5.1 FTEs (No change to current operational level)
Medical Director(s)	Craig G. Hurwitz, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	ECH will handle minor medical issues onsite. For more serious medical issues, patients will be transported. Care and treatment is expected to be provided by Champlain Valley Physicians Hospital Medical Center in Plattsburgh, NY 37.8 miles/45 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. (PMOM)	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 which owns and operates 132 dialysis clinics treating nearly 9,000 patients 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. PMOM 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 below:

Seller:	Champlain Valley Physicians Hospital Medical Center
Purchaser:	Elizabethtown Center, 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 CVPH-H.K. Freedman Renal by Plattsburgh Associates, LLC (CON 132065), and $181,874 for the purchase of Elizabethtown Community Hospital (ECH) dialysis unit by Elizabethtown Center, LLC (CON 132067).
Payment of Purchase Price:	Equity of $540,000 from the proposed members and a loan of $2,060,000 from American Renal Associates, LLC at an interest rate of 5% for a five year term.

Proposed Payment for CON 132067

	Elizabeth Center, LLC
Equity-Members	$ 56,375
Loan (5-year term @ 5%)	125,499
Total	$181,874

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 below:

Company:	Elizabethtown Center, LLC
Contractor:	American Renal Management, LLC
Purpose:	To provide certain administrative services at the dialysis center located at 75 Park Street, Route 9N, Elizabethtown, New York.
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.
Term:	The term of the agreement shall be for an initial period of three years and shall be automatically extended for excessive periods of three years.
Compensation:	$75,000 annually.

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 rental agreement for the space they will occupy:

Premises:	1,762 sq. ft. for the premises located at Elizabethtown Community Hospital.
Lessor:	Elizabethtown Community Hospital
Lessee:	Elizabethtown Center, LLC
Term:	Ten years
Rental:	$68,718 annually ($39.00 per sq. ft.)
Provisions:	The lessee shall be responsible for maintenance, utilities and real estate taxes.

The applicant has submitted an affidavit indicating that the lease arrangement will be an arms length lease arrangement.

Total Project Cost and Financing

Total project cost, which is for renovations, is estimated at $106,069; which is summarized below:

Renovation and Demolition	$86,250
Design Contingency	8,625
Construction Contingency	8,625
CON Fee	2,000
Additional Processing Fee	569
Total Project Cost	$106,069

Project costs are based on a January 1, 2014 construction start date and a three month construction period.

The applicant will provide equity to meet the total project cost.

Operating Budget

The applicant has submitted an operating budget, in 2013 dollars, for the first year subsequent to the change in operator; which is summarized below:

Total Revenues	$996,160
Expenses:	
Operating	$808,813
Capital	133,311
Total Expenses	$942,124
Net Income	$ 54,036
Utilization: (treatments)	3,113
Cost Per Treatment	$302.64

Utilization itemized by payor source during the first year subsequent to the change in operator, summarized below:

Medicaid Managed Care	14.35%
Medicare Fee-for-Service	80.00%
Commercial Fee-for-Service	5.65%

Expense and utilization assumptions are based on the historical experience of the dialysis center in operating 132 dialysis centers in 21 states and the District of Columbia.

Capability and Feasibility

Total project cost of $106,069 will be met via equity by the proposed members. The purchase price for the two companion CONs is $2,600,000, which will be met as follows: Equity of $540,000 from the proposed members and a loan of $2,060,000 from American Renal Associates, LLC at an interest rate of 5% for a five year term.

Working capital requirements are estimated at $157,020, which is equivalent to two months of first year expenses. The applicant will provide equity via the proposed members to meet the working capital requirement. BFA Attachment A and BFA Attachment B are the personal net worth statements of Laura Carbone, MD., Craig Hurwitz, MD., and the 2011 and 2012 certified financial statements of American Renal Holdings, Inc., which indicate the availability of sufficient funds to meet the equity contribution relative to project cost, purchase price and the working capital requirement. BFA Attachment D is the pro-forma balance sheet of Elizabethtown Center, LLC as of the first day of operation, which includes a positive net asset position of $370,283.

The submitted budget indicates a net income of $54,036 during the first year subsequent to the change in operator. Revenues are based on current reimbursement methodologies for Medicaid and Medicare, and commercial revenue estimates. The budget appears reasonable. The existing facility achieved an excess of revenues over expenses of $263,723 in 2012.

As shown on Attachment B, American Renal Holdings, Inc. and Subsidiaries had an average positive working capital position and an average positive net asset position. Also, the entity achieved an average net income of $15,271,000 from 2011 through 2012.

BFA Attachment C is the June 30, 2013 internal financial statements of American Renal Holdings, Inc. and Subsidiaries which shows a positive working capital position and a negative net asset position. In order to take advantage of lower interest rates, American Renal Holdings undertook a refinancing, raising $640 million, which the majority used to retire existing debt and some was 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.

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
BFA Attachment B	Financial Summary- 2011 and 2012 certified financial statements of American Renal Holdings, Inc. and Subsidiaries.
BFA Attachment C	Financial Summary- June 30, 2013 internal financial statements of American Renal Holdings, Inc.
BFA Attachment D	Pro Forma Balance Sheet

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

November 21, 2013

Hospice - Establish/Construct **Exhibit # 9**

	Number	Applicant/Facility
1.	132063 E	Hospice of New York (Queens County)

Public Health and Health Planning Council

Project # 132063-E

Hospice of New York

County: **Queens**
Purpose: **Establishment**

Program: **Hospice**
Acknowledged: **August 1, 2013**

Executive Summary

Description

Hospice of New York, LLC, an existing proprietary corporation that began operations in 1997, is seeking approval to transfer 19.97% ownership interest from deceased member Andrew Parker to two existing members. Ownership percentage before and after the transfer is as follows:

Member	Ownership % before transfer	Ownership % after transfer
Michael Rosen	70.03%	75.0225%
Brad Markowitz	9.53%	24.5075%
Philip Decker	0.47%	0.4700%
Andrew Parker	19.97%	0.0000%

Anne Goldbauer, as the personal representative of the Estate of Andrew Parker, will enter into a membership interest purchase agreement with Michael Rosen and Brad Markowitz.

DOH Recommendation

Contingent Approval

Need Summary

There will be no Need recommendation of this application.

Program Summary

Hospice of New York, LLC, a for-profit limited liability company, operates an Article 40 hospice, serving Bronx, Kings, New York, Queens, and Nassau Counties. The current proposal seeks approval for the transfer of 19.97% of the ownership interest from the estate of a recently deceased member to two of the three remaining members. No programmatic changes affecting the hospice will occur as a result of this transaction.

Financial Summary

There are no project costs or budgeted incremental operating expenses or revenues associated with this project since patient care services will not be affected or interrupted.

Total purchase price of $1,000,000 will be financed with equity from Michael Rosen ($250,000) and a personal loan from Brad Markowitz ($750,000).

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 a photocopy of an executed Amended and Restated Operating Agreement, acceptable to the Department. [CSL]

Approval conditional upon:
1. The project must be completed within one year from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date
December 12, 2013.

Programmatic Analysis

Background
Hospice of New York, LLC, a for-profit limited liability company, operates an Article 40 hospice, serving Bronx, Kings, New York, Queens, and Nassau Counties. The current proposal seeks approval for the transfer of 19.97% of the ownership interest from the estate of a recently deceased member to two of the three remaining members. No programmatic changes affecting the hospice will occur as a result of this transaction.

The current membership of the LLC is as follows:

Michael Rosen	70.03%	Andrew Parker (deceased)	19.97%
Brad Markowitz	9.53%	Philip Decker	0.47%

Following the purchase transactions, wherein Mr. Rosen will purchase 25% and Mr. Markowitz will purchase 75% of the Andrew Parker ownership interests from the estate of Mr. Parker, the resulting membership and percentage of ownership of the LLC will be as follows:

Michael Rosen	75.0225%
Brad Markowitz	24.5075%
Philip Decker	0.4700%

All three of the above named remaining members of the LLC will be designated as managing members.

The three remaining members / managers list the following affiliations:

Michael Rosen
Administrator, Hospice of New York, LLC – 7/1/1995-present
Other Affiliations (in the previous seven years):
Country Manor Campus CCRC with Nursing Home (Minnesota) 7/1/1999-present;
River Terrace Estates CCRC with Nursing Home (Indiana) 10/7/2008-present

Philip G. Decker
Retired President and Former Owner, Hospice Community Care, Inc., and HCC Home Health (both Pennsylvania) – 2/24/1995-12/31/2010
Other Affiliations (in the previous seven years): None

Brad Markowitz
President / Principal Managing Member, Park Avenue Health Care Management, LLC (Physicians' Practice Management) – 3/1/1995-present
Other Affiliations (in the previous seven years): None

A search of the above named managing members, employers, and affiliations revealed no matches on either the Medicaid Disqualified Provider List or the Office of the Inspector General's Provider Exclusion List.

The Division of Home and Community Based Services reviewed the compliance history of Hospice of New York, LLC. It has been determined that the hospice has exercised sufficient supervisory responsibility to protect the health, safety, and welfare of patients and to prevent the recurrence of code violations. The hospice has been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

Out-of-State Compliance Request Forms were sent for all the out-of-state providers listed above as affiliations in the previous seven years. The licensing/regulating agencies of the states of Pennsylvania, Minnesota, and Indiana have all failed to respond to requests for compliance information.

A review of all personal qualifying information indicates there is nothing in the background of the three remaining members/managers of the LLC to adversely affect their positions in the organization. The applicant has the appropriate character and competence under Article 40 of the Public Health Law.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Purchase Agreement

The applicant has submitted an executed purchase agreement, the terms of which are summarized below:

Date:	June 10, 2013
Purpose:	Purchase 19.97% membership interest
Seller:	Anne Goldbauer, as the personal representative of the Estate of Andrew Parker.
Purchaser:	Michael Rosen (4.9925%) and Brad Markowitz (14.9775%)
Purchase Price:	$1,000,000
Payment:	$100,000 deposit with the remaining $900,000 due upon CON approval.

Operating Budget

There are no budgeted incremental operating expenses or revenues associated with this project since patient care services will not be affected or interrupted.

Capability and Feasibility

There are no project costs associated with this application.

The total purchase price of $1,000,000 will be financed with $250,000 in equity from Michael Rosen, who is purchasing 25% of the interests, and a personal loan of $750,000 from Brad Markowitz, who is purchasing 75% of the interests. The purchase price is based on an evaluation agreed upon by managing members of the Hospice at $6,000,000. Mr. Parker's ownership percentage of 19.97 would have given him a stake in Hospice of New York of approximately $1,200,000. Negotiations created an agreed upon selling price of $1,000,000 because Mr. Parker had not been involved in the day-to-day management of the company and his widow had no experience or interest in the operation of a hospice program.

BFA Attachment A is the net worth statement of the members, which indicates the availability of sufficient funds from Michael Rosen. Hospice of New York has committed to providing Mr. Markowitz with a personal loan for $750,000 interest free for a term of one year, which he plans to pay back with the proceeds from the sale of other business assets no later than January 1, 2014. BFA Attachment D, the financial summary of Hospice of New York as of July, 31, 2013, indicates the availability of sufficient funds to provide the loan, and as shown on BFA Attachment A, indicates sufficient business assets of proposed member, Brad Markowitz. BFA Attachment B is the pro-forma balance sheet of Hospice of New York, LLC as of the first day of operation after the transfer of interests, which indicates positive member's equity position of $6,032,370.

Attachment C, the financial summary of Hospice of New York, indicates the facility has maintained positive working capital and member's equity and generated a net income of $1,476,034 and $2,514,428 for 2011 and 2012, respectively. As shown on BFA Attachment D, the financial summary of Hospice of New York as of July 31, 2013, the facility has maintained positive working capital and member's equity and generated net income of $3,109,681.

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	Pro-forma Balance Sheet
BFA Attachment C	Financial Summary, Hospice of New York, LLC
BFA Attachment D	Internal Financial Summary as of July 31, 2013, Hospice of New York, LLC

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

November 21, 2013

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

	Number	Applicant/Facility
1.	131086 E	Autumn View Health Care Facility, LLC (Erie County)
2.	131087 E	Brookhaven Health Care Facility, LLC (Suffolk County)
3.	131088 E	Garden Gate Health Care Facility (Erie County)
4.	131089 E	Harris Hill Nursing Facility, LLC (Erie County)
5.	131090 E	North Gate Health Care Facility (Niagara County)
6.	131091 E	Seneca Health Care Center (Erie County)
7.	131125 E	Ruby Care, LLC d/b/a Emerald North Nursing and Rehabilitation Center (Erie County)
8.	131156 E	Opal Care, LLC d/b/a Emerald South Rehabilitation and Care Center (Erie County)
9.	131264 E	South Shore Rehabilitation, LLC d/b/a South Shore Rehabilitation and Nursing Center (Nassau County)

10.	132071 E	Steuben Operations Associates, LLC d/b/a Steuben Center for Rehabilitation and Healthcare (Steuben County)
11.	132113 E	SGRNC LLC d/b/a King David Nursing and Rehabilitation Center (Kings County)

Public Health and Health Planning Council

Project # 131086-E
Autumn View Health Care Facility, LLC

County: **Erie**
Purpose: **Establishment**
Program: **Residential Health Care Facility**
Acknowledged: **March 12, 2013**

Executive Summary

Description

Autumn View Health Care Facility (AVHCF), an existing 230-bed proprietary LLC residential health care facility (RHCF), with respite care, located in Hamburg, entered into a Master Lease Agreement with their current landlord, Nationwide Health Properties, Inc. with five of its RHCF affiliates and is requesting to include a Michigan affiliate, Autumn Woods Residential Health Care Facility, LLC (AWRHCF), a 330-bed RHCF located in Warren. The real property, which AVHCF leased for its operations from related entity Autumn View Manor Partnership was sold on January 12, 2011, to real estate investment trust Nationwide Health Properties, Inc. (NHP). AVHCF has entered into a long term sale/ lease back arrangement with NHP. This Master Lease Agreement was approved by the New York State Health Department on February 16, 2012. The Michigan RHCF affiliate entered into the sale/leaseback arrangement on September 28, 2012.

The additional five RHCFs affiliated through the amended Master Lease Agreement with NHP and being concurrently reviewed are as follows:

CON 131087-E	Brookhaven Health Care Facility
CON 131088-E	Garden Gate Health Care Facility
CON 131089-E	Harris Hill Nursing Facility
CON 131090-E	North Gate Health Care Facility
CON 131091-E	Seneca Health Care Center

The operators of each of the six New York State RHCFs and AWRHCF identified above are entering into the amended Master Lease Agreement solely to provide cross guarantees of each nursing home's lease obligations. The cross guarantee would provide sustaining support to a facility going through a period of financial difficulty. Under regulation NYCRR 600.9(c), such an agreement must be approved by PHHPC in order for an entity to participate in the total gross income or net revenue of a facility.

DOH Recommendation

Contingent Approval

Need Summary

As there will be no change to the operating certificate as a result of this application, no Need review is necessary.

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. The facility is in compliance with CMS 2013 sprinkler mandates.

Financial Summary

There are no project costs associated with this application.

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

Recommendations

Health Systems Agency
There will be no HSA recommendation of this application.

Office of Health Systems Management
Approval contingent upon:
1. Submission of a revised acceptable Operating Agreement for Autumn Woods Residential Health Care Facility, LLC, acceptable to the Department. [LTC]
2. Submission of a photocopy of a revised and executed amended and restated master lease, acceptable to the Department. [BFA, CSL]
3. Submission of a photocopy of an executed amended operating agreement of Autumn Woods Residential Health Care Facility, LLC, acceptable to the Department. [CSL]
4. Submission of a photocopy of an executed Certificate of Amendment of the Articles of Organization of Autumn Woods Residential Health Care Facility, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of an executed amended operating agreement of McGuire Group 1-B LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of an executed Certificate of Amendment of the Articles of Organization of McGuire Group 1-B LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of an executed amended Partnership Agreement of McGuire Partnership 1-A, acceptable to the Department. [CSL]

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]

Council Action Date
December 12, 2013.

Programmatic Analysis

Facility Information

	Existing	Proposed	Michigan Nursing Home
Facility Name	Autumn View Health Care Facility, LLC	Same	Autumn Woods Residential Health Care Facility
Address	S 4650 Southwestern Blvd Hamburg, NY 14075	Same	29800 Hoover Road Warren, MI 48093
RHCF Capacity	230	Same	330
ADHCP Capacity	N/A	N/A	N/A
Type of Operator	LLC	LLC	LLC
Class of Operator	Proprietary	Proprietary	Proprietary
Operator	Autumn View Health Care Facility, LLC Michael J. McGuire 16.20% Kathleen McGuire 16.20% Jeannie M. McGuire 16.20% F. James McGuire 16.20% Jacqueline M Gurney 16.20% Kelly McGuire 16.20% Stephen M. Mercurio 2.80% Total 100.00%	Same	Autumn Woods Residential Health Care Facility, LLC Members: **McGuire Group 1-B LLC 12.54%** F J McGuire (33 1/3%) C. McGuire (33 1/3%) J.M. Gurney (33 1/3%)) **McGuire Partnership 1-A 12.54%** M J McGuire (33 1/3%) K M McGuire (33 1/3%) J M McGuire (33 1/3%) **Michelle Miller 0.20%** **Elizabeth Wolf 0.20%** **Donald J Smith 9.96%** **Michelle Smith 2.99%** **Donald J Smith Jr 2.99%** **Susan J Smith 2.99%** **Lindsay J Smith 2.99%** **Jamie L Smith 2.99%** **Kelly McGuire 10.67%** **Michael J McGuire 6.49%** **F James McGuire 6.49%** **Charlene McGuire 6.49%** **Jacqueline M Gurney 6.49%** **Jeannie McGuire 6.49%** **Kathleen M McGuire 6.49%** **Total 100.00%**

The applicant requests approval to include a Michigan affiliated nursing home, Autumn Woods Residential Health Care Facility, LLC, in the previously approved Master Lease agreement with Autumn View and five other affiliated New York nursing facilities.

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Autumn View Health Care Facility, LCC	05/2003 to present
Brookhaven Health Care Facility, LLC	01/2004 to present
Garden Gate Health Care Facility	05/2003 to present
Harris Hill Nursing Facility, LLC	01/2006 to present
North Gate Health Care Facility	05/2003 to present
Seneca Health Care Center	05/2003 to present
Smithtown Health care Facility	05/2003 to present
Autumn Woods Health Care Facility (Warren, MI)	05/2003 to present

Other Health Related Entities

McGuire Group Pharmacy, Inc.

Individual Background Review

Francis James McGuire is the president and CEO of the McGuire Group, Inc., a nursing facility management company located in Buffalo, NY. He is a licensed nursing home administrator with an inactive license. Mr. McGuire discloses the following health facility interests:

Brookhaven Health Care Facility, LLC	01/2004 to present
North Gate Health Care Facility, LLC	03/2003 to present
Seneca Health Care Center, LLC	03/2003 to present
Autumn View Health Care Facility, LLC	03/2003 to present
Garden Gate Health Care Facility, LLC	03/2003 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2000 to present

Charlene (Beckett, McGuire-Ruiz) **McGuire** shows no employment in the past ten years. Ms. McGuire discloses the following health facility interest:

Autumn Woods Health Care Facility (Warren, MI)	01/2000 to present

Jacqueline McGuire Gurney is an attorney in good standing practicing law with the Erie County Family Court since 2008. Ms. McGuire discloses the following health facility interests:

Brookhaven Health Care Facility, LLC	01/2004 to present
North Gate Health Care Facility, LLC	03/2003 to present
Seneca Health Care Center, LLC	03/2003 to present
Autumn View Health Care Facility, LLC	03/2003 to present
Garden Gate Health Care Facility, LLC	03/2003 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2000 to present

Michael J. McGuire is employed as an insurance sales agent. Mr. McGuire discloses the following health facility interests:

Brookhaven Health Care Facility, LLC	01/2004 to present
North Gate Health Care Facility, LLC	03/2003 to present
Seneca Health Care Center, LLC	03/2003 to present
Autumn View Health Care Facility, LLC	03/2003 to present
Garden Gate Health Care Facility, LLC	03/2003 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2000 to present

Jeannie M. McGuire is retired since 2010. Ms. McGuire discloses the following health facility interests:

Brookhaven Health Care Facility, LLC	01/2004 to present
North Gate Health Care Facility, LLC	03/2003 to present
Seneca Health Care Center, LLC	03/2003 to present

Autumn View Health Care Facility, LLC 03/2003 to present
Garden Gate Health Care Facility, LLC 03/2003 to present
Harris Hill Nursing Facility 01/2006 to present
Autumn Woods Health Care Facility (Warren, MI) 01/2000 to present

Kathleen (Casero) **McGuire** retired in December 2012 from Northrup Grumman, a defense contractor located in Maryland, where she was employed as an engineering manager since 1984. Ms. McGuire discloses the following health facility interests:
Brookhaven Health Care Facility, LLC 01/2004 to present
North Gate Health Care Facility, LLC 03/2003 to present
Seneca Health Care Center, LLC 03/2003 to present
Autumn View Health Care Facility, LLC 03/2003 to present
Garden Gate Health Care Facility, LLC 03/2003 to present
Harris Hill Nursing Facility 01/2006 to present
Autumn Woods Health Care Facility (Warren, MI) 01/2000 to present

Kelly McGuire is presently attending Portland State University as a graduate student. Ms. McGuire discloses the following health facility interests:
Brookhaven Health Care Facility, LLC 01/2004 to present
North Gate Health Care Facility, LLC 03/2003 to present
Seneca Health Care Center, LLC 03/2003 to present
Autumn View Health Care Facility, LLC 03/2003 to present
Garden Gate Health Care Facility, LLC 03/2003 to present
Harris Hill Nursing Facility 01/2006 to present
Autumn Woods Health Care Facility (Warren, MI) 01/2000 to present

Donald J. Smith retired in 2008 from The McGuire Group, Inc., a nursing home management firm, where he was the executive director since 1968. Mr. Smith discloses the following health facility interests:
Autumn Woods Health Care Facility (Warren, MI) 01/2010 to present
Harris Hill Nursing Facility LLC 01/1992 to 12/2005
Smithtown Health care Facility 01/1992 to present
Brookhaven HCF, LLC 01/1996 to 12/2003

Donald J. Smith, Jr. is employed as a software developer, since 2005, by Office Ally, a medical information technology firm in California. Mr. Smith discloses the following health facility interest:
Autumn Woods Health Care Facility (Warren, MI) 01/2010 to present

Susan J. Smith is employed in regulatory affairs at Frito-Lay, in Plano Texas, since 1994. Ms. Smith discloses the following health facility interest:
Autumn Woods Health Care Facility (Warren, MI) 01/2010 to present

Michelle M. Smith is employed as the business office manager at Harris Hill Nursing Facility, since 1990. Ms. Smith discloses the following health facility interest:
Autumn Woods Health Care Facility (Warren, MI) 01/2010 to present

Lindsay J. Smith is an attorney in good standing practicing law with Cravath, Swaine & Moore LLP in New York. Ms. Smith has disclosed the following health facility interests.
Brookhaven Health Care Facility, LLC 01/2004 to present
Harris Hill Nursing Facility 01/2006 to present
Autumn Woods Health Care Facility (Warren, MI) 01/2010 to present

Jamie L. Smith is employed by KPMG, an audit, tax and advisory services firm, as an Audit Manager in Chicago, Illinois. She is an Illinois Certified Public Accountant in good standing. Ms. Smith has disclosed the following health facility interests.
Brookhaven Health Care Facility, LLC 01/2004 to present
Harris Hill Nursing Facility 01/2006 to present
Autumn Woods Health Care Facility (Warren, MI) 01/2010 to present

Elizabeth J. Wolf is a licensed registered nurse and nursing home administrator, in good standing in Michigan. Ms. Wolf is currently employed as the administrator and vice-president at Autumn Woods RHCF in Warren, Michigan, since 1982. She holds the following health facility interest:
Autumn Woods Health Care Facility (Warren, MI) 11/2012 to present

Michelle A. Miller is a licensed registered nurse in good standing in Michigan. Ms. Miller is the director of nursing at Autumn Woods RHCF in Warren, Michigan, since 1985. She discloses the following health facility interest:
Autumn Woods Health Care Facility (Warren, MI) 11/2012 to present

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants.

A review of the operations of Garden Gate Health Care Facility, LLC for the period indicated reveals the following:

- The facility paid a Civil Monetary Penalty of $4,800 resulting from surveillance findings on July 17, 2008. Deficiencies were found under 10 NYCRR 415.12(h) Quality of Care: Accidents.

A review of the operations of North Gate Health Care Facility, LLC for the period indicated reveals the following:

- The facility paid a Civil Monetary Penalty of $14,625 resulting from surveillance findings on September 30, 2005. Deficiencies were found under F272 Comprehensive Assessment, F 279 Comprehensive Care Plans, and F324 Accidents.

.
The review of the operations of Autumn Woods Health Care Facility, LLC (Warren, Michigan) reveals the following:

- On March 3, 2004 the facility paid a Civil Monetary Penalty of $4,875 for deficiencies related to the Life Safety Code including K52 and K130.
- On June 30, 2008 the facility paid a Civil Monetary Penalty of $7,900, subsequently reduced to $5,135, related to Substandard Quality of Care cited on a survey of April 18, 2008 for deficiencies found under F221 Resident Behavior and Facility Practices: Physical Restraints; the facility also paid a State Fine of $1,500 related to deficiencies cited on the April 18, 2008 survey.
- On August 18, 2010 the facility paid a Civil Monetary Penalty of $6,000, subsequently reduced to $3,900, related to Substandard Quality of Care cited on a survey of April 27, 2010, for deficiencies found under F323 Quality of Care: Accidents.
- On February 28, 2011 the facility paid a fine of $1,500 relating to a Michigan State survey of February 10, 2011 for M346 (Michigan tag).
- On April 22, 2011 the facility was cited for deficiencies found under F323 Quality of Care: Accidents and incurred a Civil Monetary Penalty of $250 per day.

The review of operations of Autumn Woods Health Care Facility, LLC, Garden Gate Health Care Facility, LLC and North Gate Health Care Facility, LLC results in a conclusion of substantially consistent high level of care, since there were no repeat enforcements.

The review of operations of Autumn View Health Care Facility, LLC, Brookhaven Health Care Facility, LLC, Harris Hill Nursing Facility, Smithtown Health care Facility, and Seneca Health Care Center, LLC results in a conclusion of a substantially consistent high level of care, since there were no enforcements for the time periods indicated.

Project Review

No changes in the program or physical environment are proposed in this application.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Amended Master Lease Agreement

The applicant will continue to occupy the premises under a draft amended master lease agreement to include the Michigan affiliate, Autumn Woods Residential Health Care Facility, Inc.

Capability and Feasibility

There are no project costs associated with this application.

BFA Attachment B presents the pro-forma balance sheet of Autumn View Health Care Facility, LLC. As shown, the facility will initiate operation with $ 6,615,164 in equity. It is noted that assets include $910,000 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Thus, equity would be reduced to $5,705,164.

BFA Attachment C is the summary of the McGuire Group financials as of November 30, 2012. BFA Attachment D and E are Autumn Woods RHCF's lease coverage ratio as of 11/30/2012 and sale/leaseback cost savings, respectively.

As shown on BFA Attachment A, Autumn View Health Care Facility had an average positive working capital position of $3,037,566, an average positive net equity position of $6,566,230 and maintained an average net income from operations of $1,961,967 in 2011-2012.

As shown on BFA Attachment F, Autumn Woods RHCF, LLC maintained positive working capital, net equity and a net operating income of $2,642,345 as of December 31, 2012.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Financial Summary- Autumn View Health Care Facility 2011 and 2012
BFA Attachment B	Pro-forma Balance Sheet
BFA Attachment C	Summary of McGuire Group Budgets
BFA Attachment D	Autumn Woods RHCF Lease Coverage Ratio
BFA Attachment E	Autumn Woods RHCF Sale/Leaseback Cost Savings
BFA Attachment F	Financial Summary-Autumn Woods RHCF for 2012

Public Health and Health Planning Council

Project # 131087-E
Brookhaven Health Care Facility, LLC

County: **Suffolk**
Purpose: **Establishment**
Program: **Residential Health Care Facility**
Acknowledged: **March 12, 2013**

Executive Summary

Description

Brookhaven Health Care Facility (BHHCF), an existing 160-bed proprietary LLC residential health care facility (RHCF), with respite care, located in Patchogue, entered into a Master Lease Agreement with their current landlord, Nationwide Health Properties, Inc. with five of its RHCF affiliates and is requesting to include a Michigan affiliate, Autumn Woods Residential Health Care Facility, LLC (AWRHCF), a 330-bed RHCF located in Warren. The real property which BHHCF leased for its operations from related entity Brookhaven Partnership was sold on January 12, 2011, to real estate investment trust Nationwide Health Properties, Inc. (NHP). BHHCF has entered into a long term sale/lease back arrangement with NHP. This Master Lease Agreement was approved by the New York State Health Department on February 16, 2012. The Michigan RHCF affiliate entered into the sale/leaseback arrangement on September 28, 2012.

The additional five RHCFs affiliated through the amended Master Lease Agreement with NHP and being concurrently reviewed are as follows:

CON 131086-E	Autumn View Health Care Facility
CON 131088-E	Garden Gate Health Care Facility
CON 131089-E	Harris Hill Nursing Facility
CON 131090-E	North Gate Health Care Facility
CON 131091-E	Seneca Health Care Center

The operators of each of the six New York State RHCFs and AWRHCF identified above are entering into the amended Master Lease Agreement solely to provide cross guarantees of each nursing home's lease obligations. The cross guarantee would provide sustaining support to a facility going through a period of financial difficulty. Under regulation NYCRR 600.9(c), such an agreement must be approved by PHHPC in order for an entity to participate in the total gross income or net revenue of a facility.

DOH Recommendation

Contingent Approval

Need Summary

As there will be no change to the operating certificate as a result of this application, no Need review is necessary.

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. The facility is in compliance with CMS 2013 sprinkler mandates.

Financial Summary

There are no project costs associated with this application.

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

Recommendations

Health Systems Agency
There will be no HSA recommendation of this application.

Office of Health Systems Management
Approval contingent upon:
1. Submission of a revised Operating Agreement for Autumn Woods Residential Health Care Facility, LLC, acceptable to the Department. [LTC]
2. Submission of a photocopy of a revised and executed amended and restated master lease, acceptable to the Department. [BFA, CSL]
3. Submission of a photocopy of an executed amended operating agreement of Autumn Woods Residential Health Care Facility, LLC, acceptable to the Department. [CSL]
4. Submission of a photocopy of an executed Certificate of Amendment of the Articles of Organization of Autumn Woods Residential Health Care Facility, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of an executed amended operating agreement of McGuire Group 1-B LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of an executed Certificate of Amendment of the Articles of Organization of McGuire Group 1-B LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of an executed amended Partnership Agreement of McGuire Partnership 1-A, acceptable to the Department. [CSL]

Approval conditional upon:
1. The project must be completed within one year from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date
December 12, 2013.

Programmatic Analysis

Facility Information

	Existing	Proposed	Michigan Nursing Home
Facility Name	Brookhaven Health Care Facility, LLC	Same	Autumn Woods Residential Health Care Facility
Address	801 Gazzola Blvd Patchogue, New York 11772	Same	29800 Hoover Road Warren, MI 48093
RHCF Capacity	160	Same	330
ADHCP Capacity	N/A	N/A	N/A
Type of Operator	LLC	LLC	LLC
Class of Operator	Proprietary	Proprietary	Proprietary
Operator	Brookhaven Health Care Facility, LLC Michael J McGuire 13.335% Kathleen McGuire 13.335% Jeannie M McGuire 13.335% F James McGuire 13.335% Jacqueline Gurney 13.335% Kelly McGuire 13.335% Lindsay J. Smith 9.995% Jamie L. Smith 9.995% Total 100.00 %	Same	Autumn Woods Residential Health Care Facility, LLC Members: **McGuire Group 1-B LLC 12.54%** F J McGuire (33 1/3%) C. McGuire (33 1/3%) J.M. Gurney (33 1/3%) **McGuire Partnership 1-A 12.54%** M J McGuire (33 1/3%) K M McGuire (33 1/3%) J M McGuire (33 1/3%) **Michelle Miller 0.20%** **Elizabeth Wolf 0.20%** **Donald J Smith 9.96%** **Michelle Smith 2.99%** **Donald J Smith Jr 2.99%** **Susan J Smith 2.99%** **Lindsay J Smith 2.99%** **Jamie L Smith 2.99%** **Kelly McGuire 10.67%** **Michael J McGuire 6.49%** **F James McGuire 6.49%** **Charlene McGuire 6.49%** **Jacqueline M Gurney 6.49%** **Jeannie McGuire 6.49%** **Kathleen M McGuire 6.49%** **Total 100.00%**

The applicant requests approval to include a Michigan affiliated nursing home, Autumn Woods Residential Health Care Facility, LLC, in the previously approved Master Lease agreement with Brookhaven and five other affiliated New York nursing facilities.

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Autumn View Health Care Facility, LCC	05/2003 to present
Brookhaven Health Care Facility, LLC	01/2004 to present

Garden Gate Health Care Facility	05/2003 to present
Harris Hill Nursing Facility, LLC	01/2006 to present
North Gate Health Care Facility	05/2003 to present
Seneca Health Care Center	05/2003 to present
Smithtown Health care Facility	05/2003 to present
Autumn Woods Health Care Facility (Warren, MI)	05/2003 to present

Other Health Related Entities
McGuire Group Pharmacy, Inc.

Individual Background Review

Francis James McGuire is the president and CEO of the McGuire Group, Inc., a nursing facility management company located in Buffalo, NY. He is a licensed nursing home administrator with an inactive license. Mr. McGuire discloses the following health facility interests:

Brookhaven Health Care Facility, LLC	01/2004 to present
North Gate Health Care Facility, LLC	03/2003 to present
Seneca Health Care Center, LLC	03/2003 to present
Autumn View Health Care Facility, LLC	03/2003 to present
Garden Gate Health Care Facility, LLC	03/2003 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2000 to present

Charlene (Beckett, McGuire-Ruiz) **McGuire** shows no employment in the past ten years. Ms. McGuire discloses the following health facility interest:

Autumn Woods Health Care Facility (Warren, MI)	01/2000 to present

Jacqueline McGuire Gurney is an attorney in good standing practicing law with the Erie County Family Court since 2008. Ms. McGuire discloses the following health facility interests:

Brookhaven Health Care Facility, LLC	01/2004 to present
North Gate Health Care Facility, LLC	03/2003 to present
Seneca Health Care Center, LLC	03/2003 to present
Autumn View Health Care Facility, LLC	03/2003 to present
Garden Gate Health Care Facility, LLC	03/2003 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2000 to present

Michael J. McGuire is employed as an insurance sales agent. Mr. McGuire discloses the following health facility interests:

Brookhaven Health Care Facility, LLC	01/2004 to present
North Gate Health Care Facility, LLC	03/2003 to present
Seneca Health Care Center, LLC	03/2003 to present
Autumn View Health Care Facility, LLC	03/2003 to present
Garden Gate Health Care Facility, LLC	03/2003 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2000 to present

Jeannie M. McGuire is retired since 2010. Ms. McGuire discloses the following health facility interests:

Brookhaven Health Care Facility, LLC	01/2004 to present
North Gate Health Care Facility, LLC	03/2003 to present
Seneca Health Care Center, LLC	03/2003 to present
Autumn View Health Care Facility, LLC	03/2003 to present
Garden Gate Health Care Facility, LLC	03/2003 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2000 to present

Kathleen (Casero) **McGuire** retired in December 2012 from Northrup Grumman, a defense contractor located in Maryland, where she was employed as an engineering manager since 1984. Ms. McGuire discloses the following health facility interests:

Brookhaven Health Care Facility, LLC	01/2004 to present
North Gate Health Care Facility, LLC	03/2003 to present
Seneca Health Care Center, LLC	03/2003 to present
Autumn View Health Care Facility, LLC	03/2003 to present
Garden Gate Health Care Facility, LLC	03/2003 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2000 to present

Kelly McGuire is presently attending Portland State University as a graduate student. Ms. McGuire discloses the following health facility interests:

Brookhaven Health Care Facility, LLC	01/2004 to present
North Gate Health Care Facility, LLC	03/2003 to present
Seneca Health Care Center, LLC	03/2003 to present
Autumn View Health Care Facility, LLC	03/2003 to present
Garden Gate Health Care Facility, LLC	03/2003 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2000 to present

Donald J. Smith retired in 2008 from The McGuire Group, Inc., a nursing home management firm, where he was the executive director since 1968. Mr. Smith discloses the following health facility interests:

Autumn Woods Health Care Facility (Warren, MI)	01/2010 to present
Harris Hill Nursing Facility LLC	01/1992 to 12/2005
Smithtown Health care Facility	01/1992 to present
Brookhaven HCF, LLC	01/1996 to 12/2003

Donald J. Smith, Jr. is employed as a software developer, since 2005, by Office Ally, a medical information technology firm in California. Mr. Smith discloses the following health facility interest:

Autumn Woods Health Care Facility (Warren, MI)	01/2010 to present

Susan J. Smith is employed in regulatory affairs at Frito-Lay, in Plano Texas, since 1994. Ms. Smith discloses the following health facility interest:

Autumn Woods Health Care Facility (Warren, MI)	01/2010 to present

Michelle M. Smith is employed as the business office manager at Harris Hill Nursing Facility, since 1990. Ms. Smith discloses the following health facility interest:

Autumn Woods Health Care Facility (Warren, MI)	01/2010 to present

Lindsay J. Smith is an attorney in good standing practicing law with Cravath, Swaine & Moore LLP in New York. Ms. Smith has disclosed the following health facility interests.

Brookhaven Health Care Facility, LLC	01/2004 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2010 to present

Jamie L. Smith is employed by KPMG, an audit, tax and advisory services firm, as an Audit Manager in Chicago, Illinois. She is an Illinois Certified Public Accountant in good standing. Ms. Smith has disclosed the following health facility interests.

Brookhaven Health Care Facility, LLC	01/2004 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2010 to present

Elizabeth J. Wolf is a licensed registered nurse and nursing home administrator, in good standing in Michigan. Ms. Wolf is currently employed as the administrator and vice-president at Autumn Woods RHCF in Warren, Michigan, since 1982. She holds the following health facility interest:

Autumn Woods Health Care Facility (Warren, MI)	11/2012 to present

Michelle A. Miller is a licensed registered nurse in good standing in Michigan. Ms. Miller is the director of nursing at Autumn Woods RHCF in Warren, Michigan, since 1985. She discloses the following health facility interest:

Autumn Woods Health Care Facility (Warren, MI) 11/2012 to present

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants.

A review of the operations of Garden Gate Health Care Facility, LLC for the period indicated reveals the following:

- The facility paid a Civil Monetary Penalty of $4,800 resulting from surveillance findings on July 17, 2008. Deficiencies were found under 10 NYCRR 415.12(h) Quality of Care: Accidents.

A review of the operations of North Gate Health Care Facility, LLC for the period indicated reveals the following:

- The facility paid a Civil Monetary Penalty of $14,625 resulting from surveillance findings on September 30, 2005. Deficiencies were found under F272 Comprehensive Assessment, F 279 Comprehensive Care Plans, and F324 Accidents.

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The review of the operations of Autumn Woods Health Care Facility, LLC (Warren, Michigan) reveals the following:

- On March 3, 2004 the facility paid a Civil Monetary Penalty of $4,875 for deficiencies related to the Life Safety Code including K52 and K130.
- On June 30, 2008 the facility paid a Civil Monetary Penalty of $7,900, subsequently reduced to $5,135, related to Substandard Quality of Care cited on a survey of April 18, 2008 for deficiencies found under F221 Resident Behavior and Facility Practices: Physical Restraints; the facility also paid a State Fine of $1,500 related to deficiencies cited on the April 18, 2008 survey.
- On August 18, 2010 the facility paid a Civil Monetary Penalty of $6,000, subsequently reduced to $3,900, related to Substandard Quality of Care cited on a survey of April 27, 2010, for deficiencies found under F323 Quality of Care: Accidents.
- On February 28, 2011 the facility paid a fine of $1,500 relating to a Michigan State survey of February 10, 2011 for M346 (Michigan tag).
- On April 22, 2011 the facility was cited for deficiencies found under F323 Quality of Care: Accidents and incurred a Civil Monetary Penalty of $250 per day.

The review of operations of Autumn Woods Health Care Facility, LLC, Garden Gate Health Care Facility, LLC and North Gate Health Care Facility, LLC results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements.

The review of operations of Autumn View Health Care Facility, LLC, Brookhaven Health Care Facility, LLC, Harris Hill Nursing Facility, Smithtown Health care Facility, and Seneca Health Care Center, LLC results in a conclusion of substantially consistent high level of care since there were no enforcements for the time periods indicated.

Project Review

No changes in the program or physical environment are proposed in this application.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Amended Master Lease Agreement

The applicant will continue to occupy the premises under a draft amended Master Lease Agreement to include the Michigan affiliate, Autumn Woods Residential Health Care Facility, Inc.

Capability and Feasibility

There is no project cost associated with this application.

BFA Attachment B presents the pro-forma balance sheet of Brookhaven Health Care Facility, LLC. As shown, the facility will initiate operation with $ 6,238,236 in equity. It is noted that assets include $130,423 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Thus, equity would be reduced to $6,107,813.

BFA Attachment C is the summary of the McGuire Group financials as of November 30, 2012. BFA Attachment D and E are Autumn Woods RHCF's lease coverage ratio as of 11/30/2012 and sale/leaseback cost savings, respectively.

As shown on BFA Attachment A, Brookhaven Health Care Facility had an average positive working capital position of $4,003,430, an average positive net equity position of $5,983,933 and maintained an average net income from operations of $1,444,838 in 2011-2012.

As shown on BFA Attachment F, Autumn Woods RHCF, LLC maintained positive working capital, net equity and a net operating income of $2,642,345 as of December 31, 2012.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Financial Summary- Brookhaven Health Care Facility for 2011 and 2012
BFA Attachment B	Pro-forma Balance Sheet
BFA Attachment C	Summary of McGuire Group Budgets
BFA Attachment D	Autumn Woods RHCF Lease Coverage Ratio
BFA Attachment E	Autumn Woods RHCF Sale/Leaseback Cost Savings
BFA Attachment F	Financial Summary-Autumn Woods RHCF for 2012

Public Health and Health Planning Council

Project # 131088-E
Garden Gate Health Care Facility

County: **Erie**	***Program:*** **Residential Health Care Facility**
Purpose: **Establishment**	***Acknowledged:*** **March 12, 2013**

Executive Summary

Description

Garden Gate Health Care Facility (GGHCF), an existing 184-bed proprietary LLC residential health care facility (RHCF), with respite care, located in Cheektowaga, entered into a Master Lease Agreement with their current landlord, Nationwide Health Properties, Inc. with five of its RHCF affiliates and is requesting to include a Michigan affiliate, Autumn Woods Residential Health Care Facility, LLC (AWRHCF), a 330-bed RHCF located in Warren. The real property which GGHCF leased for its operations from related entity Garden Gate Partnership was sold on January 12, 2011, to real estate investment trust Nationwide Health Properties, Inc. (NHP). GGHCF has entered into a long term sale/lease back arrangement with NHP. This Master Lease Agreement was approved by the New York State Health Department on February 16, 2012. The Michigan RHCF affiliate entered into the sale/leaseback arrangement on September 28, 2012.

The additional five RHCFs affiliated through the amended Master Lease Agreement with NHP and being concurrently reviewed are as follows:

CON 131086-E	Autumn View Health Care Facility
CON 131087-E	Brookhaven Health Care Facility
CON 131089-E	Harris Hill Nursing Facility
CON 131090-E	North Gate Health Care Facility
CON 131091-E	Seneca Health Care Center

The operators of each of the six New York State RHCFs and AWRHCF identified above are entering into the amended Master Lease Agreement solely to provide cross guarantees of each nursing home's lease obligations. The cross guarantee would provide sustaining support to a facility going through a period of financial difficulty. Under regulation NYCRR 600.9(c), such an agreement must be approved by PHHPC in order for an entity to participate in the total gross income or net revenue of a facility.

DOH Recommendation

Contingent Approval

Need Summary

As there will be no change to the operating certificate as a result of this application, no Need review is necessary.

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. The facility is in compliance with CMS 2013 sprinkler mandates.

Financial Summary

There are no project costs associated with this application.

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

Recommendations

Health Systems Agency
There will be no HSA recommendation of this application

Office of Health Systems Management
Approval contingent upon:
1. Submission of a revised Operating Agreement for Autumn Woods Residential Health Care Facility, LLC, acceptable to the Department. [LTC]
2. Submission of an executed amended Master Lease Agreement, acceptable to the Department. [BFA]
3. Submission of a photocopy of an executed amended operating agreement of Autumn Woods Residential Health Care Facility, LLC, acceptable to the Department. [CSL]
4. Submission of a photocopy of an executed Certificate of Amendment of the Articles of Organization of Autumn Woods Residential Health Care Facility, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of an executed amended operating agreement of McGuire Group 1-B LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of an executed Certificate of Amendment of the Articles of Organization of McGuire Group 1-B LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of an executed amended Partnership Agreement of McGuire Partnership 1-A, acceptable to the Department. [CSL]
8. Submission of a photocopy of a revised and executed amended and restated master lease, acceptable to the Department. [CSL]

Approval conditional upon:
1. The project must be completed within one year from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date
December 12, 2013.

Programmatic Analysis

Facility Information

	Existing	Proposed	Michigan Nursing Home
Facility Name	Garden Gate Health Care Facility	Same	Autumn Woods Residential Health Care Facility
Address	2365 Union Road Cheektowaga, NY 14227	Same	29800 Hoover Road Warren, MI 48093
RHCF Capacity	184	Same	330
ADHCP Capacity	N/A	N/A	N/A
Type of Operator	LLC	LLC	LLC
Class of Operator	Proprietary	Proprietary	Proprietary
Operator	Garden Gate Health Care Facility LLC Michael J McGuire 16.233% Kathleen McGuire 16.233% Jeannie M McGuire 16.233% F James McGuire 16.233% Jacqueline Gurney 16.233% Kelly McGuire 16.233% Stephen M Mercurio 2.602% Total 100.00 %	Same	Autumn Woods Residential Health Care Facility, LLC Members: **McGuire Group 1-B LLC 12.54%** F J McGuire (33 1/3%) C. McGuire (33 1/3%) J.M. Gurney (33 1/3%) **McGuire Partnership 1-A 12.54%** M J McGuire (33 1/3%) K M McGuire (33 1/3%) J M McGuire (33 1/3%) **Michelle Miller 0.20%** **Elizabeth Wolf 0.20%** **Donald J Smith 9.96%** **Michelle Smith 2.99%** **Donald J Smith Jr 2.99%** **Susan J Smith 2.99%** **Lindsay J Smith 2.99%** **Jamie L Smith 2.99%** **Kelly McGuire 10.67%** **Michael J McGuire 6.49%** **F James McGuire 6.49%** **Charlene McGuire 6.49%** **Jacqueline M Gurney 6.49%** **Jeannie McGuire 6.49%** **Kathleen M McGuire 6.49%** **Total 100.00%**

The applicant requests approval to include a Michigan affiliated nursing home, Autumn Woods Residential Health Care Facility, LLC, in the previously approved Master Lease agreement with Garden Gate and five other affiliated New York nursing facilities.

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Autumn View Health Care Facility, LCC	05/2003 to present
Brookhaven Health Care Facility, LLC	01/2004 to present
Garden Gate Health Care Facility	05/2003 to present
Harris Hill Nursing Facility, LLC	01/2006 to present
North Gate Health Care Facility	05/2003 to present
Seneca Health Care Center	05/2003 to present
Smithtown Health care Facility	05/2003 to present
Autumn Woods Health Care Facility (Warren, MI)	05/2003 to present

Other Health Related Entities

McGuire Group Pharmacy, Inc.

Individual Background Review

Francis James McGuire is the president and CEO of the McGuire Group, Inc., a nursing facility management company located in Buffalo, NY. He is a licensed nursing home administrator with an inactive license. Mr. McGuire discloses the following health facility interests:

Brookhaven Health Care Facility, LLC	01/2004 to present
North Gate Health Care Facility, LLC	03/2003 to present
Seneca Health Care Center, LLC	03/2003 to present
Autumn View Health Care Facility, LLC	03/2003 to present
Garden Gate Health Care Facility, LLC	03/2003 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2000 to present

Charlene (Beckett, McGuire-Ruiz) **McGuire** shows no employment in the past ten years. Ms. McGuire discloses the following health facility interest:

Autumn Woods Health Care Facility (Warren, MI)	01/2000 to present

Jacqueline McGuire Gurney is an attorney in good standing practicing law with the Erie County Family Court since 2008. Ms. McGuire discloses the following health facility interests:

Brookhaven Health Care Facility, LLC	01/2004 to present
North Gate Health Care Facility, LLC	03/2003 to present
Seneca Health Care Center, LLC	03/2003 to present
Autumn View Health Care Facility, LLC	03/2003 to present
Garden Gate Health Care Facility, LLC	03/2003 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2000 to present

Michael J. McGuire is employed as an insurance sales agent. Mr. McGuire discloses the following health facility interests:

Brookhaven Health Care Facility, LLC	01/2004 to present
North Gate Health Care Facility, LLC	03/2003 to present
Seneca Health Care Center, LLC	03/2003 to present
Autumn View Health Care Facility, LLC	03/2003 to present
Garden Gate Health Care Facility, LLC	03/2003 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2000 to present

Jeannie M. McGuire is retired since 2010. Ms. McGuire discloses the following health facility interests:

Brookhaven Health Care Facility, LLC	01/2004 to present
North Gate Health Care Facility, LLC	03/2003 to present
Seneca Health Care Center, LLC	03/2003 to present

Autumn View Health Care Facility, LLC	03/2003 to present
Garden Gate Health Care Facility, LLC	03/2003 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2000 to present

Kathleen (Casero) **McGuire** retired in December 2012 from Northrup Grumman, a defense contractor located in Maryland, where she was employed as an engineering manager since 1984. Ms. McGuire discloses the following health facility interests:

Brookhaven Health Care Facility, LLC	01/2004 to present
North Gate Health Care Facility, LLC	03/2003 to present
Seneca Health Care Center, LLC	03/2003 to present
Autumn View Health Care Facility, LLC	03/2003 to present
Garden Gate Health Care Facility, LLC	03/2003 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2000 to present

Kelly McGuire is presently attending Portland State University as a graduate student. Ms. McGuire discloses the following health facility interests:

Brookhaven Health Care Facility, LLC	01/2004 to present
North Gate Health Care Facility, LLC	03/2003 to present
Seneca Health Care Center, LLC	03/2003 to present
Autumn View Health Care Facility, LLC	03/2003 to present
Garden Gate Health Care Facility, LLC	03/2003 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2000 to present

Donald J. Smith retired in 2008 from The McGuire Group, Inc., a nursing home management firm, where he was the executive director since 1968. Mr. Smith discloses the following health facility interests:

Autumn Woods Health Care Facility (Warren, MI)	01/2010 to present
Harris Hill Nursing Facility LLC	01/1992 to 12/2005
Smithtown Health care Facility	01/1992 to present
Brookhaven HCF, LLC	01/1996 to 12/2003

Donald J. Smith, Jr. is employed as a software developer, since 03/01/2005, by Office Ally, a medical information technology firm in California. Mr. Smith discloses the following health facility interest:

Autumn Woods Health Care Facility (Warren, MI)	01/2010 to present

Susan J. Smith is employed in regulatory affairs at Frito-Lay, in Plano Texas, since 1994. Ms. Smith discloses the following health facility interest:

Autumn Woods Health Care Facility (Warren, MI)	01/2010 to present

Michelle M. Smith is employed as the business office manager at Harris Hill Nursing Facility, since 1990. Ms. Smith discloses the following health facility interest:

Autumn Woods Health Care Facility (Warren, MI)	01/2010 to present

Lindsay J. Smith is an attorney in good standing practicing law with Cravath, Swaine & Moore LLP in New York. Ms. Smith has disclosed the following health facility interests.

Brookhaven Health Care Facility, LLC	01/2004 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2010 to present

Jamie L. Smith is employed by KPMG, an audit, tax and advisory services firm, as an Audit Manager in Chicago, Illinois. She is an Illinois Certified Public Accountant in good standing. Ms. Smith has disclosed the following health facility interests.

Brookhaven Health Care Facility, LLC	01/2004 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2010 to present

Elizabeth J. Wolf is a licensed registered nurse and nursing home administrator, in good standing in Michigan. Ms. Wolf is currently employed as the administrator and vice-president at Autumn Woods RHCF in Warren, Michigan, since 1982. She holds the following health facility interest:
Autumn Woods Health Care Facility (Warren, MI) 11/2012 to present

Michelle A. Miller is a licensed registered nurse in good standing in Michigan. Ms. Miller is the director of nursing at Autumn Woods RHCF in Warren, Michigan, since 1985. She discloses the following health facility interest:
Autumn Woods Health Care Facility (Warren, MI) 11/2012 to present

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants.

A review of the operations of Garden Gate Health Care Facility, LLC for the period indicated reveals the following:

- The facility paid a Civil Monetary Penalty of $4,800 resulting from surveillance findings on July 17, 2008. Deficiencies were found under 10 NYCRR 415.12(h) Quality of Care: Accidents.

A review of the operations of North Gate Health Care Facility, LLC for the period indicated reveals the following:

- The facility paid a Civil Monetary Penalty of $14,625 resulting from surveillance findings on September 30, 2005. Deficiencies were found under F272 Comprehensive Assessment, F 279 Comprehensive Care Plans, and F324 Accidents.

.
The review of the operations of Autumn Woods Health Care Facility, LLC (Warren, Michigan) reveals the following:

- On March 3, 2004 the facility paid a Civil Monetary Penalty of $4,875 for deficiencies related to the Life Safety Code including K52 and K130.
- On June 30, 2008 the facility paid a Civil Monetary Penalty of $7,900, subsequently reduced to $5,135, related to Substandard Quality of Care cited on a survey of April 18, 2008 for deficiencies found under F221 Resident Behavior and Facility Practices: Physical Restraints; the facility also paid a State Fine of $1,500 related to deficiencies cited on the April 18, 2008 survey.
- On August 18, 2010 the facility paid a Civil Monetary Penalty of $6,000, subsequently reduced to $3,900, related to Substandard Quality of Care cited on a survey of April 27, 2010, for deficiencies found under F323 Quality of Care: Accidents.
- On February 28, 2011 the facility paid a fine of $1,500 relating to a Michigan State survey of February 10, 2011 for M346 (Michigan tag).
- On April 22, 2011 the facility was cited for deficiencies found under F323 Quality of Care: Accidents and incurred a Civil Monetary Penalty of $250 per day.

The review of operations of Autumn Woods Health Care Facility, LLC, Garden Gate Health Care Facility, LLC and North Gate Health Care Facility, LLC results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements.

The review of operations of Autumn View Health Care Facility, LLC, Brookhaven Health Care Facility, LLC, Harris Hill Nursing Facility, Smithtown Health care Facility, and Seneca Health Care Center, LLC results in a conclusion of a substantially consistent high level of care, since there were no enforcements for the time periods indicated.

Project Review

No changes in the program or physical environment are proposed in this application.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Amended Master Lease Agreement

The applicant will continue to occupy the premises under a draft amended Master Lease Agreement to include the Michigan affiliate, Autumn Woods Residential Health Care Facility, Inc.

Capability and Feasibility

There is no project cost associated with this application.

BFA Attachment B presents the pro-forma balance sheet of Garden Gate Health Care Facility, LLC. As shown, the facility will initiate operation with $ 3,963,904 in equity. It is noted that assets include $325,000 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Thus, equity would be reduced to $3,638,904.

BFA Attachment C is the summary of the McGuire Group financials as of November 30, 2012. BFA Attachment D and E are Autumn Woods RHCF's lease coverage ratio as of 11/30/2012 and sale/leaseback cost savings, respectively.

As shown on BFA Attachment A, Garden Gate Health Care Facility had an average positive working capital position of $2,788,708, an average positive net equity position of $4,635,533 and maintained an average net income from operations of $1,641,694 in 2011-2012.

As shown on BFA Attachment F, Autumn Woods RHCF, LLC maintained positive working capital, net equity and a net operating income of $2,642,345 as of December 31, 2012.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Financial Summary- Garden Gate Health Care Facility for 2011-2012
BFA Attachment B	Pro-forma Balance Sheet
BFA Attachment C	Summary of McGuire Group Budgets
BFA Attachment D	Autumn Woods RHCF Lease Coverage Ratio
BFA Attachment E	Autumn Woods RHCF Sale/Leaseback Cost Savings
BFA Attachment F	Financial Summary-Autumn Woods RHCF for 2012

Public Health and Health Planning Council

Project # 131089-E
Harris Hill Nursing Facility, LLC

County: **Erie**
Purpose: **Establishment**
Program: **Residential Health Care Facility**
Acknowledged: **March 12, 2013**

Executive Summary

Description

Harris Hill Nursing Facility (HHNF), an existing 192-bed proprietary LLC residential health care facility (RHCF), with respite care, located in Williamsville, entered into a Master Lease Agreement with their current landlord, Nationwide Health Properties, Inc. with five of its RHCF affiliates, and is requesting to include a Michigan affiliate, Autumn Woods Residential Health Care Facility, LLC (AWRHCF), a 330-bed RHCF located in Warren. The real property which HHNF leased for its operations from related entity Harris Hill Nursing Facility, LLC was sold on January 12, 2011, to real estate investment trust Nationwide Health Properties, Inc. (NHP). HHNF has entered into a long term sale/ lease back arrangement with NHP. This Master Lease Agreement was approved by the New York State Health Department on February 16, 2012. The Michigan RHCF affiliate entered into the sale/leaseback arrangement on September 28, 2012.

The five additional RHCFs affiliated through the amended Master Lease Agreement with NHP and being concurrently reviewed are as follows:

CON 131086-E	Autumn View Health Care Facility
CON 131087-E	Brookhaven Health Care Facility
CON 131088-E	Garden Gate Health Care Facility
CON 131090-E	North Gate Health Care Facility
CON 131091-E	Seneca Health Care Center

The operators of each of the six New York State RHCFs and AWRHCF identified above are entering into the amended Master Lease Agreement solely to provide cross guarantees of each nursing home's lease obligations. The cross guarantee would provide sustaining support to a facility going through a period of financial difficulty. Under regulation NYCRR 600.9(c), such an agreement must be approved by PHHPC in order for an entity to participate in the total gross income or net revenue of a facility.

DOH Recommendation

Contingent Approval

Need Summary

As there will be no change to the operating certificate as a result of this application, no Need review is necessary.

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. The facility is in compliance with CMS 2013 sprinkler mandates.

Financial Summary

There are no project costs associated with this application.

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

Recommendations

Health Systems Agency
There will be no HSA recommendation of this application.

Office of Health Systems Management
Approval contingent upon:
1. Submission of a revised acceptable Operating Agreement for Autumn Woods Residential Health Care Facility, LLC, acceptable to the Department. [LTC]
2. Submission of an executed amended Master Lease Agreement, acceptable to the Department. [BFA]
3. Submission of a photocopy of an executed amended operating agreement of Autumn Woods Residential Health Care Facility, LLC, acceptable to the Department. [CSL]
4. Submission of a photocopy of an executed Certificate of Amendment of the Articles of Organization of Autumn Woods Residential Health Care Facility, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of an executed amended operating agreement of McGuire Group 1-B LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of an executed Certificate of Amendment of the Articles of Organization of McGuire Group 1-B LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of an executed amended Partnership Agreement of McGuire Partnership 1-A, acceptable to the Department. [CSL]
8. Submission of a photocopy of a revised and executed amended and restated master lease, acceptable to the Department. [CSL]

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]

Council Action Date
December 12, 2013.

Programmatic Analysis

Facility Information

	Existing	Proposed	Michigan Nursing Home
Facility Name	Harris Hill Nursing Facility, LLC	Same	Autumn Woods Residential Health Care Facility
Address	2699 Wehrle Drive Williamsville, New York 14221	Same	29800 Hoover Road Warren, MI 48093
RHCF Capacity	192	Same	330
ADHCP Capacity	N/A	N/A	N/A
Type of Operator	LLC	LLC	LLC
Class of Operator	Proprietary	Proprietary	Proprietary
Operator	Harris Hill Nursing Facility, LLC Members: Michael J. McGuire 13.7275% Kathleen McGuire 13.7275% Jeannie M. McGuire 13.7275% F. James McGuire 13.7275% Jacqueline M Gurney 13.7275% Kelly McGuire 13.7275% Stephen M. Mercurio 3.1000% Lindsay J. Smith 7.2675% Jamie L. Smith 7.2675% Total 100.00 %	Same	Autumn Woods Residential Health Care Facility, LLC Members: **McGuire Group 1-B LLC 12.54%** F J McGuire (33 1/3%) C. McGuire (33 1/3%) J.M. Gurney (33 1/3%) **McGuire Partnership 1-A 12.54%** M J McGuire (33 1/3%) K M McGuire (33 1/3%) J M McGuire (33 1/3%) **Michelle Miller 0 .20%** **Elizabeth Wolf 0.20%** **Donald J Smith 9.96%** **Michelle Smith 2.99%** **Donald J Smith Jr 2.99%** **Susan J Smith 2.99%** **Lindsay J Smith 2.99%** **Jamie L Smith 2.99%** **Kelly McGuire 10.67%** **Michael J McGuire 6.49%** **F James McGuire 6.49%** **Charlene McGuire 6.49%** **Jacqueline M Gurney 6.49%** **Jeannie McGuire 6.49%** **Kathleen M McGuire 6.49%** **Total 100.00%**

The applicant requests approval to include a Michigan affiliated nursing home, Autumn Woods Residential Health Care Facility, LLC, in the previously approved Master Lease agreement with Harris Hill and five other affiliated New York nursing facilities.

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Autumn View Health Care Facility, LCC	05/2003 to present
Brookhaven Health Care Facility, LLC	01/2004 to present
Garden Gate Health Care Facility	05/2003 to present
Harris Hill Nursing Facility, LLC	01/2006 to present
North Gate Health Care Facility	05/2003 to present
Seneca Health Care Center	05/2003 to present
Smithtown Health care Facility	05/2003 to present
Autumn Woods Health Care Facility (Warren, MI)	05/2003 to present

Other Health Related Entities

McGuire Group Pharmacy, Inc.

Individual Background Review

Francis James McGuire is the president and CEO of the McGuire Group, Inc., a nursing facility management company located in Buffalo, NY. He is a licensed nursing home administrator with an inactive license. Mr. McGuire discloses the following health facility interests:

Brookhaven Health Care Facility, LLC	01/2004 to present
North Gate Health Care Facility, LLC	03/2003 to present
Seneca Health Care Center, LLC	03/2003 to present
Autumn View Health Care Facility, LLC	03/2003 to present
Garden Gate Health Care Facility, LLC	03/2003 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2000 to present

Charlene (Beckett, McGuire-Ruiz) **McGuire** shows no employment in the past ten years. Ms. McGuire discloses the following health facility interest:

Autumn Woods Health Care Facility (Warren, MI)	01/2000 to present

Jacqueline McGuire Gurney is an attorney in good standing practicing law with the Erie County Family Court since 2008. Ms. McGuire discloses the following health facility interests:

Brookhaven Health Care Facility, LLC	01/2004 to present
North Gate Health Care Facility, LLC	03/2003 to present
Seneca Health Care Center, LLC	03/2003 to present
Autumn View Health Care Facility, LLC	03/2003 to present
Garden Gate Health Care Facility, LLC	03/2003 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2000 to present

Michael J. McGuire is employed as an insurance sales agent. Mr. McGuire discloses the following health facility interests:

Brookhaven Health Care Facility, LLC	01/2004 to present
North Gate Health Care Facility, LLC	03/2003 to present
Seneca Health Care Center, LLC	03/2003 to present
Autumn View Health Care Facility, LLC	03/2003 to present
Garden Gate Health Care Facility, LLC	03/2003 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2000 to present

Jeannie M. McGuire is retired since 2010. Ms. McGuire discloses the following health facility interests:

Brookhaven Health Care Facility, LLC	01/2004 to present
North Gate Health Care Facility, LLC	03/2003 to present
Seneca Health Care Center, LLC	03/2003 to present
Autumn View Health Care Facility, LLC	03/2003 to present
Garden Gate Health Care Facility, LLC	03/2003 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2000 to present

Kathleen (Casero) **McGuire** retired in December 2012 from Northrup Grumman, a defense contractor located in Maryland, where she was employed as an engineering manager since 1984. Ms. McGuire discloses the following health facility interests:

Brookhaven Health Care Facility, LLC	01/2004 to present
North Gate Health Care Facility, LLC	03/2003 to present
Seneca Health Care Center, LLC	03/2003 to present
Autumn View Health Care Facility, LLC	03/2003 to present
Garden Gate Health Care Facility, LLC	03/2003 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2000 to present

Kelly McGuire is presently attending Portland State University as a graduate student. Ms. McGuire discloses the following health facility interests:

Brookhaven Health Care Facility, LLC	01/2004 to present
North Gate Health Care Facility, LLC	03/2003 to present
Seneca Health Care Center, LLC	03/2003 to present
Autumn View Health Care Facility, LLC	03/2003 to present
Garden Gate Health Care Facility, LLC	03/2003 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2000 to present

Donald J. Smith retired in 2008 from The McGuire Group, Inc., a nursing home management firm, where he was the executive director since 1968. Mr. Smith discloses the following health facility interests:

Autumn Woods Health Care Facility (Warren, MI)	01/2010 to present
Harris Hill Nursing Facility LLC	01/1992 to 12/2005
Smithtown Health care Facility	01/1992 to present
Brookhaven HCF, LLC	01/1996 to 12/2003

Donald J. Smith, Jr. is employed as a software developer, since 03/01/2005, by Office Ally, a medical information technology firm in California. Mr. Smith discloses the following health facility interest:

Autumn Woods Health Care Facility (Warren, MI)	01/2010 to present

Susan J. Smith is employed in regulatory affairs at Frito-Lay, in Plano Texas, since 1994. Ms. Smith discloses the following health facility interest:

Autumn Woods Health Care Facility (Warren, MI)	01/2010 to present

Michelle M. Smith is employed as the business office manager at Harris Hill Nursing Facility, since 1990. Ms. Smith discloses the following health facility interest:

Autumn Woods Health Care Facility (Warren, MI)	01/2010 to present

Lindsay J. Smith is an attorney in good standing practicing law with Cravath, Swaine & Moore LLP in New York. Ms. Smith has disclosed the following health facility interests.

Brookhaven Health Care Facility, LLC	01/2004 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2010 to present

Jamie L. Smith is employed by KPMG, an audit, tax and advisory services firm, as an Audit Manager in Chicago, Illinois. She is an Illinois Certified Public Accountant in good standing. Ms. Smith has disclosed the following health facility interests.

Brookhaven Health Care Facility, LLC	01/2004 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2010 to present

Elizabeth J. Wolf is a licensed registered nurse and nursing home administrator, both in good standing in Michigan. Ms. Wolf is currently employed as the administrator and vice-president at Autumn Woods RHCF in Warren, Michigan, since 1982. She holds the following health facility interest:

Autumn Woods Health Care Facility (Warren, MI)	11/2012 to present

Michelle A. Miller is a licensed registered nurse in good standing in Michigan. Ms. Miller is the director of nursing at Autumn Woods RHCF in Warren, Michigan, since 1985. She discloses the following health facility interest:

Autumn Woods Health Care Facility (Warren, MI)	11/2012 to present

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of the operations of Garden Gate Health Care Facility, LLC for the period indicated reveals the following:

- The facility paid a Civil Monetary Penalty of $4,800 resulting from surveillance findings on July 17, 2008. Deficiencies were found under 10 NYCRR 415.12(h) Quality of Care: Accidents.

A review of the operations of North Gate Health Care Facility, LLC for the period indicated reveals the following:

- The facility paid a Civil Monetary Penalty of $14,625 resulting from surveillance findings on September 30, 2005. Deficiencies were found under F272 Comprehensive Assessment, F 279 Comprehensive Care Plans, and F324 Accidents.

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The review of the operations of Autumn Woods Health Care Facility, LLC (Warren, Michigan) reveals the following:

- On March 3, 2004 the facility paid a Civil Monetary Penalty of $4,875 for deficiencies related to the Life Safety Code including K52 and K130.
- On June 30, 2008 the facility paid a Civil Monetary Penalty of $7,900, subsequently reduced to $5,135, related to Substandard Quality of Care cited on a survey of April 18, 2008 for deficiencies found under F221 Resident Behavior and Facility Practices: Physical Restraints; the facility also paid a State Fine of $1,500 related to deficiencies cited on the April 18, 2008 survey.
- On August 18, 2010 the facility paid a Civil Monetary Penalty of $6,000, subsequently reduced to $3,900, related to Substandard Quality of Care cited on a survey of April 27, 2010, for deficiencies found under F323 Quality of Care: Accidents.
- On February 28, 2011 the facility paid a fine of $1,500 relating to a Michigan State survey of February 10, 2011 for M346 (Michigan tag).
- On April 22, 2011 the facility was cited for deficiencies found under F323 Quality of Care: Accidents and incurred a Civil Monetary Penalty of $250 per day.

The review of operations of Autumn Woods Health Care Facility, LLC, Garden Gate Health Care Facility, LLC and North Gate Health Care Facility, LLC results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements.

The review of operations of Autumn View Health Care Facility, LLC, Brookhaven Health Care Facility, LLC, Harris Hill Nursing Facility, Smithtown Health care Facility, and Seneca Health Care Center, LLC results in a conclusion of a substantially consistent high level of care, since there were no enforcements for the time periods indicated.

Project Review
No changes in the program or physical environment are proposed in this application.

Recommendation
From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Amended Master Lease Agreement
The applicant will continue to occupy the premises under a draft amended Master Lease Agreement to include the Michigan affiliate, Autumn Woods Residential Health Care Facility, Inc.

Capability and Feasibility
There is no project cost associated with this application.

BFA Attachment B presents the pro forma balance sheet of Harris Hill Nursing Facility, LLC. As shown, the facility will initiate operation with $ 9,030,883 in equity. It is noted that assets include $390,000 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Thus, equity would be reduced to $8,640,883.

BFA Attachment C is the summary of the McGuire Group financials as of November 30, 2012. BFA Attachment D and E are Autumn Woods RHCF's lease coverage ratio as of 11/30/2012 and sale/leaseback cost savings, respectively.

As shown on BFA Attachment A, Harris Hill Nursing Facility had an average positive working capital position of $6,485,510, an average positive net equity position of $9,442,408 and maintained an average net income from operations of $4,014,367 in 2011-2012.

As shown on BFA Attachment F, Autumn Woods RHCF, LLC maintained positive working capital, net equity and a net operating income of $2,642,345 as of December 31, 2012.

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

Recommendation
From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Financial Summary- Harris Hill Nursing Facility for 2011 and 2012
BFA Attachment B	Pro-forma Balance Sheet
BFA Attachment C	Summary of McGuire Group Budgets
BFA Attachment D	Autumn Woods RHCF Lease Coverage Ratio
BFA Attachment E	Autumn Woods RHCF Sale/Leaseback Cost Savings
BFA Attachment F	Financial Summary-Autumn Woods RHCF for 2012

Public Health and Health Planning Council

Project # 131090-E
North Gate Health Care Facility

County: **Niagara**
Purpose: **Establishment**
Program: **Residential Health Care Facility**
Acknowledged: **March 12, 2013**

Executive Summary

Description
North Gate Health Care Facility (NGHCF), an existing 200-bed proprietary LLC residential health care facility (RHCF), with respite care, located in North Tonawanda, entered into a Master Lease Agreement with their current landlord, Nationwide Health Properties, Inc. with five of its RHCF affiliates and is requesting to include a Michigan affiliate, Autumn Woods Residential Health Care Facility, LLC (AWRHCF), a 330-bed RHCF located in Warren. The real property, which NGHCF leased for its operations from related entity North Gate Manor Partnership, was sold on January 12, 2011, to real estate investment trust Nationwide Health Properties, Inc. (NHP). NGHCF has entered into a long term sale/ lease back arrangement with NHP. This Master Lease Agreement was approved by the New York State Health Department on February 16, 2012. The Michigan RHCF affiliate entered into the sale/leaseback arrangement on September 28, 2012.

The additional five RHCFs affiliated through the amended Master Lease Agreement with NHP and being concurrently reviewed are as follows:

CON 131086-E	Autumn View Health Care Facility
CON 131087-E	Brookhaven Health Care Facility
CON 131088-E	Garden Gate Health Care Facility
CON 131089-E	Harris Hill Nursing Facility
CON 131091-E	Seneca Health Care Center

The operators of each of the six New York State RHCFs and AWRHCF identified above are entering into the amended Master Lease Agreement solely to provide cross guarantees of each nursing home's lease obligations. The cross guarantee would provide sustaining support to a facility going through a period of financial difficulty. Under regulation NYCRR 600.9(c), such an agreement must be approved by the PHHPC in order for an entity to participate in the total gross income or net revenue of a facility.

DOH Recommendation
Contingent Approval

Need Summary
As there will be no change to the operating certificate as a result of this application, no Need review is necessary.

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. The facility is in compliance with CMS 2013 sprinkler mandates.

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

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

Recommendations

Health Systems Agency
There will be no HSA recommendation of this application.

Office of Health Systems Management
Approval contingent upon:
1. Submission of a revised acceptable Operating Agreement for Autumn Woods Residential Health Care Facility, LLC, acceptable to the Department. [LTC]
2. Submission of an executed amended Master Lease Agreement, acceptable to the Department. [BFA]
3. Submission of a photocopy of an executed amended operating agreement of Autumn Woods Residential Health Care Facility, LLC, acceptable to the Department. [CSL]
4. Submission of a photocopy of an executed Certificate of Amendment of the Articles of Organization of Autumn Woods Residential Health Care Facility, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of an executed amended operating agreement of McGuire Group 1-B LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of an executed Certificate of Amendment of the Articles of Organization of McGuire Group 1-B LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of an executed amended Partnership Agreement of McGuire Partnership 1-A, acceptable to the Department. [CSL]
8. Submission of a photocopy of a revised and executed amended and restated master lease, acceptable to the Department. [CSL]

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]

Council Action Date
December 12, 2013.

Programmatic Analysis

Facility Information

	Existing	Proposed	Michigan Nursing Home
Facility Name	North Gate Health Care Facility	Same	Autumn Woods Residential Health Care Facility
Address	7264 Nash Road North Tonawanda, NY 14120	Same	29800 Hoover Road Warren, MI 48093
RHCF Capacity	200	Same	330
ADHCP Capacity	N/A	N/A	N/A
Type of Operator	LLC	LLC	LLC
Class of Operator	Proprietary	Proprietary	Proprietary
Operator	North Gate Health Care Facility LLC Michael J. McGuire 16.6667% Kathleen McGuire 16.6667% Jeannie M. McGuire 16.6667% F. James McGuire 16.6667% Jacqueline M Gurney 16.6666% Kelly McGuire 16.6666% Total 100.00%	Same	Autumn Woods Residential Health Care Facility, LLC Members: **McGuire Group 1-B LLC 12.54%** F J McGuire (33 1/3%) C. McGuire (33 1/3%) J.M. Gurney (33 1/3%) **McGuire Partnership 1-A 12.54%** M J McGuire (33 1/3%) K M McGuire (33 1/3%) J M McGuire (33 1/3%) **Michelle Miller 0 .20%** **Elizabeth Wolf 0.20%** **Donald J Smith 9.96%** **Michelle Smith 2.99%** **Donald J Smith Jr 2.99%** **Susan J Smith 2.99%** **Lindsay J Smith 2.99%** **Jamie L Smith 2.99%** **Kelly McGuire 10.67%** **Michael J McGuire 6.49%** **F James McGuire 6.49%** **Charlene McGuire 6.49%** **Jacqueline M Gurney 6.49%** **Jeannie McGuire 6.49%** **Kathleen M McGuire 6.49%** **Total 100.00%**

The applicant requests approval to include a Michigan affiliated nursing home, Autumn Woods Residential Health Care Facility, LLC, in the previously approved Master Lease agreement with NGHCF and five other affiliated New York nursing facilities.

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Autumn View Health Care Facility, LCC	05/2003 to present
Brookhaven Health Care Facility, LLC	01/2004 to present
Garden Gate Health Care Facility	05/2003 to present
Harris Hill Nursing Facility, LLC	01/2006 to present
North Gate Health Care Facility	05/2003 to present
Seneca Health Care Center	05/2003 to present

Smithtown Health care Facility	05/2003 to present
Autumn Woods Health Care Facility (Warren, MI)	05/2003 to present

Other Health Related Entities

McGuire Group Pharmacy, Inc.

Individual Background Review

Francis James McGuire is the president and CEO of the McGuire Group, Inc., a nursing facility management company located in Buffalo, NY. He is a licensed nursing home administrator with an inactive license. Mr. McGuire discloses the following health facility interests:

Brookhaven Health Care Facility, LLC	01/2004 to present
North Gate Health Care Facility, LLC	03/2003 to present
Seneca Health Care Center, LLC	03/2003 to present
Autumn View Health Care Facility, LLC	03/2003 to present
Garden Gate Health Care Facility, LLC	03/2003 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2000 to present

Charlene (Beckett, McGuire-Ruiz) **McGuire** shows no employment in the past ten years. Ms. McGuire discloses the following health facility interest:

Autumn Woods Health Care Facility (Warren, MI)	01/2000 to present

Jacqueline McGuire Gurney is an attorney in good standing practicing law with the Erie County Family Court since 2008. Ms. McGuire discloses the following health facility interests:

Brookhaven Health Care Facility, LLC	01/2004 to present
North Gate Health Care Facility, LLC	03/2003 to present
Seneca Health Care Center, LLC	03/2003 to present
Autumn View Health Care Facility, LLC	03/2003 to present
Garden Gate Health Care Facility, LLC	03/2003 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2000 to present

Michael J. McGuire is employed as an insurance sales agent. Mr. McGuire discloses the following health facility interests:

Brookhaven Health Care Facility, LLC	01/2004 to present
North Gate Health Care Facility, LLC	03/2003 to present
Seneca Health Care Center, LLC	03/2003 to present
Autumn View Health Care Facility, LLC	03/2003 to present
Garden Gate Health Care Facility, LLC	03/2003 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2000 to present

Jeannie M. McGuire is retired since 2010. Ms. McGuire discloses the following health facility interests:

Brookhaven Health Care Facility, LLC	01/2004 to present
North Gate Health Care Facility, LLC	03/2003 to present
Seneca Health Care Center, LLC	03/2003 to present
Autumn View Health Care Facility, LLC	03/2003 to present
Garden Gate Health Care Facility, LLC	03/2003 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2000 to present

Kathleen (Casero) **McGuire** retired in December 2012 from Northrup Grumman, a defense contractor located in Maryland, where she was employed as an engineering manager since 1984. Ms. McGuire discloses the following health facility interests:

Brookhaven Health Care Facility, LLC	01/2004 to present
North Gate Health Care Facility, LLC	03/2003 to present

Seneca Health Care Center, LLC	03/2003 to present
Autumn View Health Care Facility, LLC	03/2003 to present
Garden Gate Health Care Facility, LLC	03/2003 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2000 to present

Kelly McGuire is presently attending Portland State University as a graduate student. Ms. McGuire discloses the following health facility interests:

Brookhaven Health Care Facility, LLC	01/2004 to present
North Gate Health Care Facility, LLC	03/2003 to present
Seneca Health Care Center, LLC	03/2003 to present
Autumn View Health Care Facility, LLC	03/2003 to present
Garden Gate Health Care Facility, LLC	03/2003 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2000 to present

Donald J. Smith retired in 2008 from The McGuire Group, Inc., a nursing home management firm, where he was the executive director since 1968. Mr. Smith discloses the following health facility interests:

Autumn Woods Health Care Facility (Warren, MI)	01/2010 to present
Harris Hill Nursing Facility LLC	01/1992 to 12/2005
Smithtown Health care Facility	01/1992 to present
Brookhaven HCF, LLC	01/1996 to 12/2003

Donald J. Smith, Jr. is employed as a software developer, since 03/01/2005, by Office Ally, a medical information technology firm in California. Mr. Smith discloses the following health facility interest:

Autumn Woods Health Care Facility (Warren, MI)	01/2010 to present

Susan J. Smith is employed in regulatory affairs at Frito-Lay, in Plano Texas, since 1994. Ms. Smith discloses the following health facility interest:

Autumn Woods Health Care Facility (Warren, MI)	01/2010 to present

Michelle M. Smith is employed as the business office manager at Harris Hill Nursing Facility, since 1990. Ms. Smith discloses the following health facility interest:

Autumn Woods Health Care Facility (Warren, MI)	01/2010 to present

Lindsay J. Smith is an attorney in good standing practicing law with Cravath, Swaine & Moore LLP in New York. Ms. Smith has disclosed the following health facility interests.

Brookhaven Health Care Facility, LLC	01/2004 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2010 to present

Jamie L. Smith is employed by KPMG, an audit, tax and advisory services firm, as an Audit Manager in Chicago, Illinois. She is an Illinois Certified Public Accountant in good standing. Ms. Smith has disclosed the following health facility interests.

Brookhaven Health Care Facility, LLC	01/2004 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2010 to present

Elizabeth J. Wolf is a licensed registered nurse and nursing home administrator, both in good standing in Michigan. Ms. Wolf is currently employed as the administrator and vice-president at Autumn Woods RHCF in Warren, Michigan, since 1982. She holds the following health facility interest:

Autumn Woods Health Care Facility (Warren, MI)	11/2012 to present

Michelle A. Miller is a licensed registered nurse in good standing in Michigan. Ms. Miller is the director of nursing at Autumn Woods RHCF in Warren, Michigan, since 1985. She discloses the following health facility interest:

Autumn Woods Health Care Facility (Warren, MI)	11/2012 to present

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants.

A review of the operations of Garden Gate Health Care Facility, LLC for the period indicated reveals the following:

- The facility paid a Civil Monetary Penalty of $4,800 resulting from surveillance findings on July 17, 2008. Deficiencies were found under 10 NYCRR 415.12(h) Quality of Care: Accidents.

A review of the operations of North Gate Health Care Facility, LLC for the period indicated reveals the following:

- The facility paid a Civil Monetary Penalty of $14,625 resulting from surveillance findings on September 30, 2005. Deficiencies were found under F272 Comprehensive Assessment, F 279 Comprehensive Care Plans, and F324 Accidents.

.

The review of the operations of Autumn Woods Health Care Facility, LLC (Warren, Michigan) reveals the following:

- On March 3, 2004 the facility paid a Civil Monetary Penalty of $4,875 for deficiencies related to the Life Safety Code including K52 and K130.
- On June 30, 2008 the facility paid a Civil Monetary Penalty of $7,900, subsequently reduced to $5,135, related to Substandard Quality of Care cited on a survey of April 18, 2008 for deficiencies found under F221 Resident Behavior and Facility Practices: Physical Restraints; the facility also paid a State Fine of $1,500 related to deficiencies cited on the April 18, 2008 survey.
- On August 18, 2010 the facility paid a Civil Monetary Penalty of $6,000, subsequently reduced to $3,900, related to Substandard Quality of Care cited on a survey of April 27, 2010, for deficiencies found under F323 Quality of Care: Accidents.
- On February 28, 2011 the facility paid a fine of $1,500 relating to a Michigan State survey of February 10, 2011 for M346 (Michigan tag).
- On April 22, 2011 the facility was cited for deficiencies found under F323 Quality of Care: Accidents and incurred a Civil Monetary Penalty of $250 per day.

The review of operations of Autumn Woods Health Care Facility, LLC, Garden Gate Health Care Facility, LLC and North Gate Health Care Facility, LLC results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements.

The review of operations of Autumn View Health Care Facility, LLC, Brookhaven Health Care Facility, LLC, Harris Hill Nursing Facility, Smithtown Health care Facility, and Seneca Health Care Center, LLC results in a conclusion of a substantially consistent high level of care, since there were no enforcements for the time periods indicated.

Project Review

No changes in the program or physical environment are proposed in this application.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Amended Master Lease Agreement
The applicant will continue to occupy the premises under a draft amended Master Lease Agreement to include the Michigan affiliate, Autumn Woods Residential Health Care Facility, Inc.

Capability and Feasibility
There is no project cost associated with this application.

BFA Attachment B presents the pro-forma balance sheet of North Gate Health Care Facility. As shown, the facility will initiate operation with $ 3,867,444 in equity. It is noted that assets include $215,300 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Thus, equity would be reduced to $3,652,144.

BFA Attachment C is the summary of the McGuire Group financials as of November 30, 2012. BFA Attachments D and E are Autumn Woods RHCF's lease coverage ratio as of 11/30/2012 and sale/leaseback cost savings, respectively.

As shown on BFA Attachment A, North Gate Health Care Facility had an average positive working capital position of $2,328,773, an average positive net equity position of $4,048,988 and maintained an average net income from operations of $1,738,755 in 2011-2012.

As shown on BFA Attachment F, Autumn Woods RHCF, LLC maintained positive working capital, net equity and a net operating income of $2,642,345 as of December 31, 2012.

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

Recommendation
From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Financial Summary- North Gate Health Care Facility for 2011 and 2012
BFA Attachment B	Pro-forma Balance Sheet
BFA Attachment C	Summary of McGuire Group Budgets
BFA Attachment D	Autumn Woods RHCF Lease Coverage Ratio
BFA Attachment E	Autumn Woods RHCF Sale/Leaseback Cost Savings
BFA Attachment F	Financial Summary-Autumn Woods RHCF for 2012

Public Health and Health Planning Council

Project # 131091-E
Seneca Health Care Center

County: **Erie**
Purpose: **Establishment**
Program: **Residential Health Care Facility**
Acknowledged: **March 12, 2013**

Executive Summary

Description
Seneca Health Care Center (SHCC), an existing 160-bed proprietary LLC residential health care facility (RHCF), located in West Seneca, entered into a Master Lease Agreement with their current landlord, Nationwide Health Properties, Inc. with five of its RHCF affiliates and is requesting to include a Michigan affiliate, Autumn Woods Residential Health Care Facility, LLC (AWRHCF), a 330-bed RHCF located in Warren. The real property which SHHC leased for its operations from related entity McGuire Manor, Inc. was sold on January 12, 2011, to real estate investment trust Nationwide Health Properties, Inc. (NHP). SHCC has entered into a long term sale/lease back arrangement with NHP. This Master Lease Agreement was approved by the New York State Health Department on February 16, 2012. The Michigan RHCF affiliate entered into the sale/leaseback arrangement on September 28, 2012.

The additional five RHCFs affiliated through the amended Master Lease Agreement with NHP and being concurrently reviewed are as follows:

CON 131086-E	Autumn View Health Care Facility
CON 131087-E	Brookhaven Health Care Facility
CON 131088-E	Garden Gate Health Care Facility
CON 131089-E	Harris Hill Nursing Facility
CON 131090-E	North Gate Health Care Facility

The operators of each of the six New York State RHCFs and AWRHCF identified above are entering into the amended Master Lease Agreement solely to provide cross guarantees of each nursing home's lease obligations. The cross guarantee would provide sustaining support to a facility going through a period of financial difficulty. Under regulation NYCRR 600.9(c), such an agreement must be approved by PHHPC in order for an entity to participate in the total gross income or net revenue of a facility.

DOH Recommendation
Contingent Approval

Need Summary
As there will be no change to the operating certificate as a result of this application, no Need review is necessary.

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. The facility is in compliance with CMS 2013 sprinkler mandates.

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

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

Recommendations

Health Systems Agency
There will be no HSA recommendation of this application.

Office of Health Systems Management
Approval contingent upon:
1. Submission of a revised acceptable Operating Agreement for Autumn Woods Residential Health Care Facility, LLC, acceptable to the Department. [LTC]
2. Submission of an executed amended Master Lease Agreement, acceptable to the Department. [BFA]
3. Submission of a photocopy of an executed amended operating agreement of Autumn Woods Residential Health Care Facility, LLC, acceptable to the Department. [CSL]
4. Submission of a photocopy of an executed Certificate of Amendment of the Articles of Organization of Autumn Woods Residential Health Care Facility, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of an executed amended operating agreement of McGuire Group 1-B LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of an executed Certificate of Amendment of the Articles of Organization of McGuire Group 1-B LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of an executed amended Partnership Agreement of McGuire Partnership 1-A, acceptable to the Department. [CSL]
8. Submission of a photocopy of a revised and executed amended and restated master lease, acceptable to the Department. [CSL]

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]

Council Action Date
December 12, 2013.

Programmatic Analysis

Facility Information

	Existing	Proposed	Michigan Nursing Home
Facility Name	Seneca Health Care Center	Same	Autumn Woods Residential Health Care Facility
Address	2987 Seneca Street West Seneca, NY 14224	Same	29800 Hoover Road Warren, MI 48093
RHCF Capacity	160	Same	330
ADHCP Capacity	N/A	N/A	N/A
Type of Operator	LLC	LLC	LLC
Class of Operator	Proprietary	Proprietary	Proprietary
Operator	Seneca Health Care Center LLC Members: Michael J. McGuire 16.6667% Kathleen McGuire 16.6667% Jeannie M. McGuire 16.6667% F. James McGuire 16.6667% Jacqueline M Gurney 16.6666% Kelly McGuire 16.6666% Total 100.00%	Same	Autumn Woods Residential Health Care Facility, LLC Members: **McGuire Group 1-B LLC 12.54%** F J McGuire (33 1/3%) C. McGuire (33 1/3%) J.M. Gurney (33 1/3%) **McGuire Partnership 1-A 12.54%** M J McGuire (33 1/3%) K M McGuire (33 1/3%) J M McGuire (33 1/3%) **Michelle Miller 0.20%** **Elizabeth Wolf 0.20%** **Donald J Smith 9.96%** **Michelle Smith 2.99%** **Donald J Smith Jr 2.99%** **Susan J Smith 2.99%** **Lindsay J Smith 2.99%** **Jamie L Smith 2.99%** **Kelly McGuire 10.67%** **Michael J McGuire 6.49%** **F James McGuire 6.49%** **Charlene McGuire 6.49%** **Jacqueline M Gurney 6.49%** **Jeannie McGuire 6.49%** **Kathleen M McGuire 6.49%** **Total 100.00%**

The applicant requests approval to include a Michigan affiliated nursing home, Autumn Woods Residential Health Care Facility, LLC, in the previously approved Master Lease agreement with Seneca Health and five other affiliated New York nursing facilities.

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Autumn View Health Care Facility, LCC	05/2003 to present
Brookhaven Health Care Facility, LLC	01/2004 to present
Garden Gate Health Care Facility	05/2003 to present
Harris Hill Nursing Facility, LLC	01/2006 to present
North Gate Health Care Facility	05/2003 to present
Seneca Health Care Center	05/2003 to present

Smithtown Health care Facility	05/2003 to present
Autumn Woods Health Care Facility (Warren, MI)	05/2003 to present

<u>Other Health Related Entities</u>
McGuire Group Pharmacy, Inc.

<u>Individual Background Review</u>

Francis James McGuire is the president and CEO of the McGuire Group, Inc., a nursing facility management company located in Buffalo, NY. He is a licensed nursing home administrator with an inactive license. Mr. McGuire discloses the following health facility interests:

Brookhaven Health Care Facility, LLC	01/2004 to present
North Gate Health Care Facility, LLC	03/2003 to present
Seneca Health Care Center, LLC	03/2003 to present
Autumn View Health Care Facility, LLC	03/2003 to present
Garden Gate Health Care Facility, LLC	03/2003 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2000 to present

Charlene (Beckett, McGuire-Ruiz) **McGuire** shows no employment in the past ten years. Ms. McGuire discloses the following health facility interest:

Autumn Woods Health Care Facility (Warren, MI)	01/2000 to present

Jacqueline McGuire Gurney is an attorney in good standing practicing law with the Erie County Family Court since 2008. Ms. McGuire discloses the following health facility interests:

Brookhaven Health Care Facility, LLC	01/2004 to present
North Gate Health Care Facility, LLC	03/2003 to present
Seneca Health Care Center, LLC	03/2003 to present
Autumn View Health Care Facility, LLC	03/2003 to present
Garden Gate Health Care Facility, LLC	03/2003 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2000 to present

Michael J. McGuire is employed as an insurance sales agent. Mr. McGuire discloses the following health facility interests:

Brookhaven Health Care Facility, LLC	01/2004 to present
North Gate Health Care Facility, LLC	03/2003 to present
Seneca Health Care Center, LLC	03/2003 to present
Autumn View Health Care Facility, LLC	03/2003 to present
Garden Gate Health Care Facility, LLC	03/2003 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2000 to present

Jeannie M. McGuire is retired since 2010. Ms. McGuire discloses the following health facility interests:

Brookhaven Health Care Facility, LLC	01/2004 to present
North Gate Health Care Facility, LLC	03/2003 to present
Seneca Health Care Center, LLC	03/2003 to present
Autumn View Health Care Facility, LLC	03/2003 to present
Garden Gate Health Care Facility, LLC	03/2003 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2000 to present

Kathleen (Casero) **McGuire** retired in December 2012 from Northrup Grumman, a defense contractor located in Maryland, where she was employed as an engineering manager since 1984. Ms. McGuire discloses the following health facility interests:

Brookhaven Health Care Facility, LLC	01/2004 to present
North Gate Health Care Facility, LLC	03/2003 to present

Seneca Health Care Center, LLC	03/2003 to present
Autumn View Health Care Facility, LLC	03/2003 to present
Garden Gate Health Care Facility, LLC	03/2003 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2000 to present

Kelly McGuire is presently attending Portland State University as a graduate student. Ms. McGuire discloses the following health facility interests:

Brookhaven Health Care Facility, LLC	01/2004 to present
North Gate Health Care Facility, LLC	03/2003 to present
Seneca Health Care Center, LLC	03/2003 to present
Autumn View Health Care Facility, LLC	03/2003 to present
Garden Gate Health Care Facility, LLC	03/2003 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2000 to present

Donald J. Smith retired in 2008 from The McGuire Group, Inc., a nursing home management firm, where he was the executive director since 1968. Mr. Smith discloses the following health facility interests:

Autumn Woods Health Care Facility (Warren, MI)	01/2010 to present
Harris Hill Nursing Facility LLC	01/1992 to 12/2005
Smithtown Health care Facility	01/1992 to present
Brookhaven HCF, LLC	01/1996 to 12/2003

Donald J. Smith, Jr. is employed as a software developer, since 03/01/2005, by Office Ally, a medical information technology firm in California. Mr. Smith discloses the following health facility interest:

Autumn Woods Health Care Facility (Warren, MI)	01/2010 to present

Susan J. Smith is employed in regulatory affairs at Frito-Lay, in Plano Texas, since 1994. Ms. Smith discloses the following health facility interest:

Autumn Woods Health Care Facility (Warren, MI)	01/2010 to present

Michelle M. Smith is employed as the business office manager at Harris Hill Nursing Facility, since 1990. Ms. Smith discloses the following health facility interest:

Autumn Woods Health Care Facility (Warren, MI)	01/2010 to present

Lindsay J. Smith is an attorney in good standing practicing law with Cravath, Swaine & Moore LLP in New York. Ms. Smith has disclosed the following health facility interests.

Brookhaven Health Care Facility, LLC	01/2004 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2010 to present

Jamie L. Smith is employed by KPMG, an audit, tax and advisory services firm, as an Audit Manager in Chicago, Illinois. She is an Illinois Certified Public Accountant in good standing. Ms. Smith has disclosed the following health facility interests.

Brookhaven Health Care Facility, LLC	01/2004 to present
Harris Hill Nursing Facility	01/2006 to present
Autumn Woods Health Care Facility (Warren, MI)	01/2010 to present

Elizabeth J. Wolf is a licensed registered nurse and nursing home administrator, both in good standing in Michigan. Ms. Wolf is currently employed as the administrator and vice-president at Autumn Woods RHCF in Warren, Michigan, since 1982. She holds the following health facility interest:

Autumn Woods Health Care Facility (Warren, MI)	11/2012 to present

Michelle A. Miller is a licensed registered nurse in good standing in Michigan. Ms. Miller is the director of nursing at Autumn Woods RHCF in Warren, Michigan, since 1985. She discloses the following health facility interest:

Autumn Woods Health Care Facility (Warren, MI)	11/2012 to present

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of the operations of Garden Gate Health Care Facility, LLC for the period indicated reveals the following:

- The facility paid a Civil Monetary Penalty of $4,800 resulting from surveillance findings on July 17, 2008. Deficiencies were found under 10 NYCRR 415.12(h) Quality of Care: Accidents.

A review of the operations of North Gate Health Care Facility, LLC for the period indicated reveals the following:

- The facility paid a Civil Monetary Penalty of $14,625 resulting from surveillance findings on September 30, 2005. Deficiencies were found under F272 Comprehensive Assessment, F 279 Comprehensive Care Plans, and F324 Accidents.

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The review of the operations of Autumn Woods Health Care Facility, LLC (Warren, Michigan) reveals the following:

- On March 3, 2004 the facility paid a Civil Monetary Penalty of $4,875 for deficiencies related to the Life Safety Code including K52 and K130.
- On June 30, 2008 the facility paid a Civil Monetary Penalty of $7,900, subsequently reduced to $5,135, related to Substandard Quality of Care cited on a survey of April 18, 2008 for deficiencies found under F221 Resident Behavior and Facility Practices: Physical Restraints; the facility also paid a State Fine of $1,500 related to deficiencies cited on the April 18, 2008 survey.
- On August 18, 2010 the facility paid a Civil Monetary Penalty of $6,000, subsequently reduced to $3,900, related to Substandard Quality of Care cited on a survey of April 27, 2010, for deficiencies found under F323 Quality of Care: Accidents.
- On February 28, 2011 the facility paid a fine of $1,500 relating to a Michigan State survey of February 10, 2011 for M346 (Michigan tag).
- On April 22, 2011 the facility was cited for deficiencies found under F323 Quality of Care: Accidents and incurred a Civil Monetary Penalty of $250 per day.

The review of operations of Autumn Woods Health Care Facility, LLC, Garden Gate Health Care Facility, LLC and North Gate Health Care Facility, LLC results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements.

The review of operations of Autumn View Health Care Facility, LLC, Brookhaven Health Care Facility, LLC, Harris Hill Nursing Facility, Smithtown Health care Facility, and Seneca Health Care Center, LLC results in a conclusion of a substantially consistent high level of care, since there were no enforcements for the time periods indicated.

Project Review

No changes in the program or physical environment are proposed in this application.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Amended Master Lease Agreement

The applicant will continue to occupy the premises under a draft amended Master Lease Agreement to include the Michigan affiliate, Autumn Woods Residential Health Care Facility, Inc.

Capability and Feasibility

There is no project cost associated with this application.

BFA Attachment B presents the pro-forma balance sheet of Seneca Health Care Center. As shown, the facility will initiate operation with $ 4,490,319 in equity. It is noted that assets include $690,881 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Thus, equity would be reduced to $3,799,438.

BFA Attachment C is the summary of the McGuire Group financials as of November 30, 2012. BFA Attachments D and E are Autumn Woods RHCF's lease coverage ratio as of 11/30/2012 and sale/leaseback cost savings, respectively.

As shown on BFA Attachment A, Seneca Health Care Center had an average positive working capital position of $2,627,287, an average positive net equity position of $4,582,569 and maintained an average net income from operations of $1,296,307 in 2011-2012.

As shown on BFA Attachment F, Autumn Woods RHCF, LLC maintained positive working capital, net equity and a net operating income of $2,642,345 as of December 31, 2012.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Financial Summary- Seneca Health Care Center for 2011-2012
BFA Attachment B	Pro-forma Balance Sheet
BFA Attachment C	Summary of McGuire Group Budgets
BFA Attachment D	Autumn Woods RHCF Lease Coverage Ratio
BFA Attachment E	Autumn Woods RHCF Sale/Leaseback Cost Savings
BFA Attachment F	Financial Summary-Autumn Woods RHCF for 2012

Public Health and Health Planning Council

Project # 131125 E
Ruby Care, LLC d/b/a Emerald North Nursing & Rehabilitation Center

County: **Erie**
Purpose: **Establishment**
Program: **Residential Health Care Facility**
Acknowledged: **March 27, 2013**

Executive Summary

Description
Ruby Care, LLC d/b/a Emerald North Nursing and Rehabilitation Center, a proposed limited liability company, requests approval to be established as the operator of Harbour Health Multicare Center for Living, a 95-bed skilled nursing facility located at 1205 Delaware Avenue, Buffalo, New York. Harbour Health is currently operated by Receiver Services, LLC pursuant to a July 26, 2012 Receiver Agreement by and among Presbyterian Senior Care of Western New York, Inc. (PSC), (the former operator of Harbour Health), Receiver Services, LLC and the New York State Department of Health. The current receiver's sole member is Benjamin Landa. The applicant will lease the premises to be used and occupied by Emerald North Nursing and Rehabilitation Center from 1205 Delaware Avenue Realty, LLC, an entity which was assigned the premises on August 3, 2012.

Concurrently, the proposed members of Ruby Care, LLC are also requesting, via CON #131156, to establish Opal Care, LLC as the operator of Hawthorn Health Multicare Center.

The proposed members of Ruby Care, LLC are Judy Landa (50%) and Barry Jeremias (50%).

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 through 2011. There is currently no need for additional beds in Erie County.

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
The purchase price for the operation of Harbour Health is $1,180,109.35, and will be met as follows: $680,109.35 cash at Closing and $500,000 via a promissory note at 0% interest rate for a three year term.

Budget:

Revenues	$6,283,345
Expenses	5,409,472
Net Income	$873,893

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 application.

Office of Health Systems Management
Approval contingent upon:
1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
   - 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 promissory note, acceptable to the Department of Health. [BFA]
4. Submission of an executed lease rental agreement, acceptable to the Department. [BFA]
5. Submission of an executed Certificate of Amendment to the Certificate of Incorporation, acceptable to the Department. [CSL]
6. Submission of an executed Operating Agreement, acceptable to the Department. [CSL]
7. Submission of an executed Lease Agreement, acceptable to the Department. [CSL]
8. Submission of an amendment to the Purchase Agreement and Amendment to the Purchase Agreement dated April 12, 2012, acceptable to the Department. [CSL]
9. Submission of an executed copy of the Memorandum, dated August 3, 2012, acceptable to the Department. [CSL]
10. Submission of a fully executed proposed Certificate of Amendment to its Certificate of Incorporation of Certificate of Dissolution, as the case may be, acceptable to the Department. [CSL]
11. Submission of a withdrawal statement by Benjamin Landa, acceptable to the Department. [CSL]

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]

Council Action Date
December 12, 2013.

Need Analysis

Background
Ruby Care LLC is seeking approval to be established as the new operator of Harbour Health Multicare Center for Living (Harbour Health), a 95 bed existing facility located at 1205 Delaware Avenue, Buffalo, in Erie County. The facility plans to change its name to Emerald North Nursing and Rehabilitation Center.

Analysis
Erie County is currently overbedded by 602 beds, as shown in Table 1.

Table 1: RHCF Need – Erie County

2016 Projected Need	5,291
Current Beds	6,225
Beds Under Construction	-332
Total Resources	5,893
Unmet Need	-602

Harbour Health exceeded the Department's planning optimum for 2009 through 2011. Harbour Health also exceeded the Erie County average for the same years. Occupancy was 97.7% in 2009 and 97.5 % in 2010 and 2011 while Erie County averaged 95.3% in 2009, 93.9% in 2010, and 93.4% in 2011.

Table 2: Harbour Health /Erie County

Facility/County/Region	% Occupancy 2009	% Occupancy 2010	% Occupancy 2011
Harbour Health	97.7%	97.5%	97.5%
Erie County	95.3%	93.9%	93.4%

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.

Harbour Health exceeded the Erie County 75% Medicaid admission percentages of 23.67% in 2010 and 23.36% in 2011 with admissions of 46.94% and 58.82%, respectively.

Conclusion
This transfer of ownership will not result in any capacity changes and will preserve a facility that is a resource for the community and for its Medicaid-eligible population.

Recommendation
From a need perspective, contingent approval is recommended.

Programmatic Analysis

Facility Information

	Existing	Proposed
Facility Name	Harbour Health Multicare Center for Living	Emerald North Nursing and Rehabilitation Center
Address	1205 Delaware Avenue Buffalo, NY 14209	Same
RHCF Capacity	95	Same
ADHC Program Capacity	N/A	Same
Type Of Operator	Proprietary	Proprietary
Class Of Operator	LLC	LLC
Operator	Receiver Services LLC Benjamin Landa 100%	Ruby Care LLC Members: Judy Landa 50% Barry Jeremias 50%

Character and Competence - Background

Facilities Reviewed

Nursing Homes
Brookhaven Rehabilitation and Health Care Center LLC 10/2003 to 02/2009
Fort Tryon Center for Rehabilitation and Nursing 10/2003 to 01/2009
Franklin Center for Rehabilitation and Nursing 10/2003 to 01/2009
Highfield Gardens Care Center of Great Neck
(formerly known as Wedgewood Care Center) 10/2003 to 11/2005
West Lawrence Care Center 10/2003 to present

Missouri Nursing Homes
Bentwood Nursing and Rehabilitation 07/2012 to present
Hidden Lake Care Center 08/2012 to present

Oklahoma Nursing Homes
Lake Drive Rehabilitation and Care Center 03/2013 to present
Vista Pointe Rehabilitation and Care Center 03/2013 to present
South Pointe Rehabilitation and Care Center 03/2013 to present
Seminole Rehabilitation and Care Center 03/2013 to present
Forest Hills Care and Rehabilitation Center 06/2013 to present

Oklahoma Assisted Living Facility
Forest Hills Assisted Living Retirement and Care Center 06/2013 to present

New Jersey Outpatient Mental Health
Morning Glory Behavioral Health Services LLC 08/2010 to present

Individual Background Review

Judy Landa discloses no employment history over the last ten years. Ms. Landa discloses the following health care facility interests:
Brookhaven Rehabilitation and Health Care Center LLC 10/2003 to 02/2009
Fort Tryon Center for Rehabilitation and Nursing 10/2003 to 01/2009
Franklin Center for Rehabilitation and Nursing 10/2003 to 01/2009
Highfield Gardens Care Center of Great Neck
(formerly 10/2003 to 11/2005 Wedgewood Care Center)
West Lawrence Care Center 10/2003 to present

Baruch (Barry) Jeremias has been the Chief Executive Officer of Morning Glory Behavioral Health LLC, an outpatient mental health services company in Neptune, New Jersey since August 2010. Previously, Mr. Jeremias was the Director of Business Development at NP Care, a nurse practitioner services company located in Shelton, Connecticut. Baruch (Barry) Jeremias discloses the following ownership interests in health facilities:

Morning Glory Behavioral Health Services LLC-NJ	08/2010 to present
Bentwood Nursing and Rehabilitation-MO	07/2012 to present
Hidden Lake Care Center-MO	08/2012 to present
Lake Drive Rehabilitation and Care Center-OK	03/2013 to present
Vista Pointe Rehabilitation and Care Center-OK	03/2013 to present
South Pointe Rehabilitation and Care Center-OK	03/2013 to present
Seminole Rehabilitation and Care Center-OK	03/2013 to present
Forest Hills Care and Rehabilitation Center-OK	06/2013 to present
Forest Hills Assisted Living Retirement and Care Center-OK	06/2013 to present

Character and Competence - Analysis:

No negative information has been received concerning the character and competence of the above applicants.

A review of Brookhaven Rehabilitation and Health Care Center LLC for the period identified above reveals that the facility was fined $2,000 pursuant to a Stipulation and Order issued April 3, 2009 for surveillance findings on April 25, 2008. Deficiencies were found under 10 NYCRR 415.12 - Quality of Care.

A review of Highfield Gardens Care Center of Great Neck formerly known as Wedgewood Care Center for the period identified above reveals that the facility was fined $1,000 pursuant to a Stipulation and Order issued August 16, 2005 for surveillance findings on August 27, 2004. Deficiencies were found under 10 NYCRR 415.12(c)(2) - Quality of Care: Pressure Sores.

A review of operations for Brookhaven Rehabilitation and Health Care Center and Highfield Gardens Care Center of Great Neck formerly known as Wedgewood Care Center results in a conclusion of substantially consistent high level of care, since there were no repeat enforcements.

A review of operations for Fort Tryon Center for Rehabilitation and Nursing, Franklin Center for Rehabilitation and Nursing, and West Lawrence Care Center, LLC 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 Bentwood Nursing and Rehabilitation and Hidden Lake Care Center located in the state of Missouri for the period identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of Vista Pointe Rehabilitation and Care Center in Midwest City, Oklahoma for the period identified above reveals that the facility was assessed a Civil Money Penalty fine of $7,250 pursuant to an enforcement action for surveillance findings on August 21, 2013 and September 19, 2013. Deficiencies were found under regulatory tags F275, F276, F309, F318, F353 and life safety code tags K018, K025, and K068.

A review of operations for Vista Pointe Rehabilitation and Care Center in Midwest City, Oklahoma results in a conclusion of substantially consistent high level of care, since there were no repeat enforcements.

A review of operations for Lake Drive Rehabilitation and Care Center, South Pointe Rehabilitation and Care Center, Seminole Rehabilitation and Care Center, and Forest Hills Care and Rehabilitation Center all located in the state of Oklahoma, 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 Forest Hills Assisted Living Retirement and Care Center in the state of Oklahoma 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 Morning Glory Behavioral Health Services LLC in Neptune, New Jersey for the period identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

Project Review
No changes in the program or physical environment are proposed in this application. 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
The applicant has submitted an executed asset purchase agreement for the purchase of the operation, which is summarized below:

Date:	March 6, 2012
Purchaser:	Ruby Care, LLC
Seller:	Presbyterian Senior Care of Western New York, Inc.
Assets Acquired:	The purchaser shall purchase the following assets: the trade name “Harbour Health Multicare Center for Living; the business and operation of the Facility, except for the Excluded Assets; all inventory and supplies, and other articles of personal property used in the operation of the Facility; all resident funds held in trust; all prepayments of residents held by Seller, if any, for future services at the Facility and allocable to the period on and after the Asset Closing Date; all menus, policies and procedure manuals used in the operation of the facility; all computer software exclusively used in connection with the operation of the Facility; the telephone numbers and telefax numbers used by the Facility; all original records of all residents residing at the Facility on the Asset Closing Date; all employee and/or personnel folders and payroll records of personnel working at the Facility on the Asset Closing Date; copies of all other books and records of Seller relating to the facility on the Asset Closing Date; copies of all other books and records of Seller (including all property cost records) (or the electronic transfer of a copy of such date) relating to the Facility for all periods subject to audit on or after the Asset Closing Date; goodwill; to the extent assignable, Seller’s Medicare and Medicaid provider numbers and provider agreements; all surveys, plans, sketches and drawings relating to the facility; all accounts receivable arising from and attributable to the rendering of services to residents of the facility; all cash, cash equivalents, marketable securities and deposits in the operating accounts of the Facility; all retroactive rate increases and/or lump sum payments, resulting from rate appeals; prepaid expenses and deposits relating to the Assumed Contracts and all other physical assets of Seller relating to the facility other than the Excluded Assets.

Excluded Assets:	All contracts which are not Assumed Contracts; any tangible personal property having religious significance, which shall be moved on or before the Asset Closing and all retroactive rate increases and/or lump sum payments, resulting from rate appeals for services rendered by the facility prior to the Closing Date.
Assumption of Liabilities:	The purchaser shall assume the following liabilities: at the Property Closing, provided that the mortgage may be assumed, in Buyer's sole discretion, Buyer may assume the Mortgage; at the Asset Closing, Buyer shall assume the Assumed Payables to the extent unpaid or otherwise unsatisfied on the Asset Closing Date; all liabilities of Seller relating to the use, ownership and operation of the facility on an after the Property Closing Date and at the Asset Closing, Purchaser shall assume all liabilities of Seller under the Assumed Contracts, but only to the extent such liabilities arose or arise on and after the Property Closing Date.
Retained Liabilities:	Except for the Assumed Liabilities and; if Buyer assumes the Mortgage, Buyer is not assuming and Seller is retaining and shall remain liable for all liabilities is relating to the ownership or operation of the facility prior to the Property Closing Date, including, but not limited to all trade and accounts payable and all other liabilities of the Facility, any other liabilities relating to the ownership or operation of the Basic Assets and the facility, or the use and occupancy of the Property, prior to the Property Closing Date and all cash receipt assessments liabilities relating to all revenue received by the facility before, on and after the Property Closing Date to the extent such liabilities are not included in the Assumed Liabilities.
Purchase Price:	The consideration to be paid by Buyer to Seller for the Basic Assets to be sold hereunder and to be paid by the Buyer to Seller is $1,180,109.35.
Payment of Purchase Price:	$680,109.35 cash at Closing and $500,000 via a promissory note.

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, the facility has no outstanding liabilities.

The applicant has submitted an executed assignment for the transfer of the real estate.

Lease Rental Agreement

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

Date:	February 28, 2013
Lessor:	1205 Delaware Avenue Realty, LLC
Lessee:	Ruby Care, LLC
Term:	20 years
Rental:	Lessee shall pay to Lessor during the term of this Lease a net annual basic rent equal to the sum of forty-five percent (45%) of Lessor's Debt Service plus $10,000. The rental payments are estimated at $118,000
Provisions:	The lessee shall be responsible for maintenance, utilities and real estate taxes.

The sole member of the landlord entity, 1205 Delaware Avenue, LLC is Benjamin Landa.

Operating Budget

The applicant has submitted an operating budget, in 2013 dollars, for the first year subsequent to the change in operator, summarized as follows:

	Per Diem	Total
Revenues:		
Medicaid Managed Care	$148.00	$4,174,340
Medicare Fee For Service	495.00	1,159,785
Commercial Fee For Service	366.97	40,000
Commercial Managed Care	355.00	555,220
Private Pay	300.00	354,000
Total Revenues		$6,283,345
Expenses:		
Operating	$152.12	$5,081,020
Capital	9.83	328,432
Total Expenses	$161.95	$ 5,409,452
Net Income		$873,893
Utilization: (patient days)		33,401
Occupancy		96.32%

Utilization broken down by payor source during the first year subsequent to the change in operator is as follows:

Medicaid Managed Care	84.44%
Medicare Fee For Service	7.01%
Commercial Fee For Service	0.32%
Commercial Managed Care	4.68%
Private Pay	3.55%

Utilization assumptions are based on the historical experience of the facility.

The applicant projected the following expense reductions:

- Reduced ROM aides ($32,419).
- Reduce activities by 1 FTE ($32,419).
- Outsource to HCS ($148,000).
- RN Day shift supplies ($71,968).
- Part time S.W ($12,979)
- Reduce therapists 1.5 FTE's ($104,208)

Capability and Feasibility

The purchase price for the acquisition of the operating interests of Harbour is $1,180,109.35 and will be financed as follows: Cash of $680,109.35 from the proposed members at Closing and $500,000 via a promissory note at a 0% interest rate for a three year term.

Working capital requirements are estimated at $901,578, which is equivalent to two months of first year expenses. The applicant will provide the funds from their personal resources to meet the working capital requirement. BFA Attachment A are the personal net worth statements of the proposed members of Ruby Care, LLC, which indicates the availability of sufficient funds for the equity contribution for the purchase price and the working capital requirement. The applicant has submitted an affidavit indicating that they will contribute resources disproportionate to ownership percentages. BFA Attachment C is the pro-forma balance sheet of Ruby Care, LLC, which indicates a positive net asset position of $1,335,578 as of the first day of operation.

It is noted that assets include $1,250,000 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Thus, members' equity would be a positive $85,578.

The submitted budget indicates a net income of $873,893 during the first year subsequent to the change in operator. The budget appears reasonable.

Staff notes that with the expected 2014 implementation of managed care for nursing home residents, 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 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 the project.

BFA Attachment B is the financial summary of Harbour Health Multicare Center for Living for 2010, 2011, and for July 27, 2012 through December 31, 2012. As shown, the facility had an average negative working capital position and an average negative net asset position during the period shown. Also, the facility incurred average losses of $378,434 during the period shown. The applicant has indicated that the reason for the losses are the result of the following: high workers compensation expense, unfavorable payor mix, pharmacy operating costs, consulting services and employee benefits at a higher rate than normal. The facility implemented the following steps to improve operations: operating efficiencies and increasing payer mix by extensive training and in-service of its screening and admissions team.

BFA Attachment D are the September 30, 2013 internal financial statements of Harbour Health Multicare Center for Living. As shown on Attachment D, the facility had a negative working capital position and a negative net asset position through September 30, 2013. Also, the facility incurred losses of $52,079 through September 30, 2013. The applicant has indicated that the losses through September 30, 2013, was due to the approximately month long ban on admissions at the facility during the late summer of 2013, which caused occupancy to dip during the fall of 2013. During the second half of October, 2013, the facility regained its prior occupancy levels. Also, the facility has realized higher paying Medicaid and HMO residents, which resulted in part from the facility's exclusive contract with the county hospital to admit from their "ALC List" residents, who, for a variety of reasons, are difficult to discharge from the hospital. This program has been successful such that the facility is developing a similar program with one of the largest hospitals in the region. As a result of these arrangements, the facility will continue to receive additional admissions of residents for which higher reimbursement is received.

BFA Attachment E is the financial summary of West Lawrence Care Center. As shown, the facility had an average negative working capital position and an average positive net asset position from 2010 through 2012. The reason for the negative working capital position is that the facility experienced historical losses. Also, the facility incurred average historical losses of $81,385 from 2010 through 2012. The applicant has indicated that the reasons for the losses were due to a retroactive rate reduction of $833,857 and an approximate $40 per patient day reduction in the facility's Medicaid rate. The applicant implemented the following steps to improve operations: re-evaluating staffing patterns, decreasing excess staff, and aggressively restructuring contracts and insurance policies.

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, approval is recommended.

Attachments

BFA Attachment A-	Personal Net Worth Statement
BFA Attachment B-	Financial Summary- Harbour Health Multicare Center for Living
BFA Attachment C-	Pro-forma Balance Sheet of Ruby Care, LLC
BFA Attachment D-	September 30, 2013 internal financial statements of Harbour Health Multicare Center for Living
BFA Attachment E-	Financial Summary- West Lawrence Care Center

Public Health and Health Planning Council

Project # 131156-E
Opal Care, LLC d/b/a Emerald South Rehabilitation and Care Center

County: **Erie**
Purpose: **Establishment**
Program: **Residential Health Care Facility**
Acknowledged: **March 27, 2013**

Executive Summary

Description
Opal Care, LLC d/b/a Emerald South Rehabilitation and Care Center, an existing limited liability company requests approval to be established as the operator of Hawthorn Health Multicare Center for Living, a 122-bed residential health care facility (RHCF) located at 1175 Delaware Avenue, Buffalo. The facility was operated by Presbyterian Senior Care of Western New York, Inc. and as of July 26, 2012, an appointed receiver, Receiver Services, LLC, whose sole member is Benjamin Landa, has been operating the facility.

Concurrently, the proposed members of Opal Care are requesting to be established as the operator of Harbour Health Multicare Center for Living, via CON 131125.

The proposed members of Opal Care, LLC are Judy Landa (50%) and Barry Jeremias (50%).

DOH Recommendation
Contingent Approval

Need Summary
The change in ownership will not result in any change in capacity. Hawthorn Health Multicare Center for Living's utilization decreased from 90.7% in 2009 to 86.9% in 2011. This decrease is attributed to maintenance that forced the temporary closure of approximately 12 rooms. Opal Care LLC plans to increase utilization by instituting outreach programs, improving the physical plant, and improving communications with area hospitals. There is currently no need for additional beds in Erie County.

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
The total asset purchase price of $1,442,356 will be met with a $550,000 promissory note with the remaining $892,356 from member's equity.

Budget:	Revenues:	$7,690,323
	Expenses:	6,611,479
	Net Income:	$1,078,844

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

Recommendations

Health Systems Agency

There will be no HSA recommendation of this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
   - 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;
   - 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 to the Certificate of Incorporation, acceptable to the Department. [CSL]
4. Submission of an Operating Agreement, acceptable to the Department. [CSL]
5. Submission of an executed Lease Agreement, acceptable to the Department. [BFA, CSL]
6. Submission of a Medicaid Affidavit, acceptable to the Department. [CSL]
7. Submission of an amendment to the Purchase Agreement dated April 12, 2012, acceptable to the Department. [CSL]
8. Submission of a fully executed proposed Certificate of Amendment to its Certificate of Incorporation of Certificate of Dissolution, as the case may be, acceptable to the Department. [CSL]
9. Submission of a withdrawal statement by Benjamin Landa, acceptable to the Department. [CSL]

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]

Council Action Date

December 12, 2013.

Need Analysis

Background

Opal Care, LLC is seeking approval to be established as the operator of Hawthorn Health Multicare Center for Living, a 122 bed residential health care facility located at 1175 Delaware Avenue Buffalo, in Erie County. The applicant is also planning to change the name to Emerald South Rehabilitation and Care Center.

Analysis

Erie County is currently overbedded by 602 beds, as shown in Table 1.

Table 1: RHCF Need – Erie County

2016 Projected Need	5,291
Current Beds	6,225
Beds Under Construction	-332
Total Resources	5,893
Unmet Need	-602

Hawthorn Health Multicare Center for Living did not exceed the Department's planning optimum for 2009, 2010, or 2011. The average occupancy of Erie County had declined from 95.5% in 2009 to 91.7% in 2011. Utilization at Hawthorn Health Multicare Center for Living decreased from 90.7% in 2009 to 86.9% in 2011. This considerable decrease was caused by a window and masonry project that forced the facility to close a number of rooms while the work was being completed from 2010 – 2011.

Table 2: Hawthorn Health Multicare Center for Living/Harbour Health Multicare Center for Living /Erie County

Facility/County/Region	% Occupancy 2009	% Occupancy 2010	% Occupancy 2011
Hawthorn Health Multicare	90.7%	88.2%	86.9%
Erie County	95.5%	93.8%	91.7%

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.

Hawthorn Health Multicare Center for Living Medicaid admission percentage exceeded the Erie County 75% Medicaid admission percentages of 23.67% in 2010 and 23.36% in 2011 with admissions of 45.51% and 52.91% respectively.

Conclusion

Approval of this application will help maintain a community resource that provides beds for many Medicaid and low income patients in Erie County.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Facility Information

	Existing	Proposed
Facility Name	Hawthorn Health Multicare Center for Living	Emerald South Nursing and Rehabilitation Center
Address	1175 Delaware Avenue Buffalo, NY 14209	Same
RHCF Capacity	122	Same
ADHC Program Capacity	N/A	Same
Type Of Operator	Proprietary	Proprietary
Class Of Operator	LLC	LLC
Operator	Receiver Services LLC Benjamin Landa 100%	Opal Care LLC Members: Judy Landa 50% Barry Jeremias 50%

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Brookhaven Rehabilitation and Health Care Center LLC	10/2003 to 02/2009
Fort Tryon Center for Rehabilitation and Nursing	10/2003 to 01/2009
Franklin Center for Rehabilitation and Nursing	10/2003 to 01/2009
Highfield Gardens Care Center of Great Neck (formerly known as Wedgewood Care Center)	10/2003 to 11/2005
West Lawrence Care Center	10/2003 to present

Missouri Nursing Homes

Bentwood Nursing and Rehabilitation	07/2012 to present
Hidden Lake Care Center	08/2012 to present

Oklahoma Nursing Homes

Lake Drive Rehabilitation and Care Center	03/2013 to present
Vista Pointe Rehabilitation and Care Center	03/2013 to present
South Pointe Rehabilitation and Care Center	03/2013 to present
Seminole Rehabilitation and Care Center	03/2013 to present
Forest Hills Care and Rehabilitation Center	06/2013 to present

Oklahoma Assisted Living Facility

Forest Hills Assisted Living Retirement and Care Center	06/2013 to present

New Jersey Outpatient Mental Health

Morning Glory Behavioral Health Services LLC	08/2010 to present

Individual Background Review

Judy Landa discloses no employment history over the last ten years. Ms. Landa discloses the following health care facility interests:

Brookhaven Rehabilitation and Health Care Center LLC	10/2003 to 02/2009
Fort Tryon Center for Rehabilitation and Nursing	10/2003 to 01/2009
Franklin Center for Rehabilitation and Nursing	10/2003 to 01/2009
Highfield Gardens Care Center of Great Neck (formerly known as Wedgewood Care Center)	10/2003 to 11/2005
West Lawrence Care Center	10/2003 to present

Baruch (Barry) Jeremias has been the Chief Executive Officer of Morning Glory Behavioral Health LLC, an outpatient mental health services company in Neptune, New Jersey since August 2010. Previously, Mr. Jeremias was the Director of Business Development at NP Care, a nurse practitioner services company located in Shelton, Connecticut. Baruch (Barry) Jeremias discloses the following ownership interests in health facilities:

Morning Glory Behavioral Health Services LLC	08/2010 to present
Bentwood Nursing and Rehabilitation	07/2012 to present
Hidden Lake Care Center	08/2012 to present
Lake Drive Rehabilitation and Care Center	03/2013 to present
Vista Pointe Rehabilitation and Care Center	03/2013 to present
South Pointe Rehabilitation and Care Center	03/2013 to present
Seminole Rehabilitation and Care Center	03/2013 to present
Forest Hills Care and Rehabilitation Center	06/2013 to present
Forest Hills Assisted Living Retirement and Care Center	06/2013 to present

Character and Competence - Analysis:
No negative information has been received concerning the character and competence of the above applicants.

A review of Brookhaven Rehabilitation and Health Care Center LLC for the period identified above reveals that the facility was fined $2,000 pursuant to a Stipulation and Order issued April 3, 2009 for surveillance findings on April 25, 2008. Deficiencies were found under 10 NYCRR 415.12 - Quality of Care.

A review of Highfield Gardens Care Center of Great Neck formerly known as Wedgewood Care Center for the period identified above reveals that the facility was fined $1,000 pursuant to a Stipulation and Order issued August 16, 2005 for surveillance findings on August 27, 2004. Deficiencies were found under 10 NYCRR 415.12(c)(2) - Quality of Care: Pressure Sores.

A review of operations for Brookhaven Rehabilitation and Health Care Center and Highfield Gardens Care Center of Great Neck formerly known as Wedgewood Care Center results in a conclusion of substantially consistent high level of care, since there were no repeat enforcements.

A review of operations for Fort Tryon Center for Rehabilitation and Nursing, Franklin Center for Rehabilitation and Nursing, and West Lawrence Care Center, LLC 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 Bentwood Nursing and Rehabilitation and Hidden Lake Care Center located in the state of Missouri for the period identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of Vista Pointe Rehabilitation and Care Center in Midwest City, Oklahoma for the period identified above reveals that the facility was assessed a Civil Money Penalty fine of $7,250 pursuant to an enforcement action for surveillance findings on August 21, 2013 and September 19, 2013. Deficiencies were found under regulatory tags F275, F276, F309, F318, F353 and life safety code tags K018, K025, and K068.

A review of operations for Vista Pointe Rehabilitation and Care Center in Midwest City, Oklahoma results in a conclusion of substantially consistent high level of care, since there were no repeat enforcements.

A review of operations for Lake Drive Rehabilitation and Care Center, South Pointe Rehabilitation and Care Center, Seminole Rehabilitation and Care Center, and Forest Hills Care and Rehabilitation Center, all located in the state of Oklahoma, 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 Forest Hills Assisted Living Retirement and Care Center in the state of Oklahoma 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 Morning Glory Behavioral Health Services LLC in Neptune, New Jersey for the period identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

Project Review

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The facility is in compliance with CMS 2013 sprinkler mandates.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

Recommendation

From a programmatic perspective, is recommended.

Financial Analysis

Asset Purchase Agreement

The change in ownership will be effectuated in accordance with an executed purchase agreement, the terms of which are summarized below:

Date:	March 6, 2012
Seller:	Presbyterian Senior Care of Western New York, Inc.
Purchaser:	Opal Care, LLC
Purchased Assets:	All of the rights, title and interest in, to or under the basic assets, free and clear of all liens, claims, assessments, security interests, mortgages, collateral assignments, leases, attachments, charges, violations, levies and other encumbrances or defects in title of and type whatsoever.
Excluded Assets:	All contracts which are not assumed contracts; any tangible personal property having religious significance; all retroactive rate increases and/or lump sum payments resulting from rate appeals, audits, litigation, global settlements made by the DOH prior to the closing date and the cash payment.
Assumed Liabilities:	All liabilities of seller relating to the use, ownership and operation of the facility on and after the closing date.
Excluded Liabilities:	All liabilities relating to the ownership or operation of the facility prior to the closing date;
Purchase Price:	$1,442,356
Purchase Terms:	Payable contingent on the first to occur of (i) the asset closing date, or (ii) 18 months after the property closing date.

The applicant has provided an executed promissory note for $550,000 with no interest, payable in three equal annual installments with the remaining balance of $892,356 to be paid with equity from the proposed members. BFA Attachment A is the net worth statements of the proposed members, which indicates available resources. The proposed members have submitted affidavits stating they will contribute resources disproportionate to ownership percentage.

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 Agreement

The applicant has submitted a draft lease agreement, the terms of which are summarized below:

Premises:	A 122-bed RHCF located at 1175 Delaware Avenue, Buffalo
Lessor:	1175 Delaware Avenue Realty, LLC
Lessee:	Opal Care, LLC
Terms:	20 years
Rental:	$142,000/year
Provisions:	Lessee responsible for taxes, utilities, insurance and maintenance.

Benjamin Landa, husband of proposed member Judy Landa, is a member of 1175 Delaware Avenue Realty, LLC; therefore, the lease arrangement is a non-arm's length agreement. The lease payments are equal to 55% of debt service on the mortgage plus $10,000. The applicant has submitted an executed assignment agreement to assign all of its right, title and interest as buyer under the purchase agreement with respect to the property to 1175 Delaware Avenue Realty, LLC.

Operating Budget

The applicant has submitted an operating budget, in 2013 dollars, for the first year subsequent to change in ownership summarized below:

Revenues:	$7,690,323
Expenses:	
Operating	$6,407,479
Capital	204,000
Total Expenses:	$6,611,479
Net Income:	$1,078,844
Utilization: (patient days)	40,171
Occupancy:	90.2%

The following is noted with respect to the submitted RHCF operating budget:

- Expenses include lease rental
- Medicare and private pay assume current rates of payment.
- Medicaid rate is based on the 2013 Medicaid rate published by DOH with no trend to 2014
- The capital component of the Medicaid rate is based on the return of and return on equity reimbursement methodology.
- Utilization by payor source for year one and three is expected as follows:

Medicare	8.73%
Medicaid	80.67%
Private Pay	10.6%

- Breakeven occupancy is projected at 78.0%

Capability and Feasibility

The total purchase price of $1,442,356 will be met with a $550,000 promissory note at stated terms to be held by the seller, Presbyterian Senior Care of Western New York, Inc., with the remaining $892,356 from member's equity.

Working capital requirements are estimated at $1,101,913, based on two months of first year expenses, which will be provided as equity from the proposed members. BFA Attachment B is the pro-forma balance sheet of Opal Care, LLC as of the first day of operation. As shown, the facility will initiate

operation with $1,858,000 member's equity. It is noted that assets include $1,500,000 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Thus, member's equity would be a positive $358,000.

The submitted budget indicates a net income of $1,078,844 for the first year subsequent to change in ownership. BFA Attachment E is a budget sensitivity analysis based on the 2011 utilization by payor. DOH staff notes that the applicant has taken a conservative approach in calculating first year revenues. The budget appears reasonable.

Staff notes that with the expected 2014 implementation of managed care for nursing home residents, Medicaid reimbursement is expected to change from a state-wide price with a cost-based capital component payment methodology, to a negotiated reimbursement methodology. Facility payments will be the result of negotiations between the managed long term care plans and the facility. At this point in time, it cannot be determined what financial impact this change in reimbursement methodology will have on this project.

Review of BFA Attachment C, financial summary of Hawthorn Health Multicare Center for Living, indicates the facility has experienced negative working capital, negative equity and an average net loss of $518,036 for 2010 and 2011. As of December 31, 2012, under receivership, the facility experienced negative working capital, negative equity and a net loss of $659,178. As of September 30, 2013, the facility experienced negative working capital, negative equity, and generated a net income of $5,562. The applicant has stated the reason for the losses was due to necessary window and masonry repairs, leaving the rooms being repaired and adjacent rooms unoccupied until repairs were complete. This caused a significant decrease in census, from which the facility had a hard time recovering due to competition in the area.

To improve operations the receiver has implemented the following operating efficiencies:

- Reduced expenses through a decrease in staff for a cost savings of approximately $677,667.
- Termination of two contracts that will reduce yearly operating expenses by approximately $300,000.
- An increase in census, including Medicare and HMO residents, resulted from the facility's exclusive contract with the county hospital to admit residents who are difficult to discharge from the hospital, as well as reimbursement by the hospital of facility costs until Medicaid approval is obtained.
- Extensive training and in-service of its screening and admissions team has been successful in increasing payor mix.

Review of BFA Attachment D, financial summary of West Lawrence Care Center, indicates the facility has experienced average negative working capital, maintained average positive equity, and experienced an average net loss of $81,385 for the period shown. The applicant has indicated the reason for the losses were due to approximately $833,857 in retroactive rate reductions and an approximate $40 per patient day reduction in the facility's Medicaid rate. To improve operations, the facility is reevaluating staffing patterns, decreasing excess staff, and restructuring contracts and insurance policies.

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	Personal Net Worth Statement
BFA Attachment B	Pro-forma Balance Sheet
BFA Attachment C	Financial Summary, Hawthorn Health Multicare Center for Living
BFA Attachment D	Financial Summary, West Lawrence Care Center
BFA Attachment E	Sensitized Budgets

Public Health and Health Planning Council

Project # 131264 E
South Shore Rehabilitation, LLC d/b/a South Shore Rehabilitation and Nursing Center

County: **Nassau**
Purpose: **Establishment**
Program: **Residential Health Care Facility**
Acknowledged: **May 16, 2013**

Executive Summary

Description

South Shore Rehabilitation, LLC is requesting to become the new operator of South Shore Nursing Home, Inc. d/b/a South Shore Healthcare, an existing proprietary 100-bed Residential Health Care Facility (RHCF), with 76 RHCF beds and 24 Vent beds, located at 275 W Merrick Rd. in Freeport. Ownership of the facility operation before and after the requested change is as follows:

Current		Proposed	
South Shore Nursing Home, Inc.		South Shore Rehabilitation, LLC	
Name		Name	
Mark Gorstein	22.23%	Esther Farkovits	45.0%
Susanna Gorstein	8.33%	Solomon H. Abramczyk	25.0%
Sam Gorstein	19.44%	Robert Schuck	25.0%
Steve Cropnick	36.11%	Aryeh P. Latschek	5.0%
Robert Schlundt	13.89%		

BFA Attachment D is the financial summaries of the proposed members affiliated nursing homes.

DOH Recommendation

Contingent Approval

Need Summary

The proposed transaction will not result in any changes in beds or services at this facility.

The change in ownership will not result in any change in capacity. South Shore Healthcare's utilization was 109.4% in 2009, 114.7% in 2010, and 109.1% in 2011. Patient turnover is more frequent than at other residential health care facilities because this is a rehabilitation facility.

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. There is a consulting and administrative services agreement proposed in this application.

Financial Summary

There are no project costs associated with this application.

Budget:	Revenues:	$13,601,700
	Expenses:	13,495,444
	Gain:	$ 106,256

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

Recommendations

Health Systems Agency
There will be no HSA recommendation of this application.

Office of Health Systems Management
Approval contingent upon:
1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
   - 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;
   - 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 the second and final executed Asset Purchase Agreement acceptable to the Department of Health. [BFA]
4. Submission of a photocopy of an executed amendment to the Articles of Organization to South Shore Rehabilitation, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of an executed Asset Purchase Agreement between South Shore Nursing Home, Inc. and South Shore Rehabilitation, LLC, acceptable to the Department. [CSL]
6. Clarification as to whether the applicant intends to use the name "South Shore Rehabilitation" or "South Shore Rehabilitation and Nursing Center," as indicated on the submitted Certificate of Assumed Name, acceptable to the Department. [CSL]
7. Submission of a fully executed proposed Certificate of Incorporation to the Certificate of Amendment or Certificate of Dissolution of South Shore Nursing Home, acceptable to the Department. [CSL]

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]

Council Action Date
December 12, 2013.

Need Analysis

Background
South Shore Rehabilitation, LLC seeks approval to become the operator of South Shore Healthcare, a 100-bed residential health care facility, which includes 24 ventilator beds, located at 275 West Merrick Road, Freeport, 11520, in Nassau County. South Shore Nursing Realty, LLC, a related entity, will purchase the nursing home property.

Analysis
There is currently a need for 1,417 beds in the Long Island region as indicated in Table 1 below. However, the overall occupancy for the Long Island Region is 92.4% for 2011, as indicated in Table 2.

Table 1: RHCF Need – Long Island Region

2016 Projected Need	16,962
Current Beds	16,000
Beds Under Construction	-455
Total Resources	15,545
Unmet Need	1,417

South Shore Healthcare's utilization was 109.4% in 2009, 114.7% in 2010, and 109.1% in 2011. As a facility that provides sub-acute care services tailored to seniors as well as adults ages 16 and older, patient turnover is higher than at other residential health care facilities.

Table 2: South Shore Healthcare/Nassau County/Long Island Region Occupancy

Facility/County/Region	% Occupancy 2009	% Occupancy 2010	% Occupancy 2011
South Shore Healthcare	109.4%	114.7%	109.1%
Nassau County	93.4%	93.0%	91.5%
Long Island Region	94.5%	94.0%	92.4%

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.

South Shore Healthcare's Medicaid admissions of 4.54% in 2010 and 5.72% in 2011 did not exceed the Nassau County 75% rates of 14.16% in 2010 and 13.61% in 2011. South Shore Healthcare did not meet the county's annual percentage rate of Medicaid admissions and will be required to follow the contingent approval requirements as noted below.

Conclusion
Approval of this application will result in the maintenance of a necessary community resource that provides services to many rehabilitation patients.

Recommendation
From a need perspective, contingent approval is recommended.

Programmatic Analysis

Facility Information

	Existing	Proposed
Facility Name	South Shore Healthcare	South Shore Rehabilitation and Nursing Center
Address	275 W. Merrick Road Freeport, NY 11520	Same
RHCF Capacity	100	Same
ADHC Program Capacity	N/A	Same
Type Of Operator	Proprietary	Proprietary
Class Of Operator	Corporation	LLC
Operator	South Shore Nursing Home Inc. Shareholders: Steve Cropnick 36.11% Mark Gorstein 22.23% Sam Gorstein 19.44% Robert Schlundt 13.89% Susanna Gorstein 8.33%	South Shore Rehabilitation, LLC. Members: Esther Farkovits 45% Solomon Abramczyk 25% Robert Schuck 25% Aryeh (Richard) Iatschek 5%

Character and Competence – Background

Facilities Reviewed

Little Neck Nursing Home	04/2011 to present
Nassau Extended Care Facility	07/2004 to present
Park Avenue Extended care Facility	07/2004 to present
Throgs Neck Extended Care Facility	07/2004 to present
Townhouse Extended Care Facility	07/2004 to present
Park Gardens Rehabilitation and Nursing Center LLC	09/2003 to present
Silver Lake Specialized Rehabilitation and Care Center	06/2008 to present
Dumont Center for Rehabilitation and Nursing Care	07/2010 to present
Williamsville Suburban LLC	10/2012 to present
Ridge View Manor LLC	10/2012 to present
Sheridan Manor LLC	10/2012 to present

Individual Background Review

Esther Farkovits was employed as a yoga instructor at the Lucille Roberts gym from February 2005 through October 2006. She is currently unemployed. Ms. Farkovits discloses the following ownership interests in health facilities:

Little Neck Nursing Home	04/2011 to present
Nassau Extended Care Facility	07/2004 to present
Park Avenue Extended Care Facility	07/2004 to present
Throgs Neck Extended Care Facility	07/2004 to present
Townhouse Extended Care Facility	07/2004 to present

Solomon Abramczyk is a non-registered certified public account. He has been employed at Park Gardens Rehabilitation and Nursing Center LLC as the operator and Executive Director for the last ten years. Mr. Abramczyk discloses the following ownership interests in health facilities:

Park Gardens Rehabilitation and Nursing Center LLC	2002 to present
Silver Lake Specialized Rehabilitation and Care Center	06/2008 to present
Dumont Center for Rehabilitation and Nursing Care	07/2010 to present

Robert Schuck is a non-registered certified public account. He has been employed at Hempstead Park Nursing Home as the Chief Financial Officer for the last ten years. Mr. Schuck discloses no ownership interests in health facilities.

Aryeh (Richard) Platschek lists his occupation as sales at Stat Portable X-ray, a portable x-ray service located in Oakland Gardens, New York. He has been employed there since January 2007. Previously, Mr. Platschek was employed at Treetops Rehabilitation Care Center as a purchasing agent. Aryeh (Richard) Platschek discloses the following ownership interests in health facilities:

Williamsville Suburban LLC	10/2012 to present
Ridge View Manor LLC	10/2012 to present
Sheridan Manor LLC	10/2012 to present

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of operations for the Little Neck Nursing Home, Nassau Extended Care Facility, Park Avenue Extended Care Facility, Throgs Neck Extended Care Facility, Townhouse Center for Rehabilitation and Nursing, Park Gardens Rehabilitation and Nursing Center LLC, Silver Lake Specialized Rehabilitation and Care Center, Dumont Center for Rehabilitation and Nursing Care, Williamsville Suburban LLC, Ridge View Manor LLC, and Sheridan Manor LLC for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

Project Review

No changes in the program or physical environment are proposed in this application. The facility is in compliance with CMS 2013 sprinkler mandates. There is a consulting and administrative services agreement proposed in this application.

Staff was recently advised that the seller had entered into a consulting and administrative services agreement effective July 1, 2013 with SLAP,LLC, whose members include most of the individuals of the applicant entity. In order to allay DOH concerns regarding the agreement the parties have agreed to abrogate the agreement. According to the applicants attorney, there has been no remuneration to the consultant for any services rendered.

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

The change in ownership will be effectuated in accordance with an executed asset purchase and sale agreement, the terms of which are summarized below:

Date:	December 28, 2012
Seller:	South Shore Nursing Home, Inc. d/b/a South Shore Healthcare
Purchaser :	South Shore Rehabilitation, LLC
Purchased Assets:	All assets used in operation of the facility. Facilities; equipment;

	supplies and inventory; prepaid expenses; documents and records; assignable leases, contracts, licenses and permits; telephone numbers, fax numbers and all logos; resident trust funds; deposits; accounts and notes receivable; cash, deposits and cash equivalents;
Excluded Assets:	Any security, vendor, utility or other deposits with any Governmental Entity; any refunds, debtor claims, third-party retroactive adjustments and related documents prior to closing, and personal property of residents
Assumed Liabilities:	Those associated with purchased assets
Purchase Price:	$6,250,000 for the operating interest
Payment of Purchase Price:	$6,250,000 paid at closing

As a condition of the closing, there will be a second and final closing after purchaser has obtained the final approval from the Public Health and Health Planning Council. S.S.N.H.R., Inc. will sell to South Shore Realty, the owned real property for $1,500,000. This agreement has also been executed. The members and membership interests of South Shore Nursing Realty, LLC are identical to the members of South Shore Rehabilitation, LLC.

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.

Lease Agreement

Facility occupancy is subject to an executed lease agreement:

Date:	April 24, 2013
Premises:	A 100-bed RHCF located at 275 West Merrick Road, Freeport
Landlord:	South Shore Nursing Realty, LLC
Tenant:	South Shore Rehabilitation, LLC
Terms:	30 years commencing on the execution of the final lease
Rental:	Annual rent is $1,200,000-years 1-5 with a 5% increase each consecutive block of five years after.
Provisions:	Tenant is responsible for taxes, insurance, utilities and maintenance

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and operating entity.

Operating Budget

Following is a summary of the submitted operating budget, presented in 2013 dollars, for the first year subsequent to change in ownership:

Revenues:	
Medicaid	$3,684,000
Medicare	5,072,700
Private Pay/Other	4,720,800
Other Income	124,200
Total	$13,601,700
Expenses:	
Operating	$12,136,903
Capital	1,358,541
Total	$13,495,444

Net Income	$ 106,256
Total Patient Days	32,747

- Medicaid capital component includes lease rental payment.
- Medicare and private pay revenues are based on current payment rates.
- Medicaid rates are based on 2013 Medicaid pricing rates with no trend to 2014.
- Other income represents ancillary services, beauty shop and vending machines.
- Overall utilization is projected at 89.7%.
- Utilization by payor source is anticipated as follows:

Medicaid	42.94%
Medicare	25.49%
Private/Other	31.57%

- Breakeven utilization is projected at 89.0%.

Capability and Feasibility

There are no project costs associated with this application. The total purchase price for the operations is $6,250,000 which has already been paid by the proposed members.

Working capital requirements are estimated at $2,249,241 based on two months of first year expenses, and will be satisfied from proposed members' equity. Review of BFA Attachment A, net worth of proposed members, reveal sufficient resources to satisfy the working capital requirements for the RHCF change in ownership.

The submitted budget indicates that a net income of $106,256 would be maintained during the first year following change in ownership. BFA Attachment E is the budget sensitivity analysis based on the June 30, 2013 utilization by payor. DOH staff notes that the applicant has taken a conservative approach in calculating first year revenues. BFA Attachment B presents the pro-forma balance sheet of South Shore Rehabilitation. As shown, the facility will initiate operation with $1,385,729 members' equity. The budget appears reasonable.

Staff notes that with the expected 2014 implementation of managed care for nursing home residents, Medicaid reimbursement is expected to change from a state-wide price with a cost-based capital component payment methodology, to a negotiated reimbursement methodology. Facility payments will be the result of negotiations between the managed long term care plans and the facility. At this point in time, it cannot be determined what financial impact this change in reimbursement methodology will have on this project.

Review of BFA Attachment C, financial summary of South Shore Healthcare, shows positive working capital, net equity and a net profit from operations of $212,645 as June 30, 2013. The negative net equity in 2012 and the net loss in 2012 and 2011 was due to management fees charged by a related company.

Review of Attachment D, financial summaries of proposed member's affiliated nursing homes, shows the 11 RHCFs had average positive net income for the period shown with the following exceptions: Little Neck Nursing Home had an average $758,803 net loss from operations due to Medicaid recoupment, but has since maintained a net income of $1,301,044 as of August 31, 2013. Townhouse Extended Care had an average $78,989 loss from operations due to bad debt write-offs and management fees paid to related entities. Silverlake Specialized Rehabilitation had an average $453,085 loss from operations due to lower patient acuity levels, low census and Medicaid recoupment, which they have since corrected by improvement of the census, increased acuity levels and the finalization of recoupment in 2012.

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 of Proposed Members
BFA-Attachment B	Pro-forma Balance Sheet, Little Neck Nursing Home
BFA-Attachment C	Financial Summary, South Shore Healthcare, 2011 - June 30, 2013
BFA-Attachment D	Financial summary of proposed members affiliated Nursing Homes
BFA Attachment E	Budget Sensitivity Analysis

Public Health and Health Planning Council

Project # 132071 E

Steuben Operations Associates, LLC d/b/a Steuben Center for Rehabilitation and Healthcare

County: **Steuben**
Purpose: **Establishment**
Program: **Residential Health Care Facility**
Acknowledged: **August 6, 2013**

Executive Summary

Description

Steuben Operations Associates, LLC d/b/a Steuben Center for Rehabilitation and Healthcare, is seeking approval to become established as the new operator of Steuben County Infirmary, an existing 105-bed county-owned residential health care facility (RHCF) located at 7009 Rumsey Street Extension in Bath.

Steuben Operations Associates, LLC ownership as follows:

	% Membership Interest
Kenneth Rozenberg	63%
Jeffrey Strauss	29%
Jeffrey Sicklick	3%
David Greenberg	5%

The initial capital paid for proposed membership interest is $20 per one percent for a total of $2,000.

Kenneth Rozenberg, Jeffrey Strauss, and Jeffrey Sicklick have membership interests in multiple healthcare facilities. BFA Attachment B shows the proposed members interest in the affiliated facilities.

DOH Recommendation

Contingent Approval

Need Summary

Utilization at Steuben County Infirmary was consistent from 2009 to 2011 and was greater than the remainder of facilities in Steuben County for those years. Current utilization is 94.3%. This project will not result in changes to capacity.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The facility is in compliance with the CMS 2013 sprinkler mandate.

Financial Summary

The purchase price for the operating assets is $6,987,500. The purchase price will be paid by $698,750 in cash and a $6,288,750 mortgage at 5.26% over a 10 year term with a 20 year amortization.

There are no project costs associated with this proposal.

Budget:	Revenues:	$11,677,467
	Expenses:	$ 11,343,211
	Gain:	$ 334,256

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 contingent approval of this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
    - Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
    - Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
    - Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
    - Submit an annual report for two years to the DOH, which demonstrates substantial progress with the implement of the plan. The plan should include but not be limited to:
        - Information on activities relating to a-c above; and
        - Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
        - Other factors as determined by the applicant to be pertinent.

    The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
3. Submission of a loan commitment for working capital, acceptable to the Department. [BFA]
4. Submission of a loan commitment for the purchase price, acceptable to the Department. [BFA]
5. Submission of a photocopy of an executed Assignment and Assumption Agreement, acceptable to the Department. (CSL)
6. The sponsor's signing a Medicaid access agreement. [FLA]
7. The sponsor's willingness to enter into an agreement with Steuben County which articulates how the sponsor will continue to provide a safety net function for the County. [FLA]
8. The sponsor's agreement to either develop an aide training program or enter into an arrangement with Corning Community College or others to insure a sufficient supply of aides. [FLA]

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. With the condition that the sponsor, who will become the largest single provider of skilled nursing facility services in Steuben County and given the increasing prevalence of dementia with the aging of the population, actively engages with Steuben County authorities and other health care providers and facilities in the county to assess the unmet needs of people with dementia and their caregivers for both out-patient and inpatient best practice services. Further, the sponsor submits a report to FLHSA within a year of assuming operation of the facility indicating what role the sponsor is willing to assume to address identified needs of caregivers and people with dementia. [FLA]

Council Action Date

December 12, 2013.

Need Analysis

Background
Steuben Operations Associates, LLC d/b/a Steuben Center for Rehabilitation and Healthcare seeks approval to be established as the new operator of Steuben County Infirmary, a 105-bed residential health care facility located at 7009 Rumsey Street Extension, Bath, in Steuben County.

Analysis
There is no remaining RHCF bed need in Steuben County, as shown in Table 1.

Table 1: RHCF Need – Steuben County

2016 Projected Need	691
Current Beds	691
Beds Under Construction	0
Total Resources	691
Unmet Need	0

Steuben County Infirmary did not exceed the Department's planning optimum of 97% occupancy for 2009, 2010, or 2011. However, utilization exceeded the Steuben County average for the same years.

Table 2: Steuben Operations Associates/Steuben County

Facility/County/Region	% Occupancy 2009	% Occupancy 2010	% Occupancy 2011
Steuben Operations Associates	94.1%	93.5%	93.9%
Steuben County	91.2%	91.4%	91.9%

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.

Steuben County Infirmary did not exceed the Steuben County 75% Medicaid admission percentages of 17.97% in 2010 and 17.14% in 2011 with admissions of 16.89% and 5.08%, respectively.

Conclusion
This transfer of ownership will not result in any cacpacity changes and will preserve a facility that is serving the community, with higher occupancy rates than other RHCFs in the county.

Recommendation
From a need perspective, contingent approval is recommended.

Programmatic Analysis

Facility Information

	Existing	Proposed
Facility Name	Steuben County Infirmary	Steuben Center for Rehabilitation and Healthcare
Address	7009 Rumsey Street Extension Bath, NY 14810	Same
RHCF Capacity	105	Same
ADHC Program Capacity	N/A	Same
Type of Operator	County	Limited Liability Company
Class of Operator	Public	Proprietary
Operator	Steuben County Department of Social Services	Steuben Operations Associates, LLC d/b/a Steuben Center for Rehabilitation and Healthcare Managing Member Kenneth Rozenberg 63.0% Members: Jeremy Strauss 29.0% David Greenberg 5.0% Jeremy Sicklick 3.0%

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	10/2003 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	10/2003 to present
Waterfront Center for Rehabilitation and Health Center	08/2011 to present
Williamsbridge Manor Nursing Home	10/2003 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:

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

David Greenberg is a nursing home administrator in good standing in the states of New York and New Jersey. Mr. Greenberg has been employed as an Administrator at Boro Park Center Nursing Home since July 2010. Prior employment includes Administrator positions at both Wartburg Lutheran Nursing Home from November 2007 to July 2010, and Liberty House Nursing Home in Jersey City, NJ May 2002 to November 2007. Mr. Greenberg 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 that 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 also 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 known as Stonehedge Health & Rehabilitation Center - Chittenango) for the period identified above reveals that 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 also 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 that 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 that 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. No administrative services or consulting agreements 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 change in ownership will be effectuated in accordance with an executed asset purchase agreement, the terms of which are summarized below:

Date:	June 3, 2013
Seller:	County of Steuben
Purchaser :	Steuben Operations Associates, LLC
Purchased Assets:	All assets used in operation of the facility. Facilities; equipment; supplies and inventory; prepaid expenses; documents and records; assignable leases, contracts, licenses and permits; telephone numbers, fax numbers and all logos; resident trust funds; deposits; accounts and notes receivable; cash, deposits and cash equivalents;
Excluded Assets:	Any security, vendor, utility or other deposits with any Governmental Entity; any refunds, debtor claims, third-party retroactive adjustments and related documents prior to closing, and personal property of residents.
Assumed Liabilities:	Those associated with purchased assets.
Purchase Price:	$6,987,500 for the operating interest.
Payment of Purchase Price:	$698,750 cash held in escrow as a deposit upon execution with the remaining $6,288,750 at closing.

Concurrent with entering into the Asset Purchase Agreement, the County of Steuben entered into a Land Purchase Agreement with Steuben Land Associates, LLC for the sale and acquisition, respectively, of the real property interest of Steuben County Infirmary at a purchase price of $3,762,500. The members of Steuben Land Associates, LLC are Daryl Hagler (99%) and Jonathan Hagler (1%).

The applicant 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.

Lease Agreement
Facility occupancy is subject to an executed lease agreement, the terms of which are summarized as follows:

Date:	June 15, 2013
Premises:	A 105 bed RHCF located at 7009 Rumsey Street Extension, Bath
Landlord:	Steuben Land Associates, LLC

Tenant:	Steuben Operations Associates, LLC
Terms:	30 years commencing on the execution of the lease
Rental:	Base rent equal to the debt service payments of the mortgage covering the premises. $316,406 per year plus $250,000 per year.
Provisions:	Tenant is responsible for taxes, insurance, utilities and maintenance

The lease arrangement is an arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between landlord and tenant in that members of each company have previous business relationships involving real estate transactions of other nursing homes.

Operating Budget

Following is a summary of the submitted operating budget for the RHCF, presented in 2013 dollars, for the first and third year subsequent to change in ownership:

Revenues:	
Medicaid	$6,941,932
Medicare	1,896,139
Private Pay	2,839,396
Total Revenues	$11,677,467
Expenses:	
Operating	$10,164,542
Capital	1,178,669
Total Expenses	$11,343,211
Net Income	$334,256
Utilization: (patient days)	38,284
Occupancy	99.9%

The following is noted with respect to the submitted RHCF operating budget:

- Expenses include lease rental.
- Medicaid revenues include assessment revenues.
- Medicaid rates are based on 2013 Medicaid pricing rates with no trend to 2014.
- Medicare and Private rates are based on the experience of the County and the applicant's experience in assuming operations of similar facilities.
- Overall utilization is projected at 99.9%, while utilization by payor source is expected as follows:

Medicaid	76.3%
Medicare	9.3%
Private Pay	14.4%

- Breakeven occupancy is projected at 97.0%.

Capability and Feasibility

The purchase price of the operations will be financed by a loan from Greystone of $6,288,750 at an interest rate of 5.26% for 10 years, with a 20 year amortization, with the remaining $698,750 from the members of Steuben Operations Associates, LLC. BFA Attachment A is the net worth statement of proposed members, which shows sufficient equity. A Letter of Interest has been submitted by Greystone.

The members of Steuben Operations Associates, LLC have submitted an affidavit stating that they will fund the balloon payment, should acceptable financing not be available at the time the loan comes due after the 10 year period. BFA Attachment E is the interest and amortization schedule for the ten year term.

Working capital requirements are estimated at $1,890,535, based on two months of the first year expenses, of which $945,268 will be satisfied from the proposed member's equity, and the remaining $945,267 will be satisfied through a loan from Greystone at 5.26% over 5 years. A letter of interest has been supplied by the bank. BFA Attachment A is the net worth of proposed members, which shows sufficient equity.

The submitted budget indicates that a net income of $334,256 would be maintained during the first year following change in ownership. DOH staff has reviewed the difference between the current 2012 net operating loss of $2,881,322, as shown on BFA Attachment E, and the first year budgeted net income of $334,256 and has concluded that the difference is mainly due to the reduction in employee fringe benefits of $2,872,740. The facility will no longer participate in the County benefit plan. BFA Attachment G is the budget sensitivity analysis based on September 25, 2013 current utilization of the facility, which shows the budgeted revenues would decrease by $183,076, resulting in a net income in year one of $151,180. BFA Attachment C is the pro-forma balance sheet of Steuben Operations Associates, LLC d/b/a Steuben Center for Rehabilitation and Healthcare, which indicates positive members' equity of $2,020,268 as of the first day of operations. It is noted that assets include $6,987,500 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Thus, members' equity would be negative $4,967,232. The budget appears reasonable.

Staff notes that with the expected 2014 implementation of managed care for nursing home residents, Medicaid reimbursement is expected to change from a state-wide price with a cost-based capital component payment methodology to a negotiated reimbursement methodology. Facility payments will be the result of negotiations between the managed long term care plans and the facility. At this point in time, it cannot be determined what financial impact this change in reimbursement methodology will have on this project.

As shown on BFA Attachment D , the facility maintained positive working capital in 2009-2010, experienced negative working capital in 2011, and maintained positive net assets and an average net loss from operations of $2,137,607 for the period shown.

As shown on BFA Attachment E, the facility experienced negative working capital, net assets and a net operating loss of $2,881,322 in 2012. The county cannot maintain its current operation due to reoccurring losses from year to year and has therefore decided to sell the facility.

BFA Attachment H is the financial summary of the proposed members' affiliated health care facilities and shows the facilities have maintained positive income from operations for the periods shown with one exception, Chittenango Center for Rehabilitation had loss due to a one-time audit recoupment.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth of Proposed Members
BFA Attachment B	Proposed Members Ownership Interest in Affiliated Homes
BFA Attachment C	Pro-forma Balance Sheet,
BFA Attachment D	Financial Summary, Steuben County Infirmary, 2009-2011
BFA Attachment E	Financial Summary, Steuben County Infirmary, 2012
BFA Attachment F	Interest and Amortization Schedule
BFA Attachment G	Budget Sensitivity Analysis
BFA Attachment H	Financial Summaries of Affiliated RHCFs for proposed members

Public Health and Health Planning Council

Project # 132113 E
SGRNC LLC d/b/a King David Nursing and Rehabilitation Center

County: **Kings**
Purpose: **Establishment**
Program: **Residential Health Care Facility**
Acknowledged: **August 27, 2013**

Executive Summary

Description
SGRNC, LLC d/b/a King David Nursing and Rehabilitation Center, requests approval to be established as the operator of Sephardic Nursing and Rehabilitation Center, a 271-bed not-for-profit residential healthcare facility with a 50-slot adult day health care program located at 2230-2266 Cropsey Avenue, Brooklyn. Cropsey Properties, LLC will be purchasing the real estate, of which the ownership is identical to the proposed operators' ownership. The applicant entered into a transfer agreement dated June 26, 2013, with Sephardic Home for the Aged, Inc.

The proposed operator is as follows:

Members:	
Joel Landau	33.3333%
Marvin Rubin	33.3333%
Solomon Rubin	33.3333%

BFA Attachment E is the financial summary of Hamilton Park Nursing and Rehabilitation, in which the proposed members have ownership interests.

DOH Recommendation
Contingent Approval

Need Summary
Sephardic Nursing and Rehabilitation Center's utilization was 96.5% in 2009, 96.5% in 2010, and 96.6% in 2011, which exceeds the New York City region's overall RHCF utilization rate.

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
The purchase price for the acquisition of the operating interests of Sephardic Nursing and Rehabilitation Center is $6,000,000, and will met as follows: Equity of $200,000 from the proposed members; personal loan of $400,000 at an interest rate of 5% for a ten year term and a bank loan of $5,400,000 at an interest rate of 4.75% for a ten year term.

The purchase price for the transfer of the real property interests of the facility is $30,000,000. The purchase price for the real estate interests will be met as follows: Equity of $750,000 from the proposed members; personal loan of $2,250,000 at an interest rate of 5% for a ten year term, and a bank loan of $27,000,000 at an interest rate of 4.75% for a ten year term.

Budget:

Revenues	$38,629,121
Expenses	37,891,037
Net Income	$ 738,084

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 application.

Office of Health Systems Management
Approval contingent upon:
1. Submission of a personal loan commitment, acceptable to the Department. [BFA]
2. Submission of a bank loan commitment for the operating interest portion, acceptable to the Department. [BFA]
3. Submission of a bank loan commitment for the real estate interests portion, acceptable to the Department. [BFA]
4. Submission of a working capital loan commitment, acceptable to the Department. [BFA]
5. 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]
6. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
    a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
    b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
    c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; 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]
7. Submission of a photocopy of the applicant's executed Amended and Restated Operating Agreement, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's executed Asset Purchase Agreement, acceptable to the Department. [CSL]

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]

Council Action Date
December 12, 2013.

Need Analysis

Project Description

SGRNC LLC d/b/a King David Nursing and Rehabilitation Center seeks approval to become the established operator of Sephardic Nursing and Rehabilitation Center, a 271-bed Article 28 residential health care facility, located at 2230-2266 Cropsey Avenue, Brooklyn, 11214, in Kings County.

Analysis

There is currently a need for 8,862 beds in the New York City Region as indicated in Table 1 below. However, the overall occupancy for the New York City Region is 94.8% for 2011 as indicated in Table 2.

Table 1: RHCF Need – New York City Region

2016 Projected Need	51,071
Current Beds	41,895
Beds Under Construction	314
Total Resources	42,209
Unmet Need	8,862

Sephardic's utilization was 96.5% in 2009, 96.5% in 2010, and 96.6% in 2011. Sephardic has continually exceeded the County and the Region's overall occupancy rates.

Table 2: Sephardic Nursing & Rehabilitation Center/Kings County/New York City Region Occupancy

Facility/County/Region	% Occupancy 2009	% Occupancy 2010	% Occupancy 2011
Sephardic Nursing & Rehabilitation Center	96.5%	96.5%	96.6%
Kings County	92.7%	95.0%	94.3%
New York City Region	94.9%	95.4%	94.8%

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.

Sephardic's Medicaid admissions of 49.81% in 2010 and 45.18% in 2011 exceeded the Kings County 75% rates of 28.12% in 2010 and 30.92% in 2011.

Conclusion

Approval of this application will result in the maintenance of a necessary community resource that provides needed services to the Medicaid population.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Facility Information

	Existing	Proposed
Facility Name	Sephardic Nursing and Rehabilitation Center	King David Nursing and Rehabilitation Center
Address	2230-2266 Cropsey Avenue Brooklyn	Same
RHCF Capacity	271	Same
ADHC Program Capacity	50	Same
Type of Operator	Not for profit	Proprietary
Class of Operator	Voluntary	Limited Liability Company
Operator	Sephardic Home for the Aged Inc.	SGRNC LLC Managing Members: Joel Landau 33.33% Marvin Rubin 33.33% Solomon Rubin 33.33%

Character and Competence – Background

Facilities Reviewed

Nursing Homes

Linden Gardens Rehabilitation and Nursing Center	01/2013 to present
Crown Heights Center for Nursing and Rehabilitation (previously known as Marcus Garvey Residential Rehabilitation Pavilion)	01/2013 to present
Hamilton Park Nursing and Rehabilitation Center	08/2009 to present
Hopkins Center for Rehabilitation and Healthcare	03/2012 to present

New Jersey Nursing Home

Norwood Terrace Health Center 09/2003 to present

Licensed Home Care Services Agency (LHCSA)

True Care, Inc. 03/2011 to present

Individual Background Review

Joel Landau is the director of Care to Care, LLC, a radiology benefit management company. He is also the owner of The Intelimed Group, a medical contracting and credentialing company and E-Z Bill, a medical billing company. Joel Landau is a notary public, licensed by the Department of State in New York State. Mr. Landau discloses the following ownership interests in health facilities:

Linden Gardens Rehabilitation and Nursing Center	01/2013 to present
Crown Heights Center for Nursing and Rehabilitation	01/2013 to present

Marvin Rubin is a manager at the Hamilton Park Nursing and Rehabilitation Center. Marvin Rubin discloses the following ownership interests in health facilities:

Linden Gardens Rehabilitation and Nursing Center	05/2013 to present
Crown Heights Center for Nursing and Rehabilitation	04/2013 to present
Hopkins Center for Rehabilitation and Healthcare	03/2012 to present
Hamilton Park Nursing and Rehabilitation Center	12/2012 to present
True Care, Inc.	03/2011 to present

Solomon Rubin is the controller for the Grandell Rehabilitation and Nursing Center and the Beach Terrace Care Center. He is also a manager at Hamilton Park Nursing and Rehabilitation Center. Solomon Rubin discloses the following ownership interests in health facilities:

Hamilton Park Nursing and Rehabilitation Center	08/2009 to present
Linden Gardens Rehabilitation and Nursing Center	05/2013 to present
Crown Heights Center for Nursing and Rehabilitation	04/2013 to present
Norwood Terrace Health Center	2000 to present

Character and Competence - Analysis
No negative information has been received concerning the character and competence of the applicants.

A review of operations for the Linden Gardens Rehabilitation and Nursing Center, Hopkins Center for Rehabilitation and Healthcare, Hamilton Park Nursing and Rehabilitation Center, and Crown Heights Center for Nursing and Rehabilitation, previously known as Marcus Garvey Nursing Home Company, Inc. 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 the Norwood Terrace Health Center in Plainfield, New Jersey for the period identified above, results in a conclusion of a substantially consistent high level of care since there were no enforcements.

A review of the licensed home care services agency True Care, Inc. reveals that a substantially consistent high level of care has been provided since there were no enforcements.

Project Review
No changes in the program or physical environment are proposed in this application. 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
The applicant has submitted an executed asset purchase agreement for the purchase of the operating interests, summarized below:

Date:	June 26, 2013
Seller:	Sephardic Home for the Aged, Inc.
Purchaser:	SGRNC, LLC
Assets Acquired:	All personal property; all inventory; all prepaid expenses; to the extent

	assignable under applicable law, all financial, resident and medical staff records held or used by Seller in the Business; all assignable or transferred permits relating to the operation, ownership, use, occupancy or maintenance of the Facility; Seller's Medicare provider number and Medicare provider reimbursement agreement; all of Seller's Accounts Receivable; Seller's goodwill in response of the Business; all of Seller's interest in the Assumed Contracts; all telephone and telecopier numbers, telephone directory, listings and advertisements used in the Facility; all resident trust funds and all of Seller's rights and interests in and to Seller's Medicaid provider number and Medicaid provider reimbursement agreement.
Excluded Assets:	All cash; the real estate; all trade names, trademarks and service marks associated with the Facility, including the names "Sephardic Home for the Aged" and "Sephardic Nursing & Rehabilitation Center"; all minute books, charter documents, record books and other books and records pertaining to the organization; all agency receivables; all assets transferred or otherwise disposed of by Seller in the ordinary course of business; all prepaid assets or refunds of credits of taxes as of the Closing Date; all Excluded Contracts; all policy and procedures manuals and similar documents including all compliance plan materials; all endowment funds and other restricted funds and all interest of Seller in, and assets of, Sephardic Home Care Services, Inc., Sephardic Geriatric Foundation of New York, Inc. and the Ladies Auxiliary.
Assumed Liabilities:	All liabilities accruing from and after the Effective Time will result to the Assumed Contracts and the Assumed Collective Bargaining Agreements; all liabilities arising under Seller's Medicare provider reimbursement agreement and Medicaid provider reimbursement agreement, for periods from and after the Effective Time; all liabilities included in net working capital as of the Closing Date, including paid time off, accounts payable and accrued expenses and all liabilities with respect to any occupancy agreement with a Resident with respect to Resident Trust Funds delivered to Buyer.
Excluded Liabilities:	Except for the Assumed Liabilities, Buyer shall not assume or become liable for the payment or performance of any Liability of Seller of any nature whatsoever.
Purchase Price:	$6,000,000
Payment of Purchase:	Payment at Closing

The applicant has submitted an affidavit, 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 the liability and responsibility. Currently, there are no outstanding liabilities.

Real Estate Purchase Agreement

The applicant has submitted an executed real estate purchase agreement for the acquisition of the real property, summarized below:

Date:	June 26, 2013
Seller:	Sephardic Home For The Aged, Inc.
Purchaser:	Cropsey Properties, LLC
Purchase Price:	$30,000,000
Payment of Purchase Price:	Payment at Closing

Lease Rental Agreement

The applicant has submitted an executed lease rental agreement for the site the nursing home will occupy, summarized below:

Date:	July 31, 2013
Premises:	Leasing of the premises located at 2266 Cropsey Avenue, Brooklyn, New York.
Lessor:	Cropsey Properties, LLC
Lessee:	SGRNC, LLC
Term:	Ten years
Rental:	The annual base rent shall be $3,000,000. On each anniversary of the Commencement Date the annual base rent shall increase by 3%.
Provisions:	The lessee shall be responsible for maintenance, real estate taxes and utilities.

Operating Budget

The applicant has submitted an operating budget, in 2013 dollars, for the first year subsequent to the change in operator, summarized below:

Revenues:	
Medicaid Managed Care	$18,802,493
Medicare Fee-For-Service	10,089,330
Commercial Fee-For-Service	7,976,506
ADHCP	1,760,792
Total Revenues	$38,629,121
Expenses:	
Operating	$36,318,337
Capital	1,572,700
Total Expenses	$37,891,037
Net Income	$738,084
Utilization: (SNF patient days)	94,958
Utilization: (ADHCP visits)	14,664
Occupancy (SNF)	95.99%

Utilization for the RHCF beds broken down by payor source during the first year after the change in operator is as follows:

Medicaid	71.00%
Medicare	17.00%
Private/Other	12.00%

Utilization for the ADHCP will be 100% Medicaid.

Utilization is based on the facility's experience for the period ending June 30, 2013.

The applicant notes the following expense reductions:

- Fiscal Service Fees ($415,000)
- Administrative Service Fees ($200,000)
- Patient Food Service Salaries and Wages and associated Employee Benefits ($245,000)
- Nursing Administration and Direct Care Nursing Salaries and Wages associated Employee Benefits ($170,000)
- Activities Program Salaries and Wages and associated Employee Benefits ($90,000)
- Social Service Salaries and Wages and associated Employee Benefits ($70,000)
- Direct Care Nursing Services ($575,000)

Capability and Feasibility

The purchase price for the acquisition of the operating interests of Sephardic Nursing and Rehabilitation Center is $6,000,000. The purchase price for the operating interests will be met as follows: equity of $200,000 from the proposed members, personal loan of $400,000 at an interest rate of 5% for a ten year

term, and a bank loan of $5,400,000 at an interest rate of 4.75% for a ten year term. The purchase price for the transfer of the real property interests of the facility is $30,000,000. The purchase price for the real estate interests will be met as follows: equity of $750,000 from the proposed members, personal loan of $2,250,000 at an interest rate of 5% for a ten year term, and a bank loan of $27,000,000 at an interest rate of 4.75% for a ten year term.

Working capital requirements are estimated at $6,315,172, which is equivalent to two months of first year expenses. The applicant will finance $3,157,586 at an interest rate of 4.75% for a five year term. The remainder, $3,157,586, will be met via equity of $400,000 from the proposed members of SGRNC, LLC and a personal loan of $2,757,586 at an interest rate of 5% for a ten year term. BFA Attachment A is the personal net worth statements of the proposed members of SGRNC, LLC, which indicates the availability of sufficient funds for the equity contributions.

The proposed members have sufficient funds, which includes real estate and operational interests in other nursing homes, to pay off the personal loan. BFA Attachment C is the pro-forma balance sheet of SGRNC, LLC as of the first day of operation, which indicates a positive net asset position of $6,515,172. It is noted that assets include $6,000,000 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Thus member's equity would be a positive $515,172.

The submitted budget indicates a net income of $738,084 during the first year after the change in operator. The submitted budget appears reasonable.

BFA Attachment B is the financial summary of Sephardic Home for the Aged 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 average losses of $564,524 from 2010 through 2012. BFA Attachment D is the June 30, 2013 internal financial statements of Sephardic Home for the Aged. As shown, the facility had a positive working capital position and a positive net asset position. Also, the facility incurred an operating deficit of $175,231 through June 30, 2013. The applicant has indicated that the reason for the losses are the result of the facility not adapting to rapidly changing dynamics in the NYC long term care market, primarily with respect to MLTCP contracting in the face of mandating Medicaid managed long term care. After several years of losses, the Board of Directors made the decision to sell the nursing home.

BFA Attachment E is the financial summary of Hamilton Park Nursing and Rehabilitation. As shown, the facility had an average negative working capital position and an average positive net asset position from 2010 through 2012. The applicant has indicated that the reason for the negative working capital position is the result of the facility having had liabilities to related parties. Also, the facility achieved an average net income of $1,030,503 from 2010 through 2012.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A-	Personal Net Worth Statement
BFA Attachment B-	Financial Summary- Sephardic Home for the Aged
BFA Attachment C-	Pro-forma Balance Sheet
BFA Attachment D-	June 30, 2013 internal financial statements of Sephardic Home for the Aged
BFA Attachment E-	Financial Summary- Hamilton Park Nursing and Rehabilitation

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

November 21, 2013

Certified Home Health Agencies – Establish/Construct **Exhibit # 11**

	Number	Applicant/Facility
1.	132048 E	HCS Certified Home Care New York, Inc. d/b/a Girling Health Care of New York (Kings County)

Public Health and Health Planning Council

Project # 132048-E

HCS Certified Home Care New York, Inc. d/b/a Girling Health Care of New York

County: **Kings**
Purpose: **Establishment**

Program: **Certified Home Health Agency**
Acknowledged: **July 19, 2013**

Executive Summary

Description

Girling Health Care of New York, Inc., an existing proprietary business corporation and a certified home health agency (CHHA) is requesting to sell its operating interests to HCS Certified Home Care NY, Inc., who will do business as Girling Health Care of New York, Inc. upon Public Health and Health Planning Council approval of this application. The proposed members are Jeffrey Shemia (51%) and Agnes Shemia (49%). Girling Health Care of New York, Inc. will continue to provide nursing, physical therapy, occupational therapy, speech language pathology, medical social services, nutritional services, home health aide services and medical supplies equipment and appliances throughout Bronx, Kings, New York and Queens counties.

The existing lease agreement between Girling Health Care of New York, Inc. and Dyker Associates will continue to be in effect at the same location of 118-A Battery Avenue, Brooklyn, for the remaining term of the lease and HCS Certified Home Care NY, Inc. will enter into an amended lease extension until a future location can be decided. The applicant has submitted an affidavit attesting to no relationship between landlord and applicant.

DOH Recommendation

Contingent Approval

Need Summary

Because this transaction involves no change in services, there will be no Need review of this application.

Program Summary

The current proposal seeks approval for HCS Certified Home Care NY, Inc. d/b/a Girling Health Care of New York, a proprietary business corporation, to purchase and become the new owner/operator of the Certified Home Health Agency (CHHA) currently operated by Girling Health Care of New York, Inc. HCS Certified Home Care NY, Inc. d/b/a Girling Health Care of New York, plans to continue to operate this CHHA at its current main office practice location of 118-A Battery Avenue, Brooklyn, New York 11209, and to continue to serve Kings, New York, and Queens Counties.

Financial Summary

There are no project costs associated with this application. The purchase price of $2,100,000 will be met with the proposed member's equity.

Incremental Budget:		
	Revenues:	$21,394,447
	Expenses:	$16,354,253
	Net Income:	$ 5,040,194

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

Recommendations

Health Systems Agency
There will be no HSA recommendation of this application.

Office of Health Systems Management
Approval contingent upon:
1. Submission of an executed amended lease extension, acceptable to the Department. [BFA]
2. Submission of a photocopy of the applicant's fully executed Bylaws, acceptable to the Department. [CSL]

Approval conditional upon:
1. The project must be completed within one year from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date
December 12, 2013.

Programmatic Analysis

Background

The current proposal seeks approval for HCS Certified Home Care NY, Inc. d/b/a Girling Health Care of New York, a proprietary business corporation, to purchase and become the new owner/operator of the CHHA currently operated by Girling Health Care of New York, Inc., also a proprietary business corporation. HCS Certified Home Care NY, Inc. d/b/a Girling Health Care of New York, plans to continue to operate this CHHA at its current main office practice location of 118-A Battery Avenue, Brooklyn, New York 11209, and to continue to serve Kings, New York, and Queens Counties.

The CHHA operated by HCS Certified Home Care NY, Inc. d/b/a Girling Health Care of New York, will continue to provide the services of Home Health Aide, Medical Social Services, Medical Supplies/Equipment/Appliances, Nursing, Nutritional, Occupational Therapy, Physical Therapy, and Speech Language Pathology.

HCS Certified Home Care NY, Inc. d/b/a Girling Health Care of New York, is currently authorized 1000 shares of common stock. Currently, 100 shares of stock are issued and 900 shares of stock remain unissued. The current stockholders and stock distribution of the 100 issued shares of stock are as follows:

Jeffrey Shemia – 51 shares (51%) – disclosed below
Agnes Shemia – 49 shares (49%) – disclosed below

The members of Board of Directors of HCS Certified Home Care NY, Inc. d/b/a Girling Health Care of New York, are as follows:

Jeffrey Shemia, Board President
President, CEO, and 49% stockholder of
Home Health Care Services of New York, Inc.,
d/b/a HCS (LHCSA)

Agnes Shemia, Licensed Speech Language Pathologist, Board Secretary
Administrator and 51% stockholder of Home Health Care Services of New York, Inc., d/b/a HCS (LHCSA)

The Office of the Professions of the State Education Department indicates no issues with the professional Speech Language Pathology licensure of Agnes Shemia. In addition, a search of the above named stockholders, 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, for the time period September 2006 to present, of Home Health Care Services of New York, Inc. d/b/a HCS, a Licensed Home Care Services Agency (LHCSA) whose sole stockholders are Jeffrey Shemia and Agnes Shemia. It has been determined that the LHCSA has exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent any recurrent code violations. The LHCSA has been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

A review of all personal qualifying information indicates there is nothing in the background of the stockholders, board members, and officers to adversely affect their positions with HCS Certified Home Care NY, Inc. d/b/a Girling Health Care of New York. 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, the terms of which are summarized below:

Date:	July 11, 2012
Purpose:	Purchase 100% of the operating interest
Purchaser:	HCS Certified Home Care NY, Inc.
Seller:	Girling Health Care of New York, Inc.
Purchase Price:	$2,100,000 - $1,000,000 paid upon execution and held in escrow and remaining $1,100,000 due at closing.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 36 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility.

Operating Budgets

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:		
Commercial	$ 199,175	$ 229,135
Medicare	2,529,751	2,910,267
Medicaid	15,868,196	18,255,045
Total Revenue:	$18,597,122	$21,394,447
Expenses:	$13,534,749	$16,354,253
Net Income:	$5,062,373	$5,040,194
Visits	31,694	36,461

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

	Year One and Three
Commercial Managed Care	1%
Medicare Fee for Service	10%
Medicaid Managed Care	87%
Charity Care	2%

Expenses and utilization assumptions are based on the historical experience of Girling Health Care of New York, Inc. Revenues are reflective of current payment rates.

Capability and Feasibility

There are no project costs associated with this application. The purchase price of $2,100,000 will be met with the proposed members' equity. The proposed members have already paid $1,000,000 in equity when asset purchase agreement was executed and therefore have a balance of $1,100,000. BFA Attachment A is the net worth statement of the proposed members showing sufficient funds available.

Working capital requirements are estimated at $2,255,792, based on two months of the first year expenses, which will be satisfied from the proposed member's equity. BFA Attachment A is the net worth of the proposed members, and shows sufficient equity.

The submitted incremental budget indicates that a net income of $5,062,373 and $5,040,094 would be maintained during the first and third years, respectively, following change in ownership. BFA Attachment D is the pro-forma balance sheet of Girling Health Care of New York, which indicates positive members' equity of $4,335,792 as of the first day of operations. It is noted that assets include $2,100,000 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Thus members' equity would be positive $2,255,792. The budget appears reasonable.

As shown on BFA Attachment B, financial summary of Girling Health Care of New York, Inc., the facility has experienced negative working capital and positive stockholders' equity positions for 2010 and 2011, with an average net income of $1,039,059 for the period shown. In 2012, the facility also experienced negative working capital and positive stockholders' equity positions and net income of $1,728,525. The applicant has stated the reason for the negative working capital was due to the increase in third party liabilities caused by the change in reimbursement regulations based on per beneficiary cap limits.
As shown on BFA Attachment C, a draft financial summary for Girling Health Care of New York, Inc as of June 30, 2013, the facility has maintained positive working capital, stockholders' equity positions and shows net income of $148,781.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth Statement
BFA Attachment B	Financial Summary 2011-2012, Girling Health Care of New York, Inc
BFA Attachment C	Internal Financial Summary as of June 30, 2013, Girling Health Care of New York, Inc.
BFA Attachment D	Pro-forma Balance Sheet

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

November 21, 2013

C. Certificates

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

Applicant

1. Addiction Research and Treatment Corporation
2. East Harlem Council for Human Services, Inc.

STATE OF NEW YORK - DEPARTMENT OF HEALTH

MEMORANDUM

TO: Public Health and Health Planning Council

FROM: James E. Dering, General Counsel

DATE: September 12, 2013

SUBJECT: Proposed Certificate of Amendment of the Certificate of Incorporation of Addiction Research and Treatment Corporation, Inc.

Attached is the proposed Certificate of Amendment of the Certificate of Incorporation of Addiction Research and Treatment Corporation, Inc. The corporation seeks approval to amend its certificate to change its name to START Treatment & Recovery Centers, Inc.

East Harlem Council for Human Services, Inc. is a type B not-for-profit corporation that was 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).

Attached is the duly executed Certificate of Amendment of the Certificate of Incorporation. The Department has no objection to the Certificate of Amendment, which is in legally acceptable form.

JED: JCL
Attachments

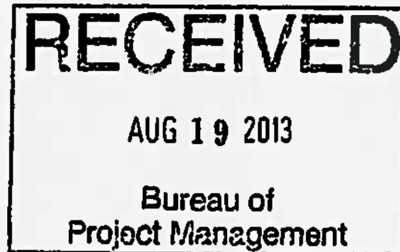
WOOD
RAFALSKY
& WOOD, LLP

ATTORNEYS AT LAW

394 WAVERLY AVENUE
BROOKLYN, NEW YORK 11238
PHONE: (718) 636-8000
FAX: (718) 857-5628
E-MAIL: admin@woodrafalsky.com

August 15, 2013

Ms. Barbara Del Cogliano
Director
Bureau of Program Management
Division of Health Facility Planning
New York State Department of Health
Corning Tower – Room 1842
Albany, New York 12237



Re: Request for Approval of Name-Change

Dear Ms. Del Cogliano:

This firm represents Addiction Research and Treatment Corporation ("ARTC") a New York State not-for-profit Article 28 provider that is seeking to change its corporate name to START Treatment & Recovery Centers, Inc. as part of its efforts to rebrand and modernize its image. ARTC is seeking to change its clinical, scientific-sounding name to a more therapeutic, patient-oriented one. No other change is intended by this name-change. An extensive search was conducted to ensure that the proposed new name does not cause confusion with the identity of any other facility. I have enclosed for your review a copy of the Certificate of Reservation, evidencing the reservation of the proposed new name, should ARTC receive approval to change its corporate name.

Also enclosed with this letter is a copy of the executed Certificate of Amendment to ARTC's Certificate of Incorporation, as well as a copy of ARTC's Certificate of Incorporation and all prior amendments thereto for your review as you consider this request.

Thank you for your attention to this matter and please contact me should you have any further questions regarding it.

Very truly yours,

Kathleen Yee, Esq.

82951

KY/tb
Enclosures

cc: Lawrence S. Brown, Jr., MD, MPH, FASAM
Thomas R. Rafalsky, Esq.

CERTIFICATE OF AMENDMENT OF THE CERTIFICATE OF INCORPORATION OF ADDICTION RESEARCH AND TREATMENT CORPORATION

Filed by: Kathleen Yee, Esq.

Wood, Rafalsky & Wood, LLP
394 Waverly Avenue
Brooklyn, New York 11238

CERTIFICATE OF AMENDMENT OF THE CERTIFICATE OF INCORPORATION OF ADDICTION RESEARCH AND TREATMENT CORPORATION UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW

I THE UNDERSIGNED, being the Chairperson of ADDICTION RESEARCH AND TREATMENT CORPORATION (the "Corporation,") do hereby certify as follows:

1. The name of the Corporation is ADDICTION RESEARCH AND TREATMENT CORPORATION.

2. The Certificate of Incorporation of the Corporation was filed by the Department of State on October 3, 1969 and the law under which it was formed was the Not-For-Profit Corporation Law. The said Certificate of Incorporation was restated pursuant to Section 803 of the Not-For-Profit Corporation Law on February 4, 1986, and amended on October 15, 1992.

3. The Corporation is a corporation as defined in sub-paragraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law and is a type B Corporation as defined by Section 201 of that law.

4. The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The post office address within the State to which the Secretary of State shall mail a copy of any process against the Corporation that is served upon the Secretary of State is Addiction Research and Treatment Corporation, 22 Chapel Street, Brooklyn, New York 11201.

5. The amendment in question does not add, change or eliminate a purpose or power of the Corporation. The Certificate of Incorporation is being amended to change the name of the Corporation.

6. Paragraph One of the Certificate of Incorporation relating to the Corporation name is hereby amended in its entirety as follows:

> 1. The name of the Corporation is: START Treatment & Recovery Centers, Inc.

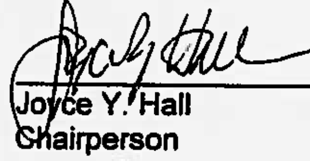
7. This foregoing amendment was authorized by the Board of Trustees of Addiction Research and Treatment Corporation by the unanimous written consent of the Corporation's Board of Trustees in lieu of a special meeting, pursuant to Section 708(b) of the New York Not-For-Profit Corporation Law.

8. That prior to the delivery to the Department of State for filing, all approvals, consents or waivers required by the Not-For-Profit Corporation Law or any other statute will be endorsed upon or annexed to this Certificate of Amendment of the Certificate of Incorporation.

(The remainder of the page intentionally left blank)

I have signed this Certificate as of the date indicated below.

Dated: As of August __, 2013



Joyce Y. Hall
Chairperson

STATE OF NEW YORK - DEPARTMENT OF HEALTH

MEMORANDUM

TO: Public Health and Health Planning Council

FROM: James E. Dering, General Counsel

DATE: September 10, 2013

SUBJECT: Proposed Certificate of Amendment of the Certificate of Incorporation of East Harlem Council for Human Services, Inc.

Attached is the proposed Certificate of Amendment of the Certificate of Incorporation of East Harlem Council for Human Services, Inc. The corporation seeks approval to amend its certificate to remove a reference to a specific address at which health related services are to be provided and to remove a reference to its assumed name. As set forth in the attached e-mail from Karen Sherman, attorney for the corporation, the reason for the change is to expand the geographical scope in which the corporation may conduct health services.

East Harlem Council for Human Services, Inc. is a type B not-for-profit corporation that was established pursuant to Article 28 of the Public Health Law. Therefore, Public Health and Health Planning Council approval for a change of corporate purposes is required by Not-for-Profit Corporation Law § 804 (a).

Attached is the duly executed Certificate of Amendment of the Certificate of Incorporation. The Department has no objection to the Certificate of Amendment, which is in legally acceptable form.

JED: JCL
Attachments

FW: consent for East Harlem Council for Human Services, Inc. certificate of amendment
Karen Sherman
to:
Colleen M. Frost
07/30/2013 10:45 AM
Show Details

History: This message has been replied to.

Karen Sherman, Esq.
ShermanLaw
1501 Broadway, Suite 2401
NY, NY 10036
Phone 212.302.9456
karen@shermanlaw.net
www.shermanlaw.net

From: Karen Sherman
Sent: Friday, July 26, 2013 4:51 PM
To: 'cml05@health.state.ny.us'
Cc: Ruthanne Bortle
Subject: consent for East Harlem Council for Human Services, Inc. certificate of amendment

I represent East Harlem Council for Human Services, Inc. which is amending its certificate of incorporation, and requests the consent of your agency.

They are currently in the process of completing a new facility to which they will move their health care center- and plan to provide such services at other locations. The amendment certificate of incorporation to delete reference to a specific address "2253 Third Avenue, New York New York, 10035" and the doing business as name for the health care centers. As amended paragraph 2(f) to read as follows:

(f) To operate outpatient health care centers, in accordance with Article 28 of the Public Health Care Law and located in New York City.

Please let me know if you need any additional information.

Karen Sherman, Esq.
ShermanLaw
1501 Broadway, Suite 2401
NY, NY 10036
Phone 212.302.9456
karen@shermanlaw.net
www.shermanlaw.net

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
EAST HARLEM COUNCIL FOR HUMAN SERVICES, INC.

Pursuant Section 803 of the Not-for-Profit Corporation Law

The undersigned, being the Secretary of East Harlem Council for Human Services, Inc. does hereby certify and set forth as follows:

FIRST: The name of the Corporation is East Harlem Council for Human Services, Inc. (the "Corporation"). The Corporation was originally incorporated under the name East Harlem Tenant Council, Inc.

SECOND: The Corporation's Certificate of Incorporation was pursuant to the Not-For-Profit Corporation Law of the State of New York on April 22, 1965. Certificates of amendment to the Certificate of Incorporation were filed on December 27, 1966, February 9, 1977 (restated certificate of incorporation), and February 16, 1983.

THIRD: The Corporation is a corporation as defined by subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law of the State of New York (the "N-PCL") and is a Type B corporation under N-PCL Section 201 and after the amendment shall continue to be a Type B corporation under N-PCL Section 201.

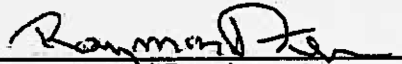
FOURTH: The Certificate of Incorporation of the Corporation is hereby amended by deleting paragraph 2(f) and replacing it with a new paragraph (f) as follows:

(f) To operate an outpatient health care centers, in accordance with Article 28 of the Public Health Care Law as and to the extent permitted by said law and any regulation thereunder, by Federal law or regulation, and by the Department of Health of the State and City of New York or any other agency or instrumentality of either the State or City of New York, and subject to any applicable establishment licensing requirements.

FIFTH: The Corporation designates the Secretary of State as its agent upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation is: East Harlem Council for Human Services, Inc., 2253 Third Avenue, New York, New York 10035.

SIXTH: The Amendment to the Certificate of Incorporation was authorized by a vote of the majority of the entire Board of Directors of the Corporation pursuant to Section 802 of the N-PCL.

IN WITNESS WHEREOF, this Certificate of Amendment has been subscribed this 26th day of June 2013, by the undersigned.



Name: Raymond Ferreira
Title: Chairperson
Address: 2253 Third Avenue
New York, New York 10035

CERTIFICATE OF AMENDMENT OF THE
CERTIFICATE OF INCORPORATION OF
EAST HARLEM COUNCIL FOR HUMAN SERVICES, INC.
Pursuant Section 803 of the Not-for-Profit Corporation Law

FILER:
Karen Sherman, Esq.
1501 Broadway
New York, New York 10036

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

November 21, 2013

Home Health Agency Licensures **Exhibit # 13**

Number	Applicant/Facility
2143 L	Access to Home Care Services, Inc. (Cayuga, Onondaga, Cortland, Seneca, Tompkins, Oswego, and Jefferson Counties)
2048 L	ACME Home Care, Inc. (Bronx, Kings, New York, Richmond, and Queens Counties)
2022 L	Big Apple Homecare Agency, Inc. (Kings, Richmond, Queens, Bronx, New York and Westchester Counties)
2117 L	Boomer Services Plus, Inc. d/b/a Comfort Keepers #786 (Nassau, Suffolk and Queens Counties)
2091 L	Elmy's Special Services, Inc. (Bronx, Richmond, Kings, Queens, Nassau and New York Counties)
2094 L	EP Home Care, LLC (Kings County)
2086 L	Irene A. Manolias d/b/a Executive Home Health Care (Nassau and Suffolk Counties)
2035 L	First Step Services, Inc. (Westchester and Bronx Counties)
2023 L	Kings Homecare Agency, Inc. (Bronx, Kings, New York, Queens and Richmond Counties)

2054 L	Lagora Health Services, Inc. (Kings, Nassau, Queens, Bronx, New York and Richmond Counties)
2363 L	Livingston County Board of Supervisors d/b/a Livingston County Department of Health (Livingston County)
2041 L	NEC Care, Inc. d/b/a Home Instead Senior Care (Saratoga, Warren, and Washington Counties)
2109 L	Neighbors NY, Inc. (Warren, Washington, and Saratoga Counties)
2115 L	NYC Pro Home Care, Inc. (New York, Bronx, Kings, Richmond, Queens and Nassau Counties)
1917 L	Polo Care, Inc. (Bronx, Queens, Kings, Richmond, Nassau, and New York Counties)
2098 L	RAMA Associates, LLC d/b/a Home Helpers and Direct Link of Amsterdam (Albany, Saratoga, Fulton, Schenectady, Montgomery and Schoharie Counties)
2040 L	Simpson Solutions, LLC d/b/a All Care Living Assistance Services (Westchester, Rockland, Bronx, New York, Queens, Richmond and Kings Counties)
2111 L	Berardino and Pfisterer, Inc. d/b/a Oxford Home Care Services (Oneida, Otsego and Herkimer Counties)
2032 L	RJG Consultants, Inc. d/b/a Providence Home Care Services (New York, Bronx, Kings, Richmond, Queens and Nassau Counties)

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Access to Home Care Services, Inc.
Address: Auburn
County: Cayuga
Structure: For-profit Corporation
Application Number: 2143L

Description of Project:

Access to Home Care Services, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has issued 200 shares of stock and has issued 100 shares that are owned as follows. The remaining 100 shares of stock remain unissued.

Michael R. McKay– 35 shares Service Coordinator, New Beginnings Home Care, Inc. Private Investigator, F.R. McKay LPI Investigators	Amy M. McKay – 35 shares Paralegal, Karpinski, Stapleton, Galbato & Tehan, PC
Frank R. McKay, Jr. – 15 shares General Mechanic, NYS Office of Children and Family Services	Robin L. Janas-McKay, RN – 15 shares Teacher Health Related Occupations I&II, Cayuga-Onondaga BOCES

The Board of Directors of Access to Home Care Services, Inc. is comprised of the following individuals:

Michael R. McKay, President, Treasurer (disclosed above)	Amy M. McKay, Vice President, Secretary (disclosed above)
Frank R. McKay, Jr., Director (disclosed above)	Robin L. Janas-McKay, RN, Director (disclosed above)
Tina M. Nash, RN, BSN Director Service Coordinator Supervisor, Access to Home Care Services, Inc.	Joseph A. Nash, Director Owner, Nash Auto Parts
Frank R. McKay, Sr., Director Retired	

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 33 William Street, Suite 3, Auburn, NY 13021

Cayuga	Cortland	Tompkins	Jefferson
Onondaga	Seneca	Oswego	

The applicant proposes to provide the following health care services:

Nursing   Home Health Aide   Personal Care   Medical Social Services

The Office of the Professions of the State Education Department indicates no issues with the licenses of the medical professionals associated with this application.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: October 8, 2013

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	ACME Home Care, Inc.
Address:	Brooklyn
County:	Kings
Structure:	For-Profit
Application Number:	2048-L

Description of Project:

ACME Home Care, Inc., a for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock, which are owned as follows:

Lolita Gavrilova – 100 shares
Elina Khanukov – 100 Shares

The Board of Directors of ACME Home Care, Inc. is comprised by the following individuals:

Lolita Gavrilova, HHA – President/Treasurer
Home Health Aide, Americare of New York City

Elina Khanukov – Vice President/Secretary
Manager/Customer Service, Atlantic Surgical Supply, Co.
Accreditation Advisor, The Compliance Team, 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 2830 Ocean Parkway, Suite 22E, Brooklyn, New York 11235.

Bronx	Kings	New York	Richmond	Queens

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	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: September 12, 2013

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Big Apple Homecare Agency, Inc.
Address:	Brooklyn
County:	Kings
Structure:	For-Profit Corporation
Application Number:	2022-L

Description of Project:

Big Apple Homecare Agency, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned solely by Kamilla G. Mord.

The Board of Directors of Big Apple Homecare Agency, Inc. comprises the following individual:

Kamilla G. Mord, R.N., President
Operating Surgical Nurse, Great New York
Endoscopy Surgical Center

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the healthcare professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 1836 East 18th Street, Apt. 2B, Brooklyn, New York 11229:

Kings	Queens	New York
Richmond	Bronx	Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech Language Pathology
Audiology	Medical Social Services	Nutrition
Homemaker	Housekeeper	Respiratory Therapy

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: August 30, 2013

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Boomer Services Plus, Inc. d/b/a Comfort Keepers # 786
Address:	Oceanside
County:	Nassau
Structure:	For Profit Corporation
Application Number:	2117-L

Description of Project:

Boomer Services Plus, Inc., d/b/a Comfort Keepers # 786, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. Boomer Services Plus, Inc. d/b/a Comfort Keepers # 786 is an existing non-medical companion care agency operating under a franchise agreement with CK Franchising, Inc. of Ohio.

The applicant has authorized 200 shares of stock which are owned as follows: Judy H. Geier owns 102 shares and Barry Geier owns 98 shares.

The members of the Board of Directors of Boomer Services Plus, Inc., d/b/a Comfort Keepers # 786 comprises the following individuals:

Judy H. Geier, President, Treasurer Comfort Keepers # 786	Barry Geier, NHA, Vice President, Secretary Comfort Keepers # 786

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 Barry Geier, NHA license #02410, 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 the following counties from an office located at 3355 Lawson Boulevard, Oceanside, New York 11572:

Nassau	Suffolk	Queens

The applicant proposes to provide the following health care services:

Nursing	Homemaker	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 28, 2013

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Elmy's Special Services, Inc.
Address:	Brooklyn
County:	Kings
Structure:	Not-For-Profit Corporation
Application Number:	2091-L

Description of Project:

Elmy's Special Services, Inc., a not-for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The Board of Directors of Elmy's Special Services, Inc. comprises the following individuals:

Robin Williams – Director
Teacher/Assistant Principal, NYC Department of Education

Gloria Smith – Director
Retired

Winston R. Anderson – Director
Chief Operating Officer, Anderson Global Business Services

Davey C. Catlyn, RN – Director
Registered Nurse, Kings County Hospital

Joyce E. Beckles – Director
Teacher, NYC Department of Education.

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 163 Van Buren Street, Brooklyn, New York 11221:

Bronx	Kings	Nassau	New York
Richmond	Queens		

The applicant proposes to provide the following health care services:

Nursing	Personal Care	Home Health Aide	Medical Social Services
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: October 18, 2013

Division of Home & Community Based Care
Character and Competence Staff Review

Name of Agency:	EP Home Care, LLC
Address:	Brooklyn
County:	Kings
Structure:	Limited Liability Company
Application Number:	2094-L

Description of Project:

EP 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 EP Home Care, LLC comprises the following individuals:

Elza Bilanishvili, RN, Director of Patient Services – 50% Field Nurse, New Century Home Care, Inc.	Paulett Harriott, Administrator – 50% Administrator, New Century Home Care, Inc.

The Office of the Professions of the State Education Department indicates no issues with the licensure of the health professional associated with this application.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of Kings County from an office located at 1238 Troy Avenue, Brooklyn, New York 11230:

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Social Services
Physical Therapy	Occupational Therapy	Respiratory Therapy	Speech-Language Pathology
Nutrition	Homemaker	Housekeeper	

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation:	Contingent Approval
Date:	September 26, 2013

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Irene A. Manolias d/b/a Executive Home Health Care
Address:	Holtsville
County:	New York
Structure:	Sole Proprietor
Application Number:	2086-L

Description of Project:

Irene A. Manolias d/b/a Executive Home Health Care, a sole proprietorship, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The sole proprietor of Executive Home Health Care is the following individual:

Irene A. Manolias, RN
Sole Owner/Operator, Executive Home Health Care
Administrator/COO, Serene Home Nursing Agency

Affiliation:
- Board Member/Owner, Serene Home Nursing Agency

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 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 35 Bayou Court, Holtsville, New York 11742:

Nassau Suffolk

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Speech-Language Pathology	Physical Therapy
Occupational Therapy	Nutrition		

A review of the operations of Serene Home Nursing Agency (July, 2009 – present) was performed as part of this review.

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: September 26, 2013

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	First Step Services, Inc.
Address:	Mount Vernon
County:	Westchester
Structure:	For Profit Corporation
Application Number:	2035L

Description of Project:

First Step Services, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. First Step Services, Inc. is an existing agency that currently provides services under the Early Intervention Program,

The applicant has authorized and issued 200 shares of stock. The sole shareholder is Lon Rigg.

The Board of Directors of First Step Services, Inc. is comprised of the following individuals:

Lon Rigg
CEO, First Step Services, Inc.
Consultant, Comprehensive Environmental & Safety Corp.

Renee Webb
Evaluation Coordinator, First Step Services, Inc.

Faith Forliano
Special Education Teacher
Independent Contractor, First Step Services, 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 4 Lorraine Avenue, Mount Vernon, New York 10553

Westchester Bronx

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Respiratory Therapy	Occupational Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation:	Contingent Approval
Date:	September 26, 2013

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Kings Homecare Agency, Inc.
Address:	New York
County:	New York
Structure:	For-Profit Corporation
Application Number:	2023-L

Description of Project:

Kings Homecare Agency, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock, which are owned as follows:

Robert Luk, HHA – 200 shares
Director, Queens Community Center
Director, OLIA

The Board of Directors of Kings Homecare Agency, Inc. comprises the following individual:

Robert Luk – President
(Previously Disclosed)

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A search of the individual named above on the New York State Home Care Registry revealed that the individual is certified as a HHA and has no convictions or findings.

The applicant proposes to serve the residents of the following counties from an office located at 2 East Broadway #808, New York, New York 10038:

Bronx	Kings	New York	Queens	Richmond

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Social Services
Physical Therapy	Occupational Therapy	Respiratory Therapy	Speech-Language Pathology
Audiology	Nutrition		

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: October 8, 2013

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Lagora Health Services, Inc.
Address:	Brooklyn
County:	Kings
Structure:	For-Profit Corporation
Application Number:	2054-L

Description of Project:

Lagora Health Services, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned as follows: Anna Gottdiener owns 100 shares and 100 shares remain unissued.

The Board of Directors of Lagora Health Services, Inc. comprises the following individual:

Anna Gottdiener, President
Vice President, Future Care Health Services, Inc.
Affiliations: Future Care Health Services, Inc.

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 919 Avenue J, Brooklyn, New York 11230:

Kings	Queens	New York
Nassau	Bronx	Richmond

The applicant proposes to open a second office site in Suffolk County to serve the residents of Suffolk County.

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech Language Pathology
Audiology	Medical Social Services	Nutrition
Homemaker	Housekeeper	

A review of the operations of the following agency was performed as part of this review:

Future Care Health Services, Inc.

The information provided by the Division of Home and Community Based Services has indicated that the home care agency reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: October 28, 2013

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Livingston County Board of Supervisors d/b/a Livingston County Department of Health
Address:	Mount Morris
County:	Livingston
Structure:	Public
Application Number:	2363L

Description of Project:

Livingston County Board of Supervisors d/b/a Livingston County Department of Health requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Livingston County currently operates a certified home health agency which they are planning on selling. The county is requesting approval to open a licensed home care services agency to enable the county to continue to provide essential public health nursing services in the event the CHHA is sold.

The applicant proposes to serve the residents of Livingston County from an office located at 2 Murray Hill Drive, Mount Morris, New York 14510.

The applicant proposes to provide Nursing Services.

Livingston County currently operates a Diagnostic and Treatment Center, a Residential Health Care Facility, a Certified Home Health Agency, and a Hospice.

Livingston County Center for Nursing and Rehabilitation was fined two thousand dollars ($2,000) pursuant to a stipulation and order dated September 5, 2008 for surveillance findings of January 9, 2008. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of Care: Medication Error.

Livingston County Center for Nursing and Rehabilitation was fined two thousand dollars ($2,000) pursuant to a stipulation and order dated March 11, 2013 for surveillance findings July 7, 2011. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of Care: Significant Medication Error.

The Information provided by the Bureau of Quality Assurance indicated that the residential health care facility reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Hospitals and Diagnostic Treatment Centers indicated that the Diagnostic and Treatment Center has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Home and Community Based Services indicated that the Certified Home Health Agency and Hospice have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: October 30, 2013

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	NEC Care, Inc. d/b/a Home Instead Senior Care
Address:	Gansevoort
County:	Saratoga
Structure:	For-Profit Corporation
Application Number:	2041L

Description of Project:

NEC Care, Inc. d/b/a Home Instead Senior Care, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. NEC Care, Inc. has entered into a franchise agreement with Home Instead, Inc.

NEC Care, Inc. d/b/a Home Instead Senior Care's application stated that they have been providing non-medical home care services to the residents of Saratoga, Warren and Washington counties for the last twelve years.

NEC Care, Inc. has authorized 200 shares of stock. The shareholders comprise the following individuals listed below. The remaining 100 shares remain unissued.

Nelson Carpenter, 99 shares

Maureen Hopkins, 1 share

The Board of Directors of NEC Care, Inc. d/b/a Home Instead Senior Care is comprised of the following individuals:

Nelson E. Carpenter, Chairman/President NEC Care, Inc. d/b/a Home Instead Senior Care Affiliation: Visiting Nurse Service of Schenectady and Saratoga (2007-2009)	Maureen Hopkins, Vice Chairman/Vice President General Manager, NEC Care, Inc. d/b/a Home Instead Senior Care

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 12 Mountain Ledge Drive, Suite 3, Gansevoort, New York 12831

Saratoga

Warren

Washington

The applicant proposes to provide the following health care services:

Nursing

Personal Care

Homemaker

The information provided by the Division of Home and Community Based Services indicated that the affiliated home care agency provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: October 29, 2013

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Neighbors NY, Inc.
Address:	Glens Falls
County:	Warren
Structure:	For Profit Corporation
Application Number:	2109-L

Description of Project:

Neighbors NY, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. Neighbors NY, Inc. is an existing companion care agency.

Neighbors NY, Inc. has authorized 200 shares of stock which are owned as follows: Nancy R. Talarski owns 51 shares and Sandra B. Fowlkes owns 49 shares. The remaining 100 shares are unissued.

The members of the Board of Directors of Neighbors NY, Inc. comprise the following individuals:

Nancy R. Talarski, President, Treasurer
Director of Operations, Neighbors NY, Inc.

Sandra B. Fowlkes, Vice President, Secretary
Client Care Manager, Neighbors NY, 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 206 Glen Street, Suite 22, Glens Falls, New York 12801:

Warren	Washington	Saratoga

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	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: September 26, 2013

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	NYC Pro Home Care, Inc.
Address:	Staten Island
County:	Richmond
Structure:	For-Profit Corporation
Application Number:	2115-L

Description of Project:

NYC Pro Home Care, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned as follows: Olga Tolmach owns 100 shares and Aleksandr Tolmach owns 100 shares.

The Board of Directors of NYC Pro Home Care, Inc. comprises the following individuals:

Olga Tolmach, President
Clinical Director, Through Ages, Inc.
CPSE Program (Committee on Preschool Education)
Assistant VP, JP Morgan

Aleksandr Tolmach, M.D., Vice President
President/CEO, Through Ages, Inc. CPSE Program (Committee on Preschool Special Education)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

Aleksandr Tolmach obtained his medical education in Russia. He is not currently practicing as a physician in New York State and is not listed on the New York State Education Department's website.

The applicant proposes to serve the residents of the following counties from an office located at 21 Kayla Court, Staten Island, New York 10306:

New York	Kings	Queens
Bronx	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

Review of the Disclosure Information indicates that the applicant has no affiliations with other health care facilities.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: September 26, 2013

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Polo Care, Inc.
Address:	New York
County:	New York
Structure:	For-Profit
Application Number:	1917-L

Description of Project:

Polo Care, Inc., a for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock, which are owned as follows:

Comfort E. Omubo, HHA – 200 shares
Unemployed

The proposed board members of Polo Care, Inc. comprise the following individuals:

Comfort E. Omubo, HHA – Chairperson
(Previously Disclosed)

Marie V. Zephir, RN – Director
Team Coordinator, St. Mary's Homecare

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the licensure of the health professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 145-15 223rd Street, Rosedale, New York 11413:

Bronx	Kings	Nassau	New York
Queens	Richmond		

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Social Services
Physical Therapy	Occupational Therapy	Respiratory Therapy	Speech-Language Pathology
Audiology	Nutrition	Homemaker	Durable Medical Equipment
Housekeeper			

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: October 16, 2013

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	RAMA Associates, LLC d/b/a Home Helpers and Direct Link of Amsterdam
Address:	Amsterdam
County:	Montgomery
Structure:	Limited Liability Company
Application Number:	2098-L

Description of Project:

RAMA Associates, LLC d/b/a Home Helpers and Direct Link of Amsterdam, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

RAMA Associates, LLC has proposed to operate as a Franchisee of Home Helpers.

The proposed member of RAMA Associates, LLC d/b/a Home Helpers and Direct Link of Amsterdam is the following individual:

Ramon Rodriguez – 100%
CEO/Owner, Home Helpers and Direct Link of Amsterdam (companion 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 2 Tryon Avenue, Unit 127, Glenville, New York 12302:

Albany	Fulton	Montgomery
Saratoga	Schenectady	Schoharie

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 29, 2013

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Simpson Solutions, LLC d/b/a All Care Living Assistance Services
Address:	Mount Vernon
County:	Westchester
Structure:	Limited Liability Company
Application Number:	2040L

Description of Project:

Simpson Solutions, LLC d/b/a All Care Living Assistance Services, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The sole member of Simpson Solutions, LLC d/b/a/ All Care Living Assistance Services is:

Shannon A. Simpson, RN, MPA
Chief Executive Officer, All Care Living Assistance Services

The Board of Directors of Simpson Solutions, LLC d/b/a All Care Living Assistance Services is comprised of the following individuals:

Andrea J. Thomas, President and Board Chairperson
Associate Executive Director, Sunnyside Community Services

Shannon A. Simpston, RN, MPA, Board Member
Disclosed above

Omyma E. David, Board Member
Deputy Consul General, Consulate General of Antigua and Barbuda

Wayne W. Webb, Board Member
Director of Human Resources, Mount Sinai Services, Elmhurst Hospital Center
President/CEO, Helping Hands for Immigrants Integration, Inc.

Yan K. Laurency, Esq., Board Member
Associate, Blackrock

A Certificate of Good Standing has been received for Yan K. Laurency, Esq.

The Office of the Professions of the State Education Department indicates no issues with the license of the medical 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 10 Fiske Place, Suite # 231, Mount Vernon, New York 10550:

Westchester	Rockland

The applicant intends to propose a second office to be located in Bronx County to serve the following counties:

Bronx	Queens	Kings
New York	Richmond	

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: October 8, 2013

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Berardino and Pfisterer, Inc. d/b/a Oxford Home Care Services
Address:	New Hartford
County:	Oneida
Structure:	For Profit Corporation
Application Number:	2111-L

Description of Project:

Berardino and Pfisterer, Inc. d/b/a Oxford Home Care Services, a business corporation, requests approval for a change in ownership of Oxford Home Care Services, Inc., a New York licensed home care services agency, under Article 36 of the Public Health Law.

Oxford Home Care Services, Inc. was previously approved as a home care services agency by the Public Health Council at its November 18, 1994 meeting and subsequently licensed as 9623L001.

Berardino and Pfisterer, Inc. has authorized 200 shares of stock. 99 shares are owned by Tami Pfisterer, 99 shares of stock are owned by Laine Berardino and 2 shares of stock are owned by Gayle Taurisano. Once a LHCSA license has been issued, Gayle Taurisano will transfer 1 share to Tami Pfisterer and 1 share to Laine Berardino which will result in Tami Pfisterer owning 100 shares and Laine Berardino owning 100 shares.

The proposed members of the Board of Directors of Berardino and Pfisterer, Inc. d/b/a Oxford Home Care Services after the change in ownership are as follows:

Laine A. Berardino, R.N., Chairperson, Treasurer
RN Supervisor, Oxford Home Care Services, Inc.
Affiliation: Oxford Home Care Services, Inc.

Tami A. Pfisterer, R.N., Vice Chairperson, Secretary
Office Manager, Oxford Home Care Services, Inc.
Affiliation: Oxford Home Care Services, Inc.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the licenses of the health care professionals associated with this application.

The applicant proposes to continue to serve the residents of the following counties from an office located at 131 Oxford Road, New Hartford, New York 13413:

Oneida	Otsego	Herkimer

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

Nursing	Home Health Aide	Personal Care

A seven year review of Oxford Home Care Services, Inc. was performed as part of this review:

The information provided by the Division of Home and Community Based Services has indicated that the home care agency reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: October 22, 2013

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: RJG Consultants, Inc. d/b/a Providence Home Care Services
Address: Brooklyn
County: Kings
Structure: For-profit
Application Number: 2032-L

Description of Project:
RJG Consultants, Inc. d/b/a Providence Home Care Services, a business corporation, requests approval for a change in stock ownership of a licensed home care services agency under Article 36 of the Public Health Law as described below.

RJG Consultants, Inc. d/b/a Providence Home Care Services was previously approved as a home care services agency by the Public Health Council at its May 18, 2001 meeting and subsequently licensed as 1013L001. At that time, 200 shares were authorized with 196 shares unissued. The shareholders were:

- Jules Valery - 1 share
- Marie Alberta Armande Jean-Baptiste – 1 share
- Marie D. Marcelin – 1 share
- Kenneth Weatherspoon – 1 share

Prior to 2008, shares were redistributed which resulted in the following distribution of shares in RJG Consultants, Inc. d/b/a Providence Home Care Services:

- Jules Valery – 50 shares
- Marie Alberta Armande Jean-Baptiste – 50 shares
- Marie D. Marcelin – 50 shares
- Kenneth Weatherspoon – 50 shares

In 2008, shares were redistributed. As a result, of this redistribution the shareholders of RJG Consultants, Inc. d/b/a Providence Home Care Services consisted of the following individuals.

- Marie Alberta Armande Jean-Baptist – 50 shares
- Kenneth Weatherspoon – 50 shares
- Joline Narcisse – 100 shares

The Board of Directors of RJG Consultants, Inc. d/b/a Providence Home Care Services comprises the following individuals:

Joline Narcisse – Chairman Administrator, Providence Home Care Services	Marie Alberta Armande Jean-Baptiste – Vice Chairman Office Manager, Camille G. Armand, MD
Vashti Hinds-Vanier, RN – Secretary Residential Nurse, Block Institute	Steven Wright – Secretary Accountant, Self-Employed
Lystra Moore-Besson – Treasurer Vice President, Branch Manager, HSBC Bank USA	

Marie Alberta Armande Jean-Baptiste and Kenneth Weatherspoon are exempt from a character and competence review due to the fact that they were previously approved by the Public Health Council for this operator.

A search revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the medical professional associated with this application.

The applicant will continue to serve the residents of the following counties from an office located at 1980 Flatbush Avenue, Brooklyn, New York 11234

New York	Kings	Queens
Bronx	Richmond	Nassau

The applicant will provide the following health care services:

Nursing	Home Health Aide	Personal Care	Physical Therapy
Occupational Therapy	Respiratory Therapy	Speech-Language Pathology	Audiology
Medical Social Services	Nutrition	Homemaker	Housekeeper

An enforcement action was brought against the applicant for failure to submit annual statistical reports for calendar years 2005 through 2008, in violation of 10 NYCRR 766.12(c); failure to maintain the viability of the operating corporation, which had dissolved in 2002 and was reinstated in 2010 and failure to obtain Public Health Council approval prior to a transfer of stock in violation of 10 NYCRR 765-1.13 and failure of its governing body to ensure compliance with all applicable Federal, State, and local statutes, rules and regulations in violation of 10 NYCRR 766.9(b). It was resolved by a stipulation and order that was signed on March 31, 2011 and payment of a twelve-thousand five hundred dollar ($12,500) fine.

The information provided by the Division of Home and Community Based Services has indicated that the Licensed Home Care Services Agency 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.

<u>Contingency</u>
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: October 25, 2013

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

November 21, 2013

COMMITTEE ON HEALTH PLANNING **Exhibit # 14**

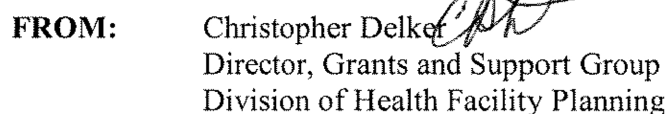
Dr. John Rugge, Chair

Memo – 709.3 Evaluation

NEW YORK STATE DEPARTMENT OF HEALTH

INTEROFFICE MEMORANDUM

TO: Members of the Committee on Health Planning
Public Health and Health Planning Council

FROM: Christopher Delker

Director, Grants and Support Group
Division of Health Facility Planning

SUBJ: Evaluation of Section 709.3
RHCF Bed Need Methodology

DATE: November 12, 2013

The planning target year for the current need methodology for residential health care facility (RHCF) beds is 2016. However, the regulation requires the Department to conduct an evaluation of the methodology by December 31, 2013, the approximate midpoint between the issuance of the methodology in 2010 and the end of the planning target year. The purpose of this mid-course assessment is to determine whether the methodology has resulted in an adequate supply of RHCF beds since its issuance, or whether it needs to be adjusted to reflect possible unforeseen changes in the demand for and utilization of inpatient long-term care services that would make current bed need projections inadequate. This midpoint evaluation gives the Department and the PHHPC the opportunity to make any such needed adjustments without undertaking the more elaborate and complicated updating of the methodology that ordinarily occurs only upon the approach of the planning target year.

RHCF Bed Approvals

The first step in this evaluation process is to review the number of additional beds that have been requested and approved since the issuance of the current methodology. Since the beginning of 2010, the Department has received and approved seven applications for the addition of beds to existing facilities and three applications to establish new facilities. Together, these approved applications represent a total of 458 RHCF beds. Currently, there are112,144 RHCF beds[1] statewide, which is well below the

[1] Includes pipeline beds, which are those approved but not yet constructed and those being closed but not yet decertified.

aggregate statewide bed need of 121,349 beds projected by the need methodology for the planning target year of 2016.

The approval of only a modest number of new RHCF beds from 2010 to the present has also occurred as RHCF bed occupancy has continued to remain low in the same period, as shown in the following table:

Statewide RHCF Bed Occupancy

2010	2011	2012
94.6%	93.7%	93.8%

Statewide, RHCF bed occupancy remains well below the planning optimum of 97 percent.

The continuing relatively low level of RHCF bed occupancy statewide suggests that the current need methodology does not underestimate the number of beds needed in New York State. Nor does the need methodology discourage the addition of needed beds by new or existing providers, as evinced by the applications approved since 2010. While many factors affect the availability of access to RHCF beds in any given locale, it is reasonable to conclude that the current need methodology prescribes a number of RHCF beds that is more than adequate for the State as a whole, given current trends in occupancy and in the modest number of beds requested overall by current RHCF operators and by applicants for the establishment of new RHCFs. The Department also notes that the provision in the need methodology for consideration of local factors in the review of requests for new beds remains available to correct for any indicators of bed need that may be masked by the methodology's projected county or regional bed need totals.

MLTC and Other Factors

The next step in the evaluation of the need methodology is to note the recommendations of the Medicaid Redesign Team (MRT) for long-term care. The advent of managed long-term care (MLTC) in particular holds promise of more appropriate, better coordinated, person-centered care and a strengthening of services provided in less restrictive, non-institutional settings. We note especially the MRT's principles governing the coordinated care model (CCM) to be followed by MLTC plans:

- Risk-adjustment of MLTC rates to reflect the population served; and payments tailored to incentivize community-based services.

- Coordination of MLTC-support care with primary and acute care services, to help ensure continuity of care and promote improved outcomes;

- Use of standardized assessment tools for more precision in the assessment of clients' needs and more appropriate care;

- The principle that the member and his/her informal supports must drive the development and execution of the care plan.

Adherence to these principles in the development of MLTC coverage and of individualized, coordinated plans of care, will likely result in reduced rates of RHCF admissions and shorter lengths of stay, which must be taken into account in any revision of the RHCF bed need methodology. However, with MLTC just on the verge of implementation, there are no data to measure its impact. It would be premature at this time to recommend changes in section 709.3 in the absence of precise information on the effects of MLTC on RHCF care and on community-based alternatives to care in the institutional setting.

We also note the expansion of certified home health agency (CHHA) services from the approvals of new and expanded CHHAs by the Department and the PHHPC that began in mid-2012. Like the implementation of the MLTC program, the broader availability of home health services throughout the State will likely contribute to a reduction in the need for RHCF beds. But as with the effects of MLTC, we must await the availability of measurable data before factoring the effects of this expansion of CHHA services into the 709.3 need formula.

Because of the complexity of the section 709.3 RHCF bed need methodology, Department staff typically begin gathering and analyzing data for its periodic revisions a year or more in advance of the end of the planning target year (2016 in the current iteration). Accordingly, staff will begin the next revision of section 709.3 toward the end of 2014, when measurable data on the effects of the MLTC program and the expansion of CHHA services will also begin to be available. This undertaking will be a better-informed and more certain effort than would any adjustment to the methodology the Department might make today at this mid-point of the current planning period.

In summary, the Department concludes that the adequacy of the current version of the RHCF bed need methodology, together with the need to await information on the effects of the MLTC program and on the recent expansion of CHHA services, make it advisable to refrain from any changes in section 709.3 at this time.