STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

COMMITTEE DAY

AGENDA

March 27, 2014
10:00 a.m.

Empire State Plaza
Concourse Level, Meeting Room 6
Albany

I. COMMITTEE ON PUBLIC HEALTH

Jo Ivey Boufford, M.D., Chair

II. COMMITTEE ON CODES, REGULATIONS AND LEGISLATION

Angel Gutiérrez, M.D., Chair

Exhibit # 1

For Emergency Adoption

3-08 Amendment of Subpart 7-2 of Title 10 NYCRR (Children's Camps)

For Information

10-15 Amendment of Section 400.18 of Title 10 NYCRR (Statewide Planning and Research Cooperative System (SPARCS))

For Discussion

Repeal of Part 407 and Amendment to Section 405.1 of Title 10 NYCRR (Critical Access Hospitals)

III. COMMITTEE ON ESTABLISHMENT AND PROJECT REVIEW

Michael S. Fassler, EPRC Member

A. Applications for Construction of Health Care Facilities

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

	Number	Applicant/Facility
1.	132313 C	Women and Children's Hospital of Buffalo (Erie County)

2.	141092 C	Westchester Medical Center (Dutchess County)

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

	Number	**Applicant/Facility**
1.	132362 C	New York Presbyterian Hospital Weill Cornell Medical Center (New York County)

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

Acute Care Services – Establish/Construct **Exhibit # 4**

	Number	**Applicant/Facility**
1.	132370 E	NYP Community Services, Inc. (Westchester County)
2.	141018 E	RU System (Monroe County)

Ambulatory Surgery Centers - Establish/Construct **Exhibit # 5**

	Number	**Applicant/Facility**
1.	131347 B	Southtowns Ambulatory Surgery Center, LLC (Erie County)
2.	132281 B	Northern GI Endoscopy Center (Warren County)
3.	132346 B	Northway SPC, LLC d/b/a The Northway Surgery and Pain Center (Saratoga County)

Diagnostic and Treatment Centers - Establish/Construct **Exhibit # 6**

	Number	**Applicant/Facility**
1.	132132 B	NewRad51, Inc. (New York County)
2.	132252 B	Cornerstone Urgent Care Center (Monroe County)

3.	132345 E	Castle Hill Medical Center of New York Inc. (Bronx County) **To Be Distributed Under Separate Cover**

Dialysis Services- Establish/Construct **Exhibit # 7**

	Number	**Applicant/Facility**
1.	132191 B	HPLD Partners, LLC d/b/a Liberty Dialysis – Hyde Park (Dutchess County)
2.	141001 B	Genesis Services LLC d/b/a Genesis Renal Care (Queens County)

Residential Health Care Facilities - Establish/Construct **Exhibit # 8**

	Number	**Applicant/Facility**
1.	132135 E	Jewish Senior Life (Monroe County)
2.	132226 E	ORNC, LLC d/b/a Chestnut Park Rehabilitation and Nursing Center (Otsego County)
3.	132227 E	RRNC, LLC d/b/a Colonial Park Rehabilitation and Nursing Center (Oneida County)
4.	132228 E	CRNC, LLC d/b/a Cortland Park Rehabilitation and Nursing Center (Cortland County)
5.	132229 E	HRNC, LLC d/b/a Highland Park Rehabilitation and Nursing Center (Allegany County)
6.	132231 E	JBRNC, LLC d/b/a Hudson Park Rehabilitation and Nursing Center (Albany County)
7.	132260 E	RSRNC, LLC d/b/a Riverside Center for Rehabilitation and Nursing (Rensselaer County)
8.	132261 E	CSRNC, LLC d/b/a Capstone Center for Rehabilitation and Nursing (Montgomery County)

9.	132316 E	Hendon Garden Center LLC d/b/a Hendon Garden Nursing and Rehabilitation Center (Queens County) **To Be Distributed Under Separate Cover**
10.	132334 B	NCRNC, LLC d/b/a Northeast Center for Rehabilitation and Brain Injury (Ulster County)

Certified Home Health Agencies – Establish/Construct **Exhibit # 9**

	<u>**Number**</u>	<u>**Applicant/Facility**</u>
1.	132193 E	Visiting Nurse Association of Western New York, Inc. (Livingston County)
2.	132236 E	Visiting Nurse Association of Long Island, Inc. (Nassau County) **To Be Distributed Under Separate Cover**
3.	141100 E	Westchester Medical Center (Dutchess County)

C. <u>Certificates</u>

Certificate of Incorporation **Exhibit # 10**

<u>Applicant</u>

1. Hope for Haven, Inc.

D. <u>Home Health Agency Licensures</u>

Home Health Agency Licensures **Exhibit # 11**

<u>**Number**</u>	<u>**Applicant/Facility**</u>
2144 L	A Caring Hand Services, Inc. (Bronx, Kings, New York, Queens, Richmond and Westchester Counties)

2129 L	Ameristar Homecare Services, LLC (Bronx, Kings, New York, Queens and Richmond Counties)
2119 L	Caring Hearts Home Care Services, LLC (Bronx, Kings, New York and Queens Counties)
2146 L	Nightingale Home Care Network, Inc. (Bronx, Kings, Nassau, New York, Queens and Richmond Counties)
2397 L	Otsego County d/b/a Otsego Manor Licensed Home Care Service Agency (Otsego County)
2142 L	Privatus Care Solutions, Inc. (Bronx, Kings, New York, Queens, Richmond and Westchester Counties)
2137 L	RBRC of Albany, LLC d/b/a Visiting Angels (Albany, Columbia, Greene, Montgomery, Rensselaer, Saratoga, Schenectady and Schoharie Counties)
2165 L	Caring Touch of NY, LLC (Bronx, Kings, Nassau, New York, Queens, and Richmond Counties)
2325 L	Advanced Care Inc. (Nassau County)

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. <u>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.</u>

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.

Contact Person:

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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

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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.

Pursuant to the authority vested in the Public Health and Health Planning Council and subject to approval by the Commissioner of Health by Section 2816 of the Public Health Law, Section 400.18 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is repealed and a new Section 400.18 is added to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

A new title of Section 400.18 is added and a new Section 400.18 is added to read as follows:

10 NYCRR § 400.18 Statewide Planning and Research Cooperative System (SPARCS).

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

(1) Health care facilities shall mean facilities licensed under Article 28 of the Public Health Law.

(2) Identifying data elements shall mean those SPARCS and Patient Review Instrument (PRI) data elements that, if disclosed without any restrictions on use or re-disclosure would constitute an unwarranted invasion of personal privacy. A list of identifying data elements shall be specified by the Commissioner and will be made available publicly.

(3) Inpatient hospitalization data shall mean SPARCS data submitted by hospitals for patients receiving inpatient services at a general hospital that is licensed under Article 28 of the Public Health Law and that provides inpatient medical services.

(4) Outpatient data shall mean emergency department data, ambulatory surgery data, and outpatient services data.

(i) Emergency department data shall mean SPARCS data submitted by a facility licensed to provide emergency department services under Article 28 of the Public Health Law.

(ii) Ambulatory surgery data shall mean SPARCS data submitted by a facility licensed to provide ambulatory surgery services under Article 28 of the Public Health Law.

(iii) Outpatient services data shall mean all data submitted by licensed Article 28 facilities excluding inpatient hospitalization data, emergency department data, and ambulatory surgery data.

(5) Patient Review Instrument (PRI) data shall mean the data submitted on PRI forms by residential health care facilities, pursuant to section 86-2.30 of this Title.

(6) SPARCS Administrator shall mean a person in the SPARCS program designated by the Commissioner to act as administrator for all SPARCS activities.

(7) SPARCS data shall mean the data collected by the Commissioner under section 2816 of the Public Health Law and this section, including inpatient hospitalization data and outpatient data.

(8) SPARCS program shall mean the program in the New York State Department of Health (NYSDOH) that collects and maintains SPARCS data and discloses SPARCS and Patient Review Instrument (PRI) data.

(b) Reporting SPARCS data.

(1) Health care facilities shall report data as follows:

(i) Health care facilities shall submit, or cause to have submitted, SPARCS data in an electronic, computer-readable format through NYSDOH's secure electronic network according to the requirements of section 400.10 of this Part and the specifications provided by the Commissioner.

(ii) All SPARCS data must be supported by documentation in the patient's medical and billing records.

(iii) Health care facilities must submit on a monthly basis to the SPARCS program, or cause to have submitted on a monthly basis to the SPARCS program, data for all inpatient discharges and outpatient visits. Health care facilities must submit, or cause to have submitted, at least 95 percent of data for all inpatient discharges and outpatient visits within sixty (60) days from the end of the month of a patient's discharge or visit. Health care facilities must submit, or cause to have submitted, 100 percent of data for all inpatient discharges and outpatient visits within one hundred eighty (180) days from the end of the month of a patient's discharge or visit.

(iv) The SPARCS program may conduct an audit evaluating the quality of submitted SPARCS data and issue an audit report to a health care facility listing any inadequacies or inconsistencies in the data. Any health care facility so audited must submit corrected data to the SPARCS program within 90 days of the receipt of the audit report.

(2) Content of the SPARCS data.

(i) Health care facilities shall submit, or cause to have submitted, uniform bill data elements as required by the Commissioner. The data elements required by the Commissioner shall be based on those approved by the National Uniform Billing Committee (NUBC) or required under national electronic data interchange (EDI) standards for health care transactions and shall be published on the NYSDOH website.

(ii) Health care facilities shall submit, or cause to have submitted, additional data elements as required by the Commissioner. Such additional data elements shall be from medical records or demographic information maintained by the health care facilities.

(iii) The list of specific SPARCS data elements and their definitions shall be maintained by the Commissioner, will be made available publicly, and may be modified by the Commissioner.

(c) Maintenance of SPARCS data.

The Commissioner shall be responsible for protecting the privacy and security of the health care information reported to the SPARCS program.

(d) Requests for SPARCS and PRI data.

(1) SPARCS and PRI data may be used for medical or scientific research or statistical or epidemiological purposes approved by the Commissioner.

(2) The Commissioner may determine that additional purposes are proper uses of SPARCS and PRI data.

(3) In determining the purpose of a request for SPARCS and PRI data, the SPARCS program shall not be limited to information contained in the data request form and may request supplemental information from the applicant.

(4) The Commissioner shall charge a reasonable fee to all persons and organizations receiving SPARCS and PRI data based upon costs incurred and recurring for data processing, platform/data center and software. The Commissioner may discount the base fee or waive the fee upon request to the SPARCS program. The fee may be waived in the following circumstances:

(i) Use by a health care facility of the data it submitted to the SPARCS program.

(ii) Use by a health care facility that is licensed under Article 28 of the Public Health Law for the purpose of rate determinations or rate appeals and for health care-related research.

(iii) Use by a Federal, New York State, county or local government agency for health care-related purposes.

(5) The SPARCS program shall follow applicable federal and state laws when determining whether SPARCS and PRI data contain identifying data elements may be

shared and whether a disclosure of SPARCS and PRI data constitutes an unwarranted invasion of personal privacy.

(6) All entities seeking SPARCS and PRI data must submit a request to the SPARCS program using standard data request forms specified by the SPARCS program. Data users shall take all necessary precautions to prevent unwarranted invasions of personal privacy resulting from any data analysis or release. Data users may not release any information that could be used, alone or in combination with other reasonably available information, to identify an individual who is a subject of the information. Data users bear full responsibility for breaches or unauthorized disclosures of personal information resulting from use of SPARCS or PRI data. Applications for SPARCS or PRI data must provide an explicit plan for preventing breaches or unauthorized disclosures of personal information of any individual who is a subject of the information.

(7) Each data request form must include an executed data use agreement in a form prescribed by the SPARCS program. Data use agreements are required of: a representative of the requesting organization; a representative of each other organization associated with the project; and all individuals who will have access to any data including identifying data elements.

(8) The SPARCS program shall publish and make publicly available the name of the project director, the organization, and the title of approved projects.

(9) The SPARCS Administrator shall review and make recommendations on requests for SPARCS and PRI data containing identifying data elements to a data release committee established by the Commissioner. The data release committee shall have at least three members, including at least one member not otherwise affiliated with NYSDOH. The members of the data release committee shall be posted on the NYSDOH website. Requests will be granted only upon formal, written approval for access by a majority of

the members of the data release committee. The Commissioner has the final authority over the approval, or disapproval, of all requests. Requests for identifying data elements shall be approved only if:

(i) The purpose of the request is consistent with the purposes for which SPARCS and PRI data may be used;

(ii) The applicant is qualified to undertake the project; and

(iii) The applicant requires such identifying data elements for the intended project and is able to ensure that patient privacy will be protected.

(10) The SPARCS Administrator may recommend approval of a request in which future SPARCS data is to be supplied on a periodic basis under the following conditions:

(i) SPARCS data may be requested for a predetermined time not to exceed three years beyond the current year provided that the organization and uses of the data remain as indicated in the data request form submitted to the SPARCS program.

(ii) During the period of retention of SPARCS or PRI data, no additional individuals may access SPARCS or PRI data without an executed data use agreement on file with the SPARCS program.

(11) The Commissioner may rescind for cause, at any time, approval of a data request.

(e) Penalties.

(1) Any person or entity that violates the provisions of this section or any data use agreement may be liable pursuant to the provisions of the Public Health Law, including, but not limited to, sections 12 and 12-d of the Public Health Law.

(2) Any person or entity that violates the provisions of this section or any data use agreement may be denied access to SPARCS or PRI data.

Appendix C-2 is repealed.

Appendix C-3 is repealed.

Appendix C-4 is repealed.

Appendix C-5 is repealed.

Section 755.10 is repealed.

Section 405.27 is repealed.

Section 400.14(b) is amended to read as follows:

(b) All requests for [deniable individual or aggregate] PRI data shall be processed pursuant to section 400.18 [(e)] of this Part.

Section 407.5(g) is amended to read as follows:

(g) Information policy and other reporting requirements.

PCHs/CAHs shall comply with the provision of section [405.27] 86-1.2, 86-1.3 and 400.18 of this Title regarding information policy and other reporting requirements.

Summary of Regulatory Impact Statement: Revised

There are five objectives for the revision of 10 NYCRR Section 400.18: 1) deleting obsolete language; 2) realigning the regulation to reflect current practices; 3) adding new provisions, including provisions for the mandated outpatient services data collection; 4) adding provisions to assure data completeness and quality; and 5) improving access to data. The first two objectives are the main reasons for the extensive and substantial changes to the regulations. The third objective is necessitated by the 2006 revision to PHL Section 2816 requiring a new type of data to be collected. The fourth and fifth objectives support Statewide initiatives to promote access to data (consistent with all applicable privacy laws and regulations) including the Governor's Open Data Portal, an initiative that supports and promotes greater data transparency and health department data promotion efforts such as the new health open data site -- Health Data NY.

Statutory Authority:

The Statewide Planning and Research Cooperative System (SPARCS) has been in existence for thirty-five years as a nationally recognized health information dataset. From its start in 1979, the authority to collect data from health facilities was established in Section 405.30 of Title 10 (Health) of the Official Compilation of Codes, Rules, and Regulations of the State of New York. This Section, repealed in 1988 and replaced with the current Section 400.18, specifies the procedures for the collection and disclosure of SPARCS and Patient Review Instrument (PRI) data.

In 1985, Section 97-x of the State Finance Law was established to fund SPARCS with fees collected from hospitals. In 2001, SPARCS was established in Section 2816 of the

Public Health Law (PHL). At the same time, the stipulation was added that emergency department data was to be collected from general hospitals. Section 97-x of the State Finance Law was also amended to refer to PHL Section 2816.

On April 12, 2006, Section 2816(2)(a)(iv) was added to authorize the collection of outpatient services data from all licensed Article 28 general hospitals and diagnostic and treatment centers (D&TCs) operating in New York State. With the 2006 revision to Section 2816, the Commissioner of the New York State Department of Health (NYSDOH) is authorized to promulgate regulations to implement the collection of outpatient services data.

Legislative Objectives:

These regulations support open government initiatives and transparency while continuing to assure confidentiality and security. The Data Protection Review Board, originally established to review data requests, assure appropriate privacy standards are met and authorize data sharing will be replaced by a NYSDOH administered process that includes a data review committee consisting of at least three members, including at least one member not otherwise affiliated with NYSDOH. This will facilitate timely access to requested data and at the same time assure data privacy and confidentiality consistent with all applicable State and Federal laws and regulations. These laws were not in place at the time SPARCS and the DPRB process were first initiated.

These regulations will support sharing of data collected by the Department on public websites such as the "Open New York" initiative and the Health Data NY initiative, subject to stringent privacy protections outlined in regulation and consistent with HIPAA standards, and will streamline and promote timely access to data by external researchers.

The proposed regulations are required to assure compliance with laws that mandate collection of outpatient services visit data in order to support the accuracy and completeness of Medicaid claims data. Collection of this information is necessary to comply with federal requirements for disproportionate share hospital (DSH) payments ($3.2 billion program, see, 42 USC § 1396r-4) and provide benchmarking capabilities for the State's ambulatory care reimbursement system (enhanced ambulatory patient groups or EAPGs) and benchmarking of outpatient pricing methodologies. The outpatient services data will assist in updating procedure weights, assist in creating procedure base rates, and potentially recalculating provider-specific payments for blend in the outpatient setting.

In addition these regulations support timeliness and completeness and assure that the data collected support open government initiatives and transparency while continuing to assure confidentiality and security. The regulations reflect a move to assign responsibility for review and approval of data requests, including assuring that appropriate privacy standards are met, to the Department and the Commissioner rather than an external body. This change is recommended to promote, streamline and facilitate timely access to requested data in a manner that ensures data privacy and confidentiality consistent with all applicable State and Federal laws and regulations (laws such as HIPAA that were not in place at the time SPARCS was first initiated).

Needs and Benefits:

There are five objectives for revising the regulation:

1) Deleting obsolete language (out of date lists of data elements collected by SPARCS);

2) Realigning regulation to reflect current practices. In 1996, HIPAA established national standards for health data reporting. SPARCS' current input data format, ANSI X12-837,

is a HIPAA-compliant data set, which is a subset of data elements as found in the national reporting standard;

3) Adding new provisions, including provisions for the mandated outpatient services data collection;

4) Adding new language to promote data completeness and accuracy. The revised Section 400.18 seeks to increase the quality and timeliness of the SPARCS data and will allow audits of SPARCS data to be conducted to determine the accuracy of the data submitted. If an audit is conducted, an audit report will be generated outlining any deficiencies. Health care facilities will have 90 days to replace any data found to be incorrect; and

5) Refining language to facilitate sharing of data consistent with HIPAA privacy protections in a manner that promotes transparency and use of Department data to further the health and well-being of all New Yorkers.

Costs:

For the past thirty five years, for SPARCS purposes, regulated entities have been Article 28 hospitals and D&TCs licensed to perform ambulatory surgery. The success of SPARCS has been due to the close alignment of the claim format that facilities must employ in their financial environment and SPARCS reporting requirements.

The Legislature mandated, in PHL 2816(2)(a)(iv) the collection of outpatient services. As an existing "type of data" that facilities have already been reporting through their financial/billing systems, it is expected that the associated costs will be minimal.

Local Government Mandates:

Article 28 facilities operated by local governments will be required to submit SPARCS data in the same manner as other Article 28 facilities.

Paperwork:

Paperwork associated with the data-reporting requirement is expected to be minimal.

Duplication:

The regulation will not duplicate, overlap, or conflict with federal or state statutes or regulations. Other state systems collecting health care facility data are payer or disease-specific. SPARCS data differ in that the data are collected from all payers and for all diseases and procedures.

Alternatives:

Refinements made to assure consistency with HIPAA are required. The collection of outpatient services data is mandated by law. There are no timely alternatives for the collection of these data.

Federal Standards:

This regulation does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

Article 28, Section 2816(2) (a) (iv) became effective in April 2006. SPARCS began to collect outpatient services data for the discharge/visit year 2011.

There are other sections of Title 10 repealed or amended to conform to the revision of Section 400.18:

Section 755.10 will be repealed. The content of this section has been incorporated into the proposed Section 400.18.

Section 405.27 will be repealed. The content of this section has been incorporated into the proposed Section 400.18 and Section 86-1.2, and Section 86-1.3.

Section 400.14(b) will be amended to conform to the revised Section 400.18.

Section 407.5(g) will be amended to add citations to Section 86-1.2 and Section 86-1.3 in place of the repealed Section 405.27.

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Regulatory Impact Statement: Revised

Statutory Authority:

The Statewide Planning and Research Cooperative System (SPARCS) has been in existence for thirty-five years as a nationally recognized health information dataset. From its start in 1979, the authority to collect the data from health facilities was established in Section 405.30 of Title 10 (Health) of the Official Compilation of Codes, Rules, and Regulations of the State of New York. This Section, repealed in 1988 and replaced with the current Section 400.18, specifies the procedures for the collection and disclosure of SPARCS and Patient Review Instrument (PRI) data.

In 1985, Section 97-x of the State Finance Law was established to fund SPARCS with fees collected from hospitals. In 2001, SPARCS was established in Section 2816 of the Public Health Law (PHL). At the same time, the stipulation was added that emergency department data was to be collected from general hospitals. Section 97-x of the State Finance Law was also amended to refer to PHL Section 2816.

Although the 400.18 regulations were modified in 2005 for emergency department data collection, additional changes were put on hold due to the changes taking place with national standards for health data reporting under the Health Insurance Portability and Accountability Act (HIPAA). HIPAA was enacted subsequent to initial creation of SPARCS and assures that data collected under SPARCS is subject to the multiple protections required under HIPAA.

Taking effect on April 14, 2003, the Privacy Rule enacted with HIPAA regulates the use and disclosure of Protected Health Information (PHI) held by "covered entities" (generally, health care clearinghouses, employer sponsored health plans, health insurers, and medical service providers that engage in certain transactions.) By regulation, the

Department of Health and Human Services extended the HIPAA privacy rule to independent contractors of covered entities who fit within the definition of "business associates". PHI is any information held by a covered entity which concerns health status, provision of health care, or payment for health care that can be linked to an individual. This is interpreted rather broadly and includes any part of an individual's medical record or payment history. The act allowed health insurance subscribers to appeal any violations of this act to the Department of Health and Human Services Office for Civil Rights. Other pertinent sections of HIPAA include the Security Rule, enacted February 20, 2003 which provides administrative safeguards, physical safeguards and technical safeguards for the use and handling of health insurance related information. These measures were enacted to provide security for the insured, the health insurance company, any organization providing the insurance to an employee, and the family or dependents of the insured. Two other rules, the Enforcement Rule and the Unique Identifiers Rule, were passed in February 2006 and May 2006, respectively. The Enforcement Rule established final penalties for any and all HIPAA violations. The Unique Identifiers Rule covered electronic transactions made by insurance companies and forced each entity to be assigned with a National Provider Identified number, or NPI.

On April 12, 2006, Section 2816(2)(a)(iv) was added to authorize the collection of outpatient services data from all licensed Article 28 general hospitals and diagnostic and treatment centers (D&TCs) operating in New York State. With the 2006 revision to Section 2816, the Commissioner of the New York State Department of Health (NYSDOH) is authorized to promulgate regulations to implement the collection of outpatient services data.

Subdivision 6 of section 2816, added by section 38 of Part H of Chapter 59 of the Laws of 2011, gives the New York State Department of Health clear legal authority to publish the data elements health care facilities are required to submit on the NYSDOH website without specifying the data elements in regulation.

Legislative Objectives:

These regulations support open government initiatives and transparency while continuing to assure confidentiality and security. The Data Protection Review Board, originally established to review data requests, assure appropriate privacy standards are met and authorize data sharing will be replaced by a NYSDOH administered process that includes a data review committee consisting of at least three members, including at least one member not otherwise affiliated with NYSDOH. This will facilitate timely access to requested data (data requests can be processed on an ongoing basis rather than being held for presentation at a quarterly DPRB meeting) and at the same time data privacy and confidentiality consistent with all applicable State and Federal laws and regulations will be assured. These laws were not in place at the time SPARCS and the DPRB process were first initiated.

These regulations will support sharing of data collected by the Department on public websites such as the "Open New York" initiative and the Health Data NY initiative, subject to stringent privacy protections outlined in regulation and consistent with HIPAA standards, and will streamline and promote timely access to data by external researchers. The Legislature has concluded that the SPARCS program has worked well as a tool for planning, research, public information, and health care improvement. Subparagraph (2)(a)(iv) of Section 2816 expands the scope of data collection from health care providers already required to report utilization data to the Department to include outpatient data. There are two primary purposes of the collection of the additional data. The first is to aid in the development and refinement of new methodologies for calculating Medicaid reimbursement. The second is to obtain information on outpatient services, an area of health care that has not been available to the Department to assess access to care for New York State residents.

Expanding SPARCS to include the collection of outpatient services will improve the accuracy and completeness of Medicaid claims data, allow the Department to capture pertinent data to comply with federal requirements for disproportionate share hospital (DSH) payments ($3.2 billion program, see, 42 USC § 1396r-4) and provide benchmarking capabilities for the State's ambulatory care reimbursement system (enhanced ambulatory patient groups or EAPGs) and outpatient pricing methodologies. The outpatient services data will assist in updating procedure weights, assist in creating procedure base rates, and potentially recalculating provider-specific payments for blend in the outpatient setting.

Sharing data in this manner increases government transparency and improves access to valuable data assets needed to inform future research and health policy. The addition of outpatient data (outpatient services, ambulatory surgery, and emergency department data), will also allow the Department, providers, and academics, to conduct additional disease analysis and increase the study of patient care in an area of health care that has not had data readily accessible. The legislature has recognized that the success of SPARCS over the past thirty five years has been the cooperative effort between facilities, associations, and the Department. Cooperation and collaborations will continue to be supported and transparency promoted through both the sharing of data and by making information on data elements collected and projects approved being publicly available on the Department's website.

Needs and Benefits:

There are five objectives for revising the regulation:

1) Deleting obsolete language;

2) Realigning regulation to reflect current practices;

3) Adding new provisions, including provisions for the mandated outpatient services data collection;

4) Adding new language to promote data completeness and accuracy; and

5) Refining language to facilitate sharing of data collected in a manner that is consistent with HIPAA and assures privacy protections but that promotes transparency and use of Department data to further health and well-being.

The first two objectives are the main reasons for the extensive and substantial changes to the regulations. The third objective is necessitated by the 2006 revision to Section 2816 requiring outpatient services data to be collected. Objectives four and five are consistent with Statewide efforts to promote transparency in government. Therefore, due to the substantial changes needed, the Department will repeal Section 400.18 as it exists and promulgate a new Section 400.18.

Provisions Deleted:

The following provisions in the current Section 400.18 will no longer be part of the regulation:

Appendix C-2

Appendix C-3

Appendix C-5

The appendices associated with the current Section 400.18 contain out of date lists of data elements collected by SPARCS. To allow for program flexibility and to maintain up-to-date regulations, the revised Section 400.18 has been written to allow the list and definition of the collected data elements to be maintained by the Commissioner and made available publicly.

The changes in the SPARCS regulations align the Department's data collection with current billing practice as required by the National Uniform Billing Committee (NUBC) or as required under national Electronic Data Interchange (EDI) standards. The revised Section 400.18 requires that facilities submit data already collected and does not require facilities to collect any additional data. Data elements are from the medical record, the billing record, or demographic information maintained by facilities.

In the current 400.18, subdivision (b), uniform bill, and Subdivision (c), uniform discharge abstract, along with their associated appendices, delineate and describe the data elements found in the uniform bill (appendix C-2) and in the uniform discharge abstract (appendix C-3). In 1979, these two forms were submitted separately by hospitals and were combined into a single data set by the Department. In the mid-1990s, the two data streams were joined to form the “Universal Data Set for Institutional Providers” (UDS/IP). Appendices C-2 and C-3 are very out-of-date and should be repealed.

In 1996, HIPAA established national standards for health data reporting. SPARCS’ current input data format, ANSI X12-837, is a HIPAA-compliant data set, which is a subset of data elements as found in the national reporting standard (See 45 CFR Part 162, Subpart K). In 2005, Section 400.18 was modified to authorize the collection of emergency service data. The data elements for emergency service data were listed in appendix C-5. Over the years, these lists of data elements have become obsolete, and the SPARCS program maintains the actual lists and definitions of these data elements. The required data elements are maintained on the Department of Health's website. The current

URL is: http://www.health.ny.gov/statistics/sparcs/sysdoc/elements_837/index.htm.

The Department will repeal appendix C-5.

The current SPARCS regulations, Section 400.18(a) (2) and 400.18(a) (11) list specific identifying data elements, which, if released, would constitute an unwarranted invasion of personal privacy. However, since the last update to these regulations, HIPAA was implemented and defines a more inclusive set of data elements aimed at protecting personal privacy. As a result, the lists of data elements previously contained within Section 400.18, utilized in the disclosure of SPARCS and PRI data, have become obsolete. In revised Section 400.18, the list of the data elements allowed in the disclosure of SPARCS and PRI data, as well as those designated as identifying data elements, are consistent with HIPAA and will be maintained by the Commissioner and made publicly available. The Department will repeal 400.18(a) (2) and 400.18(a) (11), which list the identifying data elements for the SPARCS and PRI data sets respectively.

All data elements that are not specified as identifying are considered non-identifying data elements. In maintaining the list of identifying data elements, SPARCS will take into consideration any changes in federal law. In the revised Section 400.18, requests for SPARCS and PRI data containing identifying data elements will require approval by the Commissioner.

Current section 400.18(d) specifies the method by which SPARCS identifies ambulatory surgery data in the SPARCS file. In the revised Section 400.18, the method that SPARCS uses to differentiate data types (inpatient, ambulatory surgery, emergency department, and outpatient services) will be unified and maintained by the Commissioner. This methodology will allow SPARCS greater flexibility in adapting to changes in the health care facilities' billing environment.

Current section 400.18(f) contains provisions and regulations for a Council on Hospital

Information Policy. That body was established in the original 1979 SPARCS regulations but was rarely convened and has been determined to be unnecessary.

Current section 400.18(g), Accounting and reporting, pertains to the policy and procedures for the maintenance of hospital accounts and records and the acceptable policies and instructions for submission of the Institutional Cost Reports to the Department of Health’s Division of Financing and Rate Setting. As this subdivision does not apply to the operation of the SPARCS program, the 400.18(g) language has been moved to Section 86-1.3.

Current section 400.18(e)(4) established the DPRB. Consistent with efforts to streamline and make more timely the process for requesting and securing access to SPARCS data this section will be removed and replaced by a review and approval process, consisting of at least three members, including at least one member not otherwise affiliated with NYSDOH.

Aligning Regulation to Current Practice:

Over the past thirty five years, the collection of health information and the specifications for information technology (IT) have changed significantly. Although a leader in the collection and protection of patient information in 1979, SPARCS has adapted to a number of changes in the national billing standards. To ensure continued success, SPARCS is aligning itself with the national electronic billing standards and the HIPAA environment regarding the protection of private health information.

The revised Section 400.18 significantly reorganizes and modifies the regulation to align the current functions of the SPARCS program, the collection and maintenance of SPARCS data, and the disclosure of SPARCS and PRI data.

In the existing regulations, inpatient, emergency department, and ambulatory surgery data are submitted on different timetables. Some of the reporting timetables differ from existing Section 400.18. The reporting timetable for inpatient discharge data had been found in Section 86-1.3(f). The reporting timetable for free-standing ambulatory surgery data, along with the list of collected data elements, is found in Section 755.10. Providers strongly prefer a single-collection timetable for all types of SPARCS data. The current practice, implemented in 2008, allows all health care facilities to report all types of SPARCS data on a single timetable. The revised Section 400.18 aligns the regulation to existing practice and places the reporting requirement for all SPARCS data within Section 400.18.

Section 400.18 continues to allow the Commissioner to specify fees to be charged to access SPARCS and PRI data. The practice of charging fees for the data has been in place since SPARCS's inception in 1979, and this regulation does not create any new fees. The fees charged support maintenance of the system. The base fee is the amount charged to the approved data requester for a year's worth of specified data (inpatient, ambulatory surgery, emergency department, and/or outpatient services data). The fee, which is very low by industry standards, is derived from the cost associated with data acquisition, data storage and programming required to create the output file. That base fee may be discounted or waived by the Commissioner when Department functions will be advanced by disclosure of such information. Additional charges may apply for a specific requester based upon the need for encryption and for the addition of approved identifiable data elements.

Health care facilities will continue to receive their own data without cost. Health care facilities may also receive the entire SPARCS data set when the reason for the request is either rate determinations or rate appeals or health-care related research. The fees for SPARCS or PRI data have been waived for New York State agencies and New York

State county and local agencies receiving SPARCS data for health care related purposes. In addition, the Commissioner may waive the fee upon written request in furtherance of the Department's powers and duties.

New Provisions:

New provisions are being added to improve the operations of SPARCS, to enhance data transparency and privacy protections by refining requirements surrounding release of the data, and to support the collection of outpatient services data.

Enhanced Oversight:

The revised Section 400.18 seeks to increase the quality and timeliness of the SPARCS data and will allow audits of SPARCS data to be conducted to determine the accuracy of the data submitted. If an audit is conducted, an audit report will be generated outlining any deficiencies. Health care facilities will have 90 days to replace any data found to be incorrect.

Enhanced Privacy Protections:

To protect the privacy of patients in the presentation of SPARCS and PRI data, and ensure compliance with the State Personal Privacy Protection Law, Section 400.18 currently specifies that an aggregation of individual patient data comprising fewer than six patients may not be released. The proposed revision acknowledges that this policy is not, by itself, sufficient protection against unwarranted invasions of personal privacy. 400.18 now states that identifying data elements shall mean those SPARCS and PRI data elements that, if disclosed without any restrictions on use or re-disclosure would constitute an unwarranted invasion of personal privacy.

The revision requires that the data access application specify the methods that the data users will employ to protect patients' privacy in the presentation of data analysis results. Failure to adopt privacy protection methods deemed adequate by the Department shall be cause for denial of a data access request.

Expanded Scope:

Revised Section 400.18 operationalizes the collection of outpatient services data as mandated by Section 2816 of the PHL.

Costs

Cost to Regulated Entities:

For the past thirty five years, for SPARCS purposes, regulated entities have been Article 28 hospitals and D&TCs licensed to perform ambulatory surgery. The success of SPARCS has been due to the close alignment of the claim format that facilities must employ in their financial environment and SPARCS reporting requirements. On April 12, 2006, Section 2816(2)(a)(iv) was added to authorize the collection of outpatient services data from all licensed Article 28 general hospitals and diagnostic and treatment centers (D&TCs) operating in New York State. It is expected that costs will be minimal as this "type of claim data" is already sent to payers.

Cost to State and Local Governments:

The revisions to the SPARCS regulations have only one provision that would affect state and local government owned health care facilities – mandated collection of outpatient services data. State and county owned and operated facilities would face minimal additional costs consistent with costs to the regulated parties as noted above.

Cost to the Department of Health:

The SPARCS Special Revenue Account, authorized under Section 97-x of the State Finance Law, is expected to be sufficient to support costs of development and maintenance of SPARCS data.

Local Government Mandates:

Article 28 facilities operated by local governments will be required to submit SPARCS data in the same manner as other Article 28 facilities.

Paperwork:

Paperwork associated with data-reporting requirements is expected to be minimal.

Duplication:

The regulation will not duplicate, overlap, or conflict with federal or state statutes or regulations. Other state systems collecting health care facility data are payer or disease-specific. SPARCS data differ in that the data are collected from all payers and for all diseases and procedures.

Alternatives:

Refinements made to assure consistency with HIPAA are required. The collection of outpatient services data is mandated by law. There are no timely alternatives for the collection of these data.

Federal Standards:

This regulation does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

Article 28, Section 2816(2) (a) (iv) became effective in April 2006. SPARCS began to collect outpatient services data for the discharge/visit year 2011.

There are other sections of Title 10 repealed or amended to conform to the revision of Section 400.18:

Section 755.10 will be repealed. The content of this section has been incorporated into the proposed Section 400.18.

Section 405.27 will be repealed. The content of this section has been incorporated into the proposed Section 400.18 and Section 86-1.2, and Section 86-1.3.

Section 400.14(b) will be amended to conform to the revised Section 400.18.

Section 407.5(g) will be amended to add citations to Section 86-1.2 and Section 86-1.3 in place of the repealed Section 405.27.

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Regulatory Flexibility Analysis For Small Businesses and Local Governments

Effect of Rule:

The State Administrative Procedure Act (SAPA 202-b) defines a small business as “being resident in this State, having fewer than 100 employees, independently owned and operated.” The primary purpose of the revision of section 400.18 is to delete obsolete language; to realign regulation to reflect current practices; and to add new provisions, including rules and regulations for the mandated, outpatient services data collection. Of these modifications, the collection of the outpatient services data, mandated in the April 2006 modifications to Public Health Law Article 28 Section 2816(2) (a) (iv), may impact small businesses.

The collection of outpatient services data will impact two categories of small businesses in New York State:

1) Small Health Care Facilities, which will be required to submit data; and

2) Software vendor companies, which will need to make modifications to existing programs.

There are a number of small facilities in NYS. They will be defined in terms of: the small number of visits per year and their level of information technology (IT) support within the facility. Some smaller facilities may be impacted depending upon their current electronic billing and thus reporting capabilities. Some may need to contract with an external vendor to assist with data submission.

The second small business category affected is small software vendors (computer companies). These companies will be used as consultants/contractors to modify existing billing systems to produce the SPARCS file. This group will benefit from increased revenue generated by the request for improved systems.

Compliance Requirements:

As the SPARCS file is generated from the existing health care facilities' records, all facilities with electronic billing programs should incur minimal or no increased reporting costs.

Professional Services:

The outpatient services data collection is expected to increase opportunity for professional computer services due to the modifications of the billing programs required to create the SPARCS file. Once the outpatient services data set has been collected, there will be an increase in employment opportunities for health care researchers, policy makers, and other professionals involved in the use of the health care data.

Compliance Costs:

As the SPARCS file is generated from the existing health care facilities' records, all facilities with electronic billing programs should incur minimal or no increased costs associated with reporting.

Following initial costs for system enhancements annual costs to maintain compliance with the proposed rule are expected to be minimal. NYS SDOH staff is available to provide assistance to health care facilities with reporting as needed. In addition, the Health Department's Health Commerce System (HCS) provides for the secure transmission of the SPARCS file to the Department of Health at no cost to the facility.

Economic and Technological Feasibility:

It should be technologically feasible for small businesses to comply with the proposed regulations. Most facilities should not need to hire additional professional or administrative staff to comply with these regulations, as the computer program to create the SPARCS file should be very similar to other electronic billing systems. All facilities must use the Health Commerce System to submit the data in a secure environment, and facilities must maintain internet connectivity.

Minimizing Adverse Impact:

A significant impact of this regulatory change is the collection of the outpatient services data for health care facilities that have never submitted data to the Department of Health.

Adverse impact can be minimized through the availability of training. There was a focused effort on training prior to the commencement of data collection. SPARCS provided training for SPARCS coordinators to assist them in reporting the data.

SPARCS will defer collection of data from dental clinics to sometime in the future because dental clinics use a different electronic claim form than the Institutional format of the ANSI X12-837 that SPARCS currently requires. Furthermore, smaller facilities that are self-funded or grant-funded will be excluded from the requirement to submit SPARCS data.

Small Business and Local Government Participation:

SPARCS is dedicated to maintaining a cooperative system. To do this, SPARCS holds regional meetings to elicit comments directly from health care facilities, and SPARCS attends meetings with health care associations New York Health Information

Management Association (NYHIMA), Community Health Care Association of New York State (CHCANYS), and Healthcare Association of New York State (HANYS)). In addition, SPARCS is dedicated to continuing training and providing educational material for the purpose of submitting and correcting SPARCS data.

Data submission is a requirement for Article 28 health care facilities, but there are benefits also for the facilities, themselves, and for the local governments with which they are associated. A small query database containing aggregated data is available free of charge to all facilities and local government personnel that have an active account on the HCS. This access provides basic health care information for all HCS users. In addition, facilities can always download their own patient level records at any time thru the secure feature on the HCS.

Rural Area Flexibility Analysis: Revised

Types and Estimated Numbers of Rural Areas:

This rule applies uniformly throughout the state, including rural areas. Rural areas are defined as counties with a population less than 200,000 and counties with a population of 200,000 or greater that have towns with population densities of 150 persons or fewer per square mile. The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010 (http://quickfacts.census.gov). Approximately 17% of small health care facilities are located in rural areas.

Allegany County	Greene County	Schoharie County
Cattaraugus County	Hamilton County	Schuyler County
Cayuga County	Herkimer County	Seneca County
Chautauqua County	Jefferson County	St. Lawrence County
Chemung County	Lewis County	Steuben County
Chenango County	Livingston County	Sullivan County
Clinton County	Madison County	Tioga County
Columbia County	Montgomery County	Tompkins County
Cortland County	Ontario County	Ulster County
Delaware County	Orleans County	Warren County
Essex County	Oswego County	Washington County
Franklin County	Otsego County	Wayne County

Fulton County	Putnam County	Wyoming County
Genesee County	Rensselaer County	Yates County
	Schenectady County	

The following counties have a population of 200,000 or greater and towns with population densities of 150 persons or fewer per square mile. Data is based upon the United States Census estimated county populations for 2010.

Albany County	Monroe County	Orange County
Broome County	Niagara County	Saratoga County
Dutchess County	Oneida County	Suffolk County
Erie County	Onondaga County	

Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:

The majority of the revisions of Section 400.18, i.e., address deletion of obsolete language and update the regulation to reflect current practices, and will not adversely impact health care facilities in rural areas. The addition of the provision to collect a new data type, outpatient services data, was addressed through training initially provided during 2011 and that will be provided in the future via a web based environment.

In addition, SPARCS will provide a specialized time schedule for any facility that is upgrading their system or undergoing a system transition to electronic medical records. The greatest impact in a rural area would occur if a small facility continued to maintain paper medical and billing records. A survey found most small health care facilities have some electronic form of recordkeeping due to the requirements of most insurance companies that bills be submitted electronically which should alleviate any additional costs and support effective submission of the required outpatient data.

Costs:

The cost of compliance with outpatient services data collection requirement for rural-area facilities should be minimal. As the SPARCS file is generated from the existing health care facilities' records, all facilities with electronic billing programs should incur minimal or no increased reporting costs.

Facilities currently submitting data to SPARCS will have little increased capital costs except for minor changes to their existing billing systems. For new submitters that need to improve their electronic billing capabilities, they may incur custom computer additions to their existing billing programs.

Minimizing Adverse Impact:

There was a focused effort on training prior to the commencement of data collection. SPARCS will continue to provide training for SPARCS coordinators to assist them in reporting the data. In addition, training will be provided to the vendors who will be involved in data submission.

Hospitals have been submitting data to SPARCS for thirty five years. Most hospital outpatient departments have computer systems that are already integrated into the main hospital system or are in the process of being integrated. Thus, the computer program logic has been created, and the additional flow of information should be of minimal impact.

Rural Area Participation:

Regional meetings were held to inform and obtain comments from health care facilities located in all areas of the state.

Although some may view this reporting requirement as an additional burden, there are also benefits for the facilities. A facility’s own data will be available free of charge for that facility. In addition, SPARCS allows access to health care information that all can use.

Job Impact Statement: Revised

Nature of Impact:

Very little impact on jobs is expected. To the extent that there is an impact, the addition of the outpatient data submission requirement will positively impact jobs and employment opportunities. For those reporting health care facilities requiring a custom computer program to create the SPARCS file, either their existing billing program will need modification by internal IT staff, or an external vendor will be required to create a custom program. For those health care facilities that will switch to electronic records, there will be increased business in sales and customization of the billing programs.

Categories and Numbers Affected:

The jobs created will be computer programming positions, sales positions, and technical training positions. SPARCS conducted surveys of the health care facilities impacted by this mandate, and 574 hospital-affiliated health clinics responded regarding their ability to submit data electronically. Of those, 96% reported that they submit some or all of their claims electronically.

Regions of Adverse Impact:

The revised section 400.18 will have no adverse impact on jobs or employment opportunities.

Minimizing Adverse Impact:

As the revised section 400.18 has no adverse impact on jobs or employment opportunities, there is no need to minimize adverse impacts.

Self-employment Opportunities:

In very few instances, health care facilities may rely on self-employed programmers to develop the needed programming to submit and correct SPARCS data. To date, we have had only one instance of this over SPARCS' 35-year, data-collection history.

Pursuant to the authority vested in the Public Health and Health Planning Council and subject to the approval of the Commissioner of Health by Sections 2800 and 2803 of the Public Health Law, Part 407 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby repealed and Section 405.1 is hereby amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Part 407 (Primary Care Hospitals – Minimum Standards) is REPEALED.

Subdivision (a) of section 405.1 is amended to read as follows:

(a) General hospitals, hereinafter referred to as hospitals, shall comply with all of the requirements of this Part.

(1) hospitals shall comply with construction standards contained in Article 2 of Subchapter C of this Chapter (Medical Facility Construction); [and]

(2) the commissioner may accept as evidence of compliance with the minimum operational standards of the Part, accreditation by an accreditation agency to which the Centers for Medicare and Medicaid Services has granted deeming status and which the commissioner has determined has accrediting standards sufficient to assure the commissioner that hospitals so accredited are in compliance with such operational standards. The commissioner can choose to enter into collaborative agreements with such accreditation agencies so that the accreditation agency's accreditation survey can be

used in lieu of a Departmental survey. A list of accreditation agencies with which the Department has a collaborative agreement will be posted on the department's website. Hospitals shall notify the commissioner in writing within seven days after receipt of notice of failure to be accredited, re-accredited or the loss of accreditation by the accreditation agency[,] and

(3) facilities designated by the federal government as critical access hospitals (CAHs) pursuant to the requirements of Subpart F of Part 485 of Title 42 of the Code of Federal Regulations shall comply with such regulations as well as all of the requirements of this Part.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The statutory authority for the promulgation of this regulation is contained in Public Health Law (PHL) Sections 2800 and 2803. PHL Section 2800 provides that "hospital and related services including health-related service of the highest quality, efficiently provided and properly utilized at a reasonable cost, are of vital concern to the public health. In order to provide for the protection and promotion of the health of the inhabitants of the state…, the department of health shall have the central, comprehensive responsibility for the development and administration of the state's policy with respect to hospital related services…" PHL Section 2803 authorizes the Public Health and Health Planning Council (PHHPC) to adopt 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 and promotion of the health of the residents of New York State by requiring the efficient provision and proper utilization of health services, of the highest quality at a reasonable cost.

Needs and Benefits:

Currently Part 407 of 10 NYCRR sets forth the provisions for minimum standards for Primary Care Hospitals. A *"primary care hospital"* (*PCH)* is defined as a general hospital serving a rural area which:

(1) complies with the provisions of Part 407 and the provisions of Part 405 of Title 10 NYCRR;

(2) provides all services required by Section 407.3 (Scope of Service) of Part 407 in a manner that safely and effectively meets patient needs;

(3) may provide one or more additional optional services authorized by Section 407.14 (Optional Services) of Part 407 in accordance with patient needs,

(4) hospital's ability to meet these needs safely and effectively and the commissioner's approval to provide such services;

(5) may participate in a rural health network;

(6) has a formal affiliation with a general hospital that complies with all provisions of Part 405 of 10 NYCRR; and

(7) is located in a rural area, defined as any county with less than 200,000 persons or any town which has a population of less than 200 persons per square mile, or if approved by the commissioner, any town which has a population of less than 250 persons per square mile.

Part 407 defines a *“critical access hospital” (CAH)* as a PCH serving rural area which:

(1) is designated by the Federal government as a CAH pursuant to the requirements of 42 CFR section 485.606; and

(2) complies with provisions of Part 407 that relate to PCHs as well as those applying only to CAHs.

Currently there are no PCHs in New York State. As all hospitals as defined in Part 407 (whether they are just PCHs or also CAHs), must abide by Part 405 of 10 NYCRR, the determination was made by the Department to repeal Part 407 as it is duplicative and obsolete. Furthermore, from a surveillance standpoint, the Department reviews compliance with New York State standards as set forth in Part 405 of 10 NYCRR. CAHs must also adhere to the requirements of Subpart F of Part 485 of Title 42 of the Code of Federal Regulations. It is more efficient for the CAHs to only have to abide by Part 405 of Title 10 NYCRR from a New York State perspective, rather than both Part 405 and Part 407 of 10 NYCRR in addition to their federal requirements.

Costs:

The cost of implementation and compliance of these provisions should be none as this proposal adds no additional requirements for CAHs. It merely removes outdated and obsolete language and moves the CAH provisions into Part 405 of Title 10 from Part 407 of Title 10.

Local Government Mandates:

This provision does not impose any additional mandates on local governments.

Paperwork:

This rule imposes no new reporting requirements forms, or other paperwork upon regulated parties.

Duplication:

This regulation does not duplicate any other State or federal regulation. In fact, this measure is intended to reduce duplication of New York State provisions, by repealing Part 407 that is duplicative and obsolete.

Alternatives:

The Department considered adding a new Section to Part 405 entitled Critical Access Hospitals, but decided not to as it will defer to the Federal standards and does not plan to add any new New York State standards with respect to CAHs. Amendments to Section

405.1 (Introduction) have been made to specify that facilities designated by the federal government as critical access hospitals pursuant to Subpart F of Part 485 of Title 42 of the Code of Federal Regulations must comply with such regulations as well as all of the requirements of Part 405. There are no new requirements for CAHs. They already must comply with the Federal provisions and Part 405.

Federal Standards:

This proposal does not conflict or duplicate federal provisions.

Compliance Schedule:

This proposed amendment will become effective upon publication of a Notice of Adoption in the *New York State Register.*

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REGULATORY FLEXIBILITY ANALYSIS

Effect of Rule:

Currently there are 228 general hospitals in New York State. There are no Primary Care Hospitals in the State, but there are 15 Critical Access Hospitals.

Compliance Requirements:

There are no additional compliance requirements imposed on hospitals including CAHs as a result of this proposal. CAHs are already required to abide by Part 405 provisions in addition to the Federal requirements as set forth in Subpart F of Part 485 of Title 42 of the Code of Federal Regulations.

Professional Services:

There are no additional professional services required for hospitals including CAHs as a result of this proposal.

Compliance Costs:

As there are no additional compliance requirements imposed on hospitals including CAHs as a result of this proposal there will be no additional compliance costs.

Economic and Technological Feasibility:

This proposal is economically and technologically feasible.

Minimizing Adverse Impact:

There is no adverse impact.

Small Business and Local Government Participation:

Outreach to the affected parties is being conducted. Organizations who represent the affected parties and the public can also obtain the agenda of the Codes, Regulations and Legislation Committee of the Public Health and Health Planning Council (PHHPC) and the proposed regulation on the Department's website. The public, including any affected party, is invited to comment during the Codes and Regulations Committee meeting.

Dear Chief Executive Officer (CEO) letters will be sent to affected parties explaining the changes proposed as a result of the federal CoPs.

RURAL AREA FLEXIBILITY ANALYSIS

No Rural Area Flexibility Analysis is required pursuant to section 202-bb (4) (a) of the State Administration Procedure Act (SAPA). It is apparent, from the nature of the proposed amendment that it will not impose any adverse impact on rural areas, and the rule does not impose any new reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. In fact, this measure will make it more efficient for the CAHs to only have to abide by Part 405 of Title 10 NYCRR from a New York State perspective, rather than both Part 405 and Part 407 of 10 NYCRR in addition to their federal requirements.

JOB IMPACT STATEMENT

No Job Impact Statement is required pursuant to section 201-a (2) (a) of the State Administration Procedure Act (SAPA). It is apparent, from the nature of the proposed amendment, that it will have no impact on jobs and employment opportunities.

Public Health and Health Planning Council

Project # 132313-C
Women and Children's Hospital of Buffalo

County: **Erie** ***Program:*** **Hospital**
Purpose: **Construction** ***Acknowledged:*** **December 17, 2013**

Executive Summary

Description

Women and Children's Hospital of Buffalo, (WCHOB), a 200-bed not-for-profit hospital located at 219 Bryant Street, Buffalo (Erie County), is seeking approval to amend and supersede CON 122205, which was contingently approved on June 6, 2013, for the construction of a replacement facility to be located on the Buffalo Niagara Medical Campus (BNMC) at 818 Ellicott Street, Buffalo (Erie County).

Kaleida Health Women and Children's Hospital of Buffalo is submitting this CON modification due to changes on the 7th and 12 floors of the new facility, previously known as the 6th and 11th floors in CON 122205. The original application included a shell floor in the program, which proposed that Roswell Park Cancer Institute would operate a hematology/oncology inpatient bed floor, and contemplated a hospital within a hospital arrangement. Roswell Park Cancer Institute and Kaleida Health Women's and Children Hospital of Buffalo will instead enter into a joint venture where a 9-bed unit will be operated by WCHOB and outpatient pediatric hematology/oncology services will be provided by Roswell Park Cancer Institute. Dialysis and infusion has been added to the 7th floor, originally planned for an adjacent medical office building. Equipment from the existing dialysis and infusion programs will be re-used.

In comparison to the current CON 132313 and amended and superseded CON 122205, there is no change in the 410,400 gross square feet; under CON 132313 there is a 17-bed reduction, bringing the proposed certified beds to 183 certified beds, whereas, under CON 122205 there was a 26-bed reduction. This is the result of the added scope to the program of the hematology/oncology unit, a joint venture with Roswell Park Cancer Institute. The replacement hospital will have 183 licensed inpatient beds, 17 fewer than the 200 beds presently certified at WCHOB. The proposed 17-bed reduction at WCHOB will be transferred to other Kaleida facilities in advance of the hospital's move, and will be the subject of a separate CON application. Total project cost will increase by $32,945,395, going from $237,214,362 (net of $7,198,720 in shell space costs) under Con 122205, to $270,159,757 under CON 132313, which does not have any shell space cost.

Kaleida Health will not use the old Women and Children's Hospital of Buffalo facility once the new facility is operational; thus, they have started a community-based collaborative for its reuse. Kaleida Health is an integrated healthcare delivery system that includes: Buffalo General Medical Center, DeGraff Memorial Hospital, Gates Vascular Institute, Millard Fillmore Suburban Hospital, Women and Children's Hospital of Buffalo, two long-term care facilities, Visiting Nursing Association of WNY, and several other subsidiaries, along with two charitable foundations

DOH Recommendation

Contingent Approval

Need Summary

Kaleida Health Women and Children's Hospital of Buffalo seeks to consolidate and relocate its existing hospital onto the Buffalo Niagara Medical Campus. The number of total inpatient beds will be reduced by 17, resulting in a new certified capacity of 183. In addition, they will enter into a joint venture with Roswell Park Center Institute, which will provide outpatient pediatric hematology/oncology services for Women's and Children's Hospital. Dialysis will be relocated to the 7th floor of the new facility. The relocation and restructuring of the hospital will allow WCHOB to benefit from the efficiencies of the new site. In addition, WCHOB will be in a better position to adapt to a projected declining population base of women of childbearing age.

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

The total project costs is $270,159,757 and will be , funded as follows: $3,802,216 from Kaleida Health; $20,307,253 from The Women and Children's Hospital of Buffalo Foundation; $45,728,994 in fund raising; $43,945,487 from an equipment loan, and the remaining balance of $156,375,807 from a FHA-insured mortgage, at a 5.25% interest rate with 25 year term.

Incremental Budget:	Revenues	$21,325,334
	Expenses	21,066,451
	Gain (Loss)	$258,883

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a commitment for a permanent mortgage for the project to be provided from a recognized lending institution at a prevailing rate of interest, determined to be acceptable by the Department of Health. This is to be provided within 120 days of approval of state hospital code drawings and before the start of construction. Included with the submitted permanent mortgage commitment, must be a source and uses statement and a debt amortization schedule, for both new and refinanced debt. [BFA]
3. Submission of an equipment loan commitment that is acceptable to the Department of Health. [BFA]
4. Submission of documentation of fundraising to be used as a source of financing acceptable to the Department of Health. [BFA]
5. 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 construction. [DAS]

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 applicant must adhere to Construction Start (06/18/2014) and Completion Dates (01/15/2017). [DAS]

Council Action Date

April 10, 2014

Need Analysis

Background

Kaleida Health Women and Children's Hospital of Buffalo (WCHB) is a 200-bed acute care hospital located at 219 Bryant Street, Buffalo, 14222, in Erie County. The facility seeks to replace its existing 200-bed hospital and relocate it to the Buffalo Niagara Medical Campus (BNMC) at 818 Ellicott Street, Buffalo, 14203, in Erie County. In addition, the hospital proposes to downsize its maternity and pediatric services by 17 inpatient beds and remove services such as Burns and Pediatric Intervention. When this CON is completed, the number of inpatient beds at WCHB will be reduced by 17 and total 183. The 17 beds will be transferred to other facilities in the network through a separate CON.

Kaleida Health Women and Children's Hospital of Buffalo has the following certified beds and services:

Certified Beds: Kaleida Health Women and Children's Hospital of Buffalo			
Certified Beds	Certified Capacity	Requested Action*	Certified Capacity Upon Completion
Maternity	40	-10	30
Neonatal Continuing Care	18		18
Neonatal Intensive Care	28		28
Neonatal Intermediate Care	18		18
Pediatric	68	+1	69
Pediatric ICU	28	-8	20
Total	200	-17*	183

**Will be retained by Kaleida Health and redistributed to other facilities in the system via a to-be-submitted CON.*

Certified Services: Kaleida Health Buffalo General Medical Center			
Service	Certified Service	Requested Action	Certified Service Upon Completion
AIDS Center	√		√
Ambulatory Surgery - Multi Specialty	√		√
Audiology O/P	√		√
Burn Program	√	Remove	
CT Scanner	√		√
Cardiac Catheterization - Pediatric Diagnostic	√	Remove	
Cardiac Catheterization - Pediatric Intervention Elective	√	Remove	
Cardiac Surgery - Pediatric	√		√
Certified Mental Health Services O/P	√		√
Chemical Dependence - Rehabilitation O/P	√		√
Clinic Part Time Services	√		√
Clinical Laboratory Service	√		√
Dental O/P	√		√
Emergency Department	√		√
Epilepsy Comprehensive Services	√		√
Family Planning	√		√
Health Fairs O/P	√		√
Home Peritoneal Dialysis Training and Support	√		√
Intensive Care	√		√
Magnetic Resonance Imaging	√		√
Maternity	√		√
Medical Social Services	√		√
Neonatal Continuing Care	√		√

Certified Services: Kaleida Health Buffalo General Medical Center			
Service	Certified Service	Requested Action	Certified Service Upon Completion
Neonatal Intensive Care	√		√
Neonatal Intermediate Care	√		√
Nuclear Medicine - Diagnostic	√		√
Pediatric	√		√
Pediatric Intensive Care	√		√
Pediatric O/P	√		√
Pet Scanner	√		√
Prenatal	√		√
Pharmaceutical Service	√		√
Physical Medicine and Rehabilitation O/P	√		√
Primary Medical Care O/P	√		√
Psychology		Add	√
Radiology - Diagnostic	√		√
Regional Perinatal Center	√		√
Renal Dialysis - Acute	√		√
Renal Dialysis - Chronic	√		√
Respiratory Care	√		√
Therapy - Occupational O/P	√		√
Therapy - Physical O/P	√		√
Therapy - Respiratory O/P	√		√
Therapy - Speech Language Pathology	√		√
Therapy - Vocational Rehabilitation O/P	√		√
Transplant - Heart - Pediatric	√		√
Transplant – Kidney	√	Remove	
Trauma Center - Pediatric	√		
Well Child Care	√		

Kaleida Health Women and Children's Hospital of Buffalo has the following state designations:

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

The relocation of the facility will allow WCHB to streamline its inpatient services and maximize efficiencies, thus allowing their patients access to the full continuum of care on the BNMC. According to mapquest.com the distance between the old site and new site is 1.26 miles, 4 minutes.

Analysis

From 2009 – 2011, an average of 79 percent and 10 percent of WCHB inpatient discharges originated from Erie and Niagara Counties, respectively. In 2000, the total census for these two (2) counties was 1,170,111; by 2010, it had declined by 3.0 percent to 1,135,509. Projections for 2020 indicate that the population of Erie and Niagara Counties will continue to experience further declines. Between 2010 and 2020, the population is expected to decline by 4.3 percent, to 1,086,627.

The population of women of childbearing age is also experiencing a similar downward trend. Between 2000 and 2010, the population of this cohort declined by 11.7 percent, from 284,240 to 252,969. The downward trend for this age group is expected to continue, declining an additional 7.7 percent, from 252,969 in 2010 to 233,368 in 2020.

Census and Population Projections: Erie and Niagara Counties Source: Census Bureau 2000 and 2010; Cornell Program on Applied Demographics 2020 projections.			
	Erie County	Niagara County	Total
Total Population			
2000	950,265	219,846	1,170,111
2010	919,040	216,469	1,135,509
2020	878,075	208,552	1,086,627
% Change 00 vs. 20	(7.6)	(5.1)	(7.1)
Females 10 - 44			
2000	230,311	53,929	284,240
2010	206,251	46,718	252,969
2020	190,565	42,803	233,368
% Change 00 vs. 20	(17.3)	(20.6)	(17.9)

Over the last five years, Kaleida Health Women and Children's Hospital of Buffalo total inpatient discharges have fluctuated between 13,900 and 15,200 patients. The average daily census (ADC) of these patients ranged from 170 to 185 patients on any given day, and the associated occupancy rates ranged from the high 70s to the mid-80s.

Kaleida Health Women and Children's Hospital of Buffalo will reduce its Pediatric ICU and Obstetric beds by 8-beds and 10-beds, respectively. During the period under review, the facility averaged 5,738 pediatric and 3,700 obstetric discharges. The average pediatric and obstetric occupancy rates for the interval were 59.0 percent and 79.5 percent, respectively. WCHB's average pediatric occupancy rate during the period under review was about 11 percentage points below the urban planning optimum of 70.0 percent. However, its average obstetric occupancy rate was almost 5 percentage points beyond the obstetric planning standard of 75.0 percent. As such, the hospital plans to shift its appropriate gynecological patients to Buffalo General Medical Center, allowing WCHB to stay within the obstetric planning optimum.

Kaleida Health Women and Children's Hospital of Buffalo: Inpatient Utilization by Major Service Category. Source: SPARCS 2007-2012					
Service	2008	2009	2010	2011	2012
Discharges					
Medical/Surgical	1,609	1,718	1,455	1,463	1,401
Pediatric	5,257	6,250	5,634	5,402	5,269
Obstetric	3,615	3,793	3,842	3,661	3,655
General Psychiatric	69	62	60	49	54
Chemical Dependency	5	9	17	9	10
High Risk Neonates	847	805	816	885	846
Subtotal	11,402	12,637	11,824	11,469	11,235
Healthy Newborns	2,538	2,578	2,650	2,413	2,436
Grand Total	13,940	15,215	14,474	13,882	13,671
Average Daily Census					
Medical/Surgical	17	17	15	16	16
Pediatric	53	61	53	52	56
Obstetric	32	32	32	31	30
General Psychiatric	2	1	1	1	1
Chemical Dependency	0	0	0	0	0
High Risk Neonates	55	52	54	55	48
Subtotal	159	163	155	154	152

Kaleida Health Women and Children's Hospital of Buffalo: Inpatient Utilization by Major Service Category. Source: SPARCS 2007-2012					
Service	2008	2009	2010	2011	2012
Healthy Newborns	18	18	18	16	17
Grand Total	177	181	173	170	168
Average Length of Stay					
Medical/Surgical	3.8	3.5	3.7	3.9	4.1
Pediatric	3.7	3.5	3.4	3.5	3.9
Obstetric	3.3	3.1	3	3.1	3
General Psychiatric	9.4	6.5	5.9	5.9	9.7
Chemical Dependency	2.8	3.6	2.5	1.1	1.2
High Risk Neonates	23.5	23.6	24.1	22.7	20.7
Subtotal	5.1	4.7	4.8	4.9	4.9
Healthy Newborns	2.6	2.6	2.5	2.5	2.5
Grand Total	4.6	4.3	4.4	4.5	4.5
Occupancy					
Medical/Surgical	0.0	0.0	0.0	0.0	0
Pediatric	55.0	63.0	55.1	53.8	58.6
Obstetric	81.0	80.8	80.3	77.0	75.8
General Psychiatric	0.0	0.0	0.0	0.0	0
Chemical Dependency	0.0	0.0	0.0	0.0	0
High Risk Neonates	85.3	81.3	84.2	85.9	75
Total	79.3	81.3	77.5	76.9	75.8

Conclusion

Kaleida Health Women and Children's Hospital of Buffalo intends to restructure the facility to meet the demand for its services, as well as to adjust to the projected population declines in its two core counties for inpatient admissions. The hospital will rightsize its inpatient beds and enter into a joint venture with Roswell Park to streamline treatment. The reduction in pediatric capacity will allow the hospital to operate closer to the pediatric planning optimum, with capacity for surges in utilization. However, the reduction of obstetric capacity pushes the hospital well beyond the obstetric occupancy planning optimum. The hospital is aware of this and intends to shift its appropriate gynecological cases to Buffalo General Medical Center. The shift in cases will provide WCHB with the room to operate within the obstetric planning optimum.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

Kalieda Health will restructure Women and Childrens by converting one (1) pediatric ICU bed to a pediatric bed and reducing the number of licensed beds by 17. The beds will be transferred to other Kaleida facilities in advance of the completion of this project and will not be decertified.

Staffing will increase by 47.64 FTEs in the first year after completion and an additional 22.57 FTEs by the third year of operation.

Compliance with Applicable Codes, Rules and Regulations

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total project costs for new construction and equipment is estimated at $270,159,757, broken down as follows:

New Construction	$158,092,575
Asbestos Abatement or Removal	967,924
Design Contingency	15,809,257
Construction Contingency	8,695,092
Fixed Equipment (NIC)	18,526,550
Architect/Engineering Fees	10,957,144
Construction Manager Fees	5,595,349
Other Fees	3,766,018
Movable Equipment	14,727,937
Telecommunications	10,691,000
Financing Costs	10,589,009
Interim Interest Expense	10,262,162
CON Application Fee	2,000
CON Processing Fee	1,477,740
Total Project Cost	$270,159,757

The applicant's financing plan appears as follows:

Equity: Kaleida Health	$3,802,216
Equity: The Women and Children's Hospital of Buffalo Foundation	20,307,253
Fund Raising (Pledge total is $38 million)	45,728,994
Equipment Loan (EB-5 NYS, LLC (7 years @3%)	43,945,487
FHA-Insured Mortgage (25 year term @5.25%)	156,375,807
Total	$270,159,757

A letter of interest has been provided by Gavin and LaVigne, Inc., for the FHA-insured mortgage. Also, a letter of interest has been provided by EB-5 New York State, LLC for the equipment financing.

Operating Budget

The applicant has submitted the first and third year's incremental operating budgets, in 2014 dollars, as summarized below:

	First Year	Third Year
Revenue- Inpatient	$26,096,451	$20,547,989
Revenues-Outpatient:	1,656,339	1,059,184
Other Operating Income *	(281,839)	(281,839)
Total Revenues	$27,470,951	$21,325,334
Expenses:		
Operating	$8,700,971	$775,808
Capital	20,987,829	20,290,643
Total Expenses	$29,688,800	$21,066,451
Excess (deficiency)Revenue over Expenses	($2,217,849)	$258,883
Utilization: - Inpatient discharges	2,641	1,944
- Outpatient Visits	1,894	999
Total Increase in Utilization	4,535	2,943
Cost per Utilization	$6,546.59	$7,158.16

*The reduction in "Other Operating Revenues" is the result of not leasing space in the new facility to private practices.

Inpatient and outpatient utilization by payor source for the first and third years is as follows:

	Inpatient	Outpatient
Medicaid Fee -For-Service	6.85%	8.90%
Medicaid Managed Care	17.22%	25.90%
Medicare Fee-for-Service	18.98%	12.56%
Medicare Managed Care	20.12%	14.68%
Commercial Fee-For-Service	3.11%	2.94%
Commercial Manage Care	29.83%	29.39%
Private & All Other	3.30%	4.70%
Charity	0.59%	0.93%

Expenses are based upon historical experience after adjusting for volume and investment. First year expenses contain additional staffing cost associated with the relocation process. The applicant expects operational savings in the first year of $10,500,000 and by the second year, the annual savings are expected to be $12,400,000 coming from savings in utilities, supplies, salaries, professional fees, and purchased services.

The applicant expects inpatient discharges to increase by 14% over 2011, with no change in payor mix. A portion of this increase is from a 5% increase in market share coming from obstetrics and obstetrics-non delivery (with a corresponding increase in normal newborn and neonatology), and a 3% increase in select pediatric service lines. WCHOB plans to achieve its projected volume growth through the following tactics:

- Expansion of OB/GYN services through the recently opened three suburban OB/GYN sites in the following; Hamburg, NY, Lockport, NY and Lancaster, NY;
- Expansion of OB/GYN services at the Eastside Women's Health Center and Westside Women's Health Center;
- Increase services at the Regional Perinatal Center through increased Maternal Fetal Medicine availability;
- Increase outreach and telemedicine in Southern Tier to decrease outmigration of patients to Pennsylvania;
- Focus on adolescent market for subspecialties;
- Increase access of neurology and epilepsy services;
- Expansion of pediatric surgical subspecialty services, and
- Growth and program development for the adult survivors of childhood diseases.

The applicant expects a net 2% increase in pediatric ambulatory surgery, outpatient imaging, and outpatient rehabilitation. The applicant states that for 2011, the total outpatient visits totaled 202,941, and when compared to the expected incremental change of 1,894 outpatient visits, the percentage increase was under 1%.

Capability and Feasibility

The total project costs is $270,159,757 and will be funded as follows: $3,802,216 from Kaleida Health; $20,307,253 from The Women and Children's Hospital of Buffalo Foundation; $45,728,994 in fund raising (of which $38 million has been pledged); $43,945,487 from an equipment loan, and the remaining balance of $156,375,807 from a FHA-insured mortgage at the above stated terms. Letters of interest have been provided for the equipment loan and the mortgage.

Working capital requirement is estimated at $3,511,075, which appear reasonable based on two months of third year budgeted expenses. BFA Attachments A is Kaleida Health 2011 and 2012 certified financial summary, which indicates working capital requirements can be met from accumulated funds.

The incremental budget for the first year and third years' of operations projects a first year incremental loss of $2,217,849, and by the third year, the facility is expected to generate an $258,883 operating surplus. Inpatient reimbursement rates were modeled at the DRG level by payer, assuming no inflation. Projections assumed an increase in capital add-on due to the increase cost of capital associated with the project. Outpatient reimbursements rates were modeled from existing rates at WCHOB assuming no inflationary increase. The budget appears reasonable.

A review of BFA attachment A, Kaleida Health 2011 and 2012 certified financial statement, shows the organization had an average positive working capital of $193,429,000, an average excess of revenues over expenses of $7,939,000 and net assets totaling $247,209,000 as of December 31, 2012. For 2011, Kaleida Health experienced a $26,968,000 loss which consists of a $20,062,000 loss from operations, and a $6,906,000 net loss in other income, primarily from restructuring charges, loss on impairment and disposal of assets. Kaleida Health states the Western New York market has seen a downturn in inpatient volume, about 5% or 10,000 inpatient cases, since the third quarter of 2010 and continuing through 2011. According to the SPARCS data inpatient utilization by Major Service category at WCHOB declined from 14,532 inpatient discharges in 2010 to 13,671 in patient discharges in 2012, a drop of 861 discharges or about 5.9%. The reduction in inpatients volume, along with the downward reimbursement pressure from state and federal governments, has driven down net patient service revenue. Kaleida Health has mandated a focus around cost reduction and volume growth and has implemented the following initiatives to improve operating results: productivity improvements, labor cost control, portfolio and service line review and integration, corporate and fixed cost review and reductions, community benefit analysis, utilization management and the disposition of Waterfront Health Care. It should be noted that the financial results for 2012 were profitable, with revenues in excess of expenses by $42,846,000.

BFA Attachments B is The Women and Children's Hospital of Buffalo Foundation 2011 and 2012 certified financial summary.

During this period, the foundation had a positive average working capital of $49,292,469, an average excess of revenues over expenses of $4,714,407, and net assets totaling $78,901,450 as of December 31, 2012. The Women and Children's Hospital of Buffalo Foundation has provided a letter stating it will provide $20,307,253 for the project. It appears that the Foundation has sufficient resources.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Financial Summary for 2011 and 2012, Kaleida Health
BFA Attachment B	Financial Summary for 2011 and 2012, The Women and Children's Hospital of Buffalo Foundation
BFA Attachment C	Detail Budget

Public Health and Health Planning Council

Project # 141092-C
Westchester Medical Center

County:	**Dutchess**	***Program:***	**Hospital**
Purpose:	**Construction**	***Acknowledged:***	**March 4, 2014**

Executive Summary

Description

Westchester Medical Center (WMC), a 652-bed acute care hospital located in Westchester County, requests approval to acquire the assets of St. Francis Hospital and make it a division of WMC. St. Francis Hospital has experienced recurrent and extensive financial losses resulting in its bankruptcy, filed on December 17, 2013. WMC is owned by the Westchester County Health Care Corporation. St. Francis Hospital is a 333-bed not-for-profit hospital located in Dutchess County and is a part of the Hastings Health System, Inc. and Subsidiaries. As a part of this application, the St. Francis site will be decertified of 90 medical/surgical beds and be known as the Mid-Hudson Division of Westchester Medical Center.

Concurrent with this project, Westchester Medical Center, via CON#141100, is purchasing the operation of St. Francis Hospital Certified Home Health Services. By virtue of this project, Westchester Medical Center intends to preserve the health care services provided by St. Francis Hospital, preserve jobs for persons currently employed by St. Francis Hospital, and ensure that the health care needs of the community continue to be met.

DOH Recommendation

Contingent Approval

Need Summary

Westchester Medical Center (WMC) plans to decertify 90 medical/surgical beds at Saint Francis Hospital (SFH) upon completion of the purchase. This will greatly improve the occupancy rate of the facility. The combination of WMC and the former St. Francis Hospital will allow the community to maintain its safety-net facility while helping WMC expand their market share and provide a high level of care to residents in Dutchess and surrounding counties. The acquisition also promotes the plan to establish a regional system of care and allows patients access to a larger pool of physicians and 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

The purchase for the acquisition of the St. Francis Hospital and the other entities is $3,500,000, which will be met via operations.

The applicant has submitted an incremental operating budget, in 2014 dollars, for the first year subsequent to the change in operator, which is summarized below:

Incremental Revenues	$218,758,731
Incremental Expenses:	
Operating	$200,332,159
Capital	18,328,479
Total Expenses	$218,660,638
Excess of Revenues over Expenses	$98,093

Enterprise Budget:	
Revenues	$1,141,303,554
Expenses	1,134,935,792
Excess of Revenues over Expenses	$6,367,762

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 approval from the Office of Mental Health. [PMU]
2. Submission of approval from the Office of Alcohol and Substance Abuse Services. [PMU]
3. Submission of an executed lease assignment, acceptable to the Department. [BFA]
4. Submission of a bond exchange resolution acceptable to the Department of Health. Included with the submitted bond resolution must be a sources and uses statement and debt amortization schedule. [BFA]
5. Submission of the finalized and executed Asset Purchase Agreement by and among St. Francis' Hospital, Poughkeepsie, New York, et al. and Westchester County Health Care Corporation, acceptable to the Department. [BFA, CSL]
6. Submission of the finalized and executed Assignment and Assumption Agreement by St. Francis' Hospital, Poughkeepsie, New York, et al. in favor of Westchester County Health Care Corporation, acceptable to the Department. [CSL]
7. Submission of the finalized and executed Professional Employer between Westchester County Health Care Corporation and PEO, LLC, acceptable to the Department. [BFA, CSL]
8. Submission of a photocopy of an executed Certificate of Dissolution or Certificate of Amendment of the Certificate of Incorporation of St. Francis' Hospital, Poughkeepsie, New York, 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
April 10, 2014

Need Analysis

Project Description

Westchester Medical Center (WMC) is requesting approval to acquire the assets of Saint Francis Hospital (SFH), a 333-bed hospital located at 241 North Road Poughkeepsie NY 12601 Dutchess County. WMC will decertify 90 medical/surgical beds upon approval.

Background

Current and Proposed Bed Complements				
Bed Type	**WMC Beds**	**SFH Beds**	**Proposed Bed Change**	**WMC Beds After Project Completion**
AIDS	21	0	0	21
Bone Marrow Transplant	4	0	0	4
Burn Care	10	0	0	10
Chemical Dependency Rehab.	0	50	0	50
Chemical Dependency Detox.	0	10	0	10
Coronary Care	8	7	0	15
Intensive Care	58	8	0	66
Maternity	15	0	0	15
Medical/Surgical	267	190	-90*	367
Neonatal Intensive Care	35	0	0	35
Neonatal Intermediate Care	14	0	0	14
Pediatric	69	10	0	79
Pediatric ICU	18	0	0	18
Physical Medicine & Rehab	18	18	0	36
Prisoner	14	0	0	14
Psychiatric	101	40	0	141
Total	**652**	**333**	**-90**	**895**

*From the SFH Campus

State designations Westchester Medical Center:

- AIDS Center
- Burns Center
- Regional Perinatal Center
- Regional Trauma Center
- Stroke Center

State designations Saint Francis Hospital:

- Area Trauma Center
- SAFE Center
- Stroke Center

Westchester Medical Center will add seven extension clinics through this merger.

Analysis/Discussion

	Discharges			
Westchester Medical Center	2009	2010	2011	2012
Medical/Surgical	15,710	15,076	14,264	12,899
Pediatric	4,483	4,362	4,390	3,781
Obstetric	1,283	1,287	1,263	1,114
General Psychiatric	2,079	2,166	2,092	2,082
Chemical Dependency	143	125	108	141
High Risk Neonates	480	477	492	454
Total	24,178	23,493	22,609	20,471
St Francis Hospital				
Medical/Surgical	6,092	5,908	5,772	5,072
Pediatric	49	41	31	27
Obstetric	23	16	20	24
General Psychiatric	1,314	1,272	1,133	1,056
Chemical Dependency	30	1,533	1,445	1,709
Total	7,508	8,770	8,401	7,888

	Average Daily Census			
Westchester Medical Center	2009	2010	2011	2012
Medical/Surgical	331	330	325	296
Pediatric	59	58	59	57
Obstetric	14	14	15	15
General Psychiatric	90	89	87	83
Chemical Dependency	3	3	2	2
High Risk Neonates	39	41	46	46
Total	536	535	534	499
St Francis Hospital				
Medical/Surgical	82	80	80	69
Pediatric	0	0	0	0
Obstetric	0	0	0	1
General Psychiatric	40	38	38	40
Chemical Dependency	0	37	37	47
Total	122	155	155	157

	Average Length of Stay			
Westchester Medical Center	2009	2010	2011	2012
Medical/Surgical	8	8	8	8
Pediatric	5	5	5	6
Obstetric	4	4	4	5
General Psychiatric	16	15	15	15
Chemical Dependency	7.4	7.2	5.8	6.2
High Risk Neonates	29.9	31	33.8	37.2

Overall Average	8	8	9	9
St Francis Hospital				
Medical/Surgical	5	5	5	5
Pediatric	1.4	1.4	1.5	1.6
Obstetric	4	3.9	3.9	9
General Psychiatric	11	11	12	14
Chemical Dependency	4.6	9	9	10
Overall Average	6	7	7	7

	Occupancy Based on Current Beds			
Westchester Medical Center	2009	2010	2011	2012
Medical/Surgical	83	83	81	74
Pediatric	68	66	68	66
Obstetric	57	58	63	64
General Psychiatric	90	88	86	82
Chemical Dependency	0	0	0	0
High Risk Neonates	98.3	101.3	114	115.5
Overall Average	82	82	82	77
St Francis Hospital				
Medical/Surgical	37	36	36	31
Pediatric	2	2	1	1
Obstetric	0	0	0	0
General Psychiatric	101	96	95	99
Chemical Dependency	0.7	61	62	78
Overall Average	37	47	47	47

SFH has experienced extensive financial losses, which have led to bankruptcy. WMC will use the acquisition of SFH to expand its market share. Maintaining SFH as a resource is necessary due to the long standing safety net provider status of the facility in the community.

WMC has experienced a shift from inpatient to outpatient services and has decided to decertify 90 inpatient medical/surgical beds at the SFH campus to reflect reduced demand for inpatient care.

Conclusion
Currently, Westchester Medical Center serves a seven-county region including Westchester, Orange, Rockland, Dutchess, Putnam, Ulster, and Sullivan Counties. Acquiring SFH will help WMC better reach patients in the Dutchess County area and reserve access to care for the community. Currently WMC is the only regional resource for tertiary and quaternary care and services more than 120,000 adults.

Recommendation
From a need perspective, approval is recommended.

Program Analysis

Program Description

Westchester Medical Center (WMC) requests approval to acquire St. Francis Hospital (SFH) and certify it as a new division of Westchester Medical Center, to be called Mid-Hudson Valley Division of Westchester Medical Center. St. Francis is a faith-based, not-for-profit hospital that has experienced extensive financial losses resulting in bankruptcy. Through this acquisition, WMC aims to achieve economies-of-scale and improve operational effectiveness (through unified medical and administrative leadership, standards, policies and procedures, credentialing, quality management and staff education) while preserving much needed services for residents of the Mid-Hudson Valley.

Mindful of a shift from inpatient to outpatient venues of care, WMC seeks to decertify 90 medical/surgical beds at the SFH facility. No other changes are proposed to the current, certified inpatient array of services currently provided by SFH. All aspects of the Mid-Hudson Valley Division of WMC will be integrated into WMC operations, including quality assurance and governance. In addition, the applicant seeks to add the following new services to be offered at the Mid-Hudson Valley Division of WMC site:

CT Scanner
Nutrition
Ophthalmology
Podiatry
Psychology
Outpatient Surgery
Therapy - Speech Language Pathology
Transfusion - Full

The following seven (7) extension clinics will be included in the WMC acquisition:

Dutchess ARC, Poughkeepsie (PFI 6380)
Noxon Hill Senior Citizens Program, Poughkeepsie (PFI 6379)
Catherine Seeburger Center, Wassaic (PFI 6378)
Center for Communication Disorders, Poughkeepsie (PFI 7810)
Communication Disorders Clinic, Poughkeepise (PFI 9184)
Turning Point Program, Poughkeepsie (PFI 9283)
Therapy Connection at Millbrook, Millbrook (PFI 6542)

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

Asset Purchase Agreement

The applicant has submitted a draft asset purchase agreement for the acquisition of the St. Francis Hospital site, which is summarized below:

Date: February 10, 2014

Seller:	St. Francis Hospital; St. Francis Hospital Home Care Services Corporation; St. Francis Health Care Foundation, Inc.; St. Francis Hospital Preschool Program and SFH Ventures, Inc.
Purchaser:	Westchester County Health Care Corporation
Purchased Assets:	All inventories of medical supplies, drugs and pharmaceuticals, food, janitorial and office supplies and other disposable and consumables relating to the Business and maintained, held or stored by or for Seller in connection with the Business; all equipment owned by Seller; all owned real property of Sellers; each of Seller's Permits (other than Seller's Article 28 operating license) that are assignable pursuant to applicable law and pending applications therefore; all business intellectual property; all documents; all telephone, telex and telephone facsimile numbers, remote access portals and other directory listing used in connection with the business; all purchased deposits; all insurance policies, and the rights to proceeds thereof, relating or allocable to any Purchased Asset or Assumed Liabilities, in each case to the extent assignable to Buyer; the real property leases; the operating licenses; the hospital's 49% interest in Hudson Valley Oncology Associates, PLLC, which is held through a nominee agreement; all other or additional privileges, rights and interests associated with the Purchased Assets of every kind and description and wherever located that are used or intended for use in connection with, or that are necessary to the continuous operation of, the Business and all goodwill associated with the Business or the Purchased Assets.
Excluded Assets:	Other than Purchased Deposits, all cash and cash equivalents, including, checks, commercial paper, treasury bills, certificate of deposit and other bank deposits; any shares of capital stock or other equity interest of Seller or any securities convertible into, exchangeable or exercisable for shares of capital stock or other equity interest of Seller; all minute books, stock ledgers, corporate seals and stock certificate of Seller; the purchase price and all rights of Seller under this agreement; benefit plans; any and all rights of Seller under this agreement; benefit plans; any and all rights, claims or causes of action of Seller against third parties arising, out of events occurring prior to the Petition Date and any and all rights, claims or causes of action of Seller against third parties with respect to the Excluded Assets arising out of events occurring after the Petition Date; all avoidance actions; all accounts receivable; any deposits or prepaid charges the expenses paid prior to the Closing Date that are not Purchased Deposits; all personnel records and other records and files that Seller is required by law to retain in its possession; the name "Saint Francis" and "St. Francis" and any derivatives thereof and any name or phrase which includes the forgoing; all personnel property of religious significance, which shall be removed from all premises from which the Business operated prior to Closing; any monies, securities, funds or accounts established under of held by the Bond Trustee pursuant to the Bond Documents; all operating licenses of Seller; each Seller's Permits that are not assignable pursuant to applicable law and pending applications therefore; the hospital's 85.5% interest in Hudson Valley Center at St. Francis, which is held through a nominee agreement; all rights with respect to any Proceeding pending as of the Closing Date and all documents relating exclusively to an Excluded Assets.
Assumed Liabilities:	All obligations and liabilities of Seller under the Assumed Contracts and the Assumed Leases and all obligations and liabilities of Seller under the real property leases each only to the extent such obligations are to be initially performed, or accrue, on or after the Closing Date and relate solely to data of service from and after the Closing Date.
Excluded Liabilities:	Any liability of Seller or its directors, officers, stockholders or agents arising out of, or relating to, this agreement, whether incurred prior to, at or subsequent to Closing Date; any liability relating to events or conditions occurring or existing in connection with or arising out of, the Business as operated by Seller, or the ownership, possession, use, operation or sale of other disposition prior to the Closing Date of any Purchased Assets; any liability to any persons at any time employee by Seller or its predecessors in interest at any time; all liabilities of Seller, or with respect to the Business, in connection with claims of professional malpractice or tort; any

	liability of Seller under COBRA or similar state law and all liabilities owed by Seller to Seller's employees
Purchase Price:	$3,500,000
Payment of Purchase:	Cash at Closing

The applicant will issue exchange bond obligations, which will be used for the following St. Francis Hospital debt: $19,275,000 Dutchess County Industrial Development Agency Civil Facility Revenue Refunding Bonds, Series 2004A; $8,760,000 Dutchess County Industrial Development Agency Civic Facility Revenue Bonds, Series 2004B and $9,430,000 Civic Facility Revenue Bonds, Series 2007, issued for the benefit of St. Francis Hospital, upon issuance of the exchange bond obligations; the existing SFH Bonds will be cancelled by the trustee for the existing SFH Bonds.

The applicant submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to 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.

Staff Leasing Agreement

The applicant has submitted a draft professional employer agreement; which is summarized below:

Parties:	The Westchester County Health Care Corporation and PEO, LLC (Professional Employer Organization)
Purpose:	Westchester County Health Care Corporation is acquiring all of the assets of St. Francis Hospital and contemplates offers employment (by PEO, LLC) being given to all, or substantially all, the SFH non-physician employees at Closing for the purpose of staffing the Facilities.
Responsibilities of PEO, LLC:	PEO, LLC shall be ultimately responsible for hiring, firing, assigning job responsibility and reporting relationships to, training, evaluating, promoting, terminating, and disciplining the PEO, LLC Employees, provided that with respect to all such personnel actions, PEO, LLC shall notify WCHCC and shall make good faith efforts to comply with WCHCC's and shall make good faith efforts to comply with WCHCC's reasonable requests or inquiries. PEO, LLC shall implement personnel and human resources policies and procedures similar to the personnel and human resources policies and procedures that apply to WCHCC employees of similar rank and title who furnish services at WCHCC's Westchester Medical Center in Valhalla, New York.
Administrative Functions:	During the Term, PEO, LLC shall be responsible for providing all routine administrative and human resources functions with respect to the employment of the PEO, LLC Employees.
Term:	The term shall be for a period of one year and shall thereafter automatically renew for four one year periods.
Compensation:	WCHCC shall pay PEO, LLC a yearly estimated amount of $103,483,006.

The staffing agreement submitted by the applicant has provisions that appear to be contrary to Part 405.1. Department staff has discussed this with the applicant and the applicant is committed to resolving these issues to the Department's satisfaction. A contingency for an executed staffing agreement, acceptable to the Department, has been applied to this project for this purpose.

Lease Rental Agreements

Three of the seven extension sites currently operated by St. Francis Hospital are leased. The leases will be assigned to the applicant upon approval of the project.

Operating Budget

The applicant has submitted an operating budget, in 2014 dollars, for the first year of operation, summarized below:

Revenues:	
Operating Revenues	$966,906,111
Other Operating Revenue	174,397,443
Total Revenues	$1,141,303,554
Expenses	1,134,935,792
Excess of Revenues over Expenses	$6,367,762
Utilization:	
Inpatient (Discharges)	29,596
Outpatient (Visits)	326,506

Other operating revenue includes rental, insurance, payments for services; intergovernmental transfer and interest income.

Utilization for the combined Westchester Medical Center's operations by payor source for inpatient services is as follows:

Medicare	22.85%
Medicaid	13.48%
Non Profit Indemnity Insurance	11.32%
Commercial Insurance	7.10%
HMO-Medicare	4.96%
HMO-Medicaid	21.02%
HMO-Other	9.88%
Workers Compensation	2.86%
No Fault	2.05%
Self Pay	3.03%
Government	.97%
Charity Care	.48%

Utilization for the combined Westchester Medical Center's operations by payor source for outpatient services is as follows:

Commercial Fee For Service	21.72%
Commercial Managed Care	11.21%
Medicare Fee For Service	20.09%
Medicare Managed Care	3.10%
Medicaid Fee For Service	12.42%
Medicaid Managed Care	17.20%
Private Pay	3.87%
OMH	6.93%
Charity Care	3.46%

The applicant has indicated that the adjustments in revenues from the base year consists of the following: volume recoupment for inpatient acute discharges lost during 2013, which occurred as a result of a shortfall in cash flow due to a problem with the implementation of a new billing system and attending physicians taking their cases to other facilities. This volume recoupment will result in an additional 800 discharges in the first year; applicant plans to reopen pediatric beds, having the SFH location as a division of WMC, resulting in a single operator and allowing the SFH location to utilize WMC's commercial rates; having the SFH location as a division of WMC will also result in lower Medicaid revenue due to a combined single rate and takes into account current federal Medicaid DSH regulations that will lower payments by about 14%.

Expense and utilization assumptions are based on the historical experience of both facilities, and expenses and utilization were increased due to increased volume that brought their volume to more normalized levels experienced in the prior year.

Capability and Feasibility

BFA Attachment A is the organizational chart of Westchester County Health Care Corporation after acquiring the assets of St. Francis Hospital and St. Francis Hospital Certified Home Health Services.

The purchase for the acquisition of St. Francis Hospital and the other entities is $3,500,000 and will be met via operations. Working capital requirements are estimated at $189,155,965, which appears reasonable based on two months of first year expenses of the combined facilities. The applicant will meet the working capital requirement via operations from Westchester County Health Care Corporation. BFA Attachment B is the 2012 certified financial statement and the 2013 draft certified financial statement of Westchester County Health Care Corporation, which indicates the availability of sufficient funds for the equity contributions to meet the purchase price and the working capital requirements for this project and CON# 141100.

The submitted budget indicates an excess of revenues over expenses of $6,367,762 during the first year for the combined operations. Revenues are based on current reimbursement methodologies. The submitted budget appears reasonable.

As shown on Attachment B, Westchester County Health Care Corporation had an average positive working capital position and an average negative net asset position from 2012 through 2013. The applicant has indicated that the reason for the average negative net asset position was because the facility had a negative net asset position of $182 million in 2005, due to prior year losses, but with eight consecutive years of positive bottom line results, they have dramatically improved the net asset position. Also, the applicant achieved an average operating income of $22,507,963 from 2012 through 2013.

BFA Attachment C is the 2011 and 2012 certified financial statements of Hastings Health System, Inc. and Subsidiaries. As shown on Attachment C, the entity had an average positive working capital position and an average positive net asset position from 2011 through 2012. The entity incurred an average loss of operations of $4,075,941 from 2011 through 2012. The applicant has indicated that the loss in operations in 2012 was the result of a failure in the implementation of a new billing system, where bills were not sent out. This created an immediate shortfall in cash flow. Although SFH corrected this going forward, there may be some permanent loss of cash and revenue.

BFA Attachment D is the 2013 internal financial statement of Hastings Health System, Inc. and Subsidiaries. As shown, the entity had a positive working capital position and a positive net asset position through December 31, 2013. The entity incurred an operating loss of $18,956,207 in 2013. The applicant has indicated that the loss in operations in 2013 was the result of a failure in the implementation of a new billing system where bills were not sent out. This created an immediate shortfall in cash flow, which resulted in the hospital declaring bankruptcy.

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	Organizational Chart
BFA Attachment B	Financial Summary- 2012 certified financial statements and the 2013 certified financial statements of Westchester County Health Care Corporation
BFA Attachment C	Financial Summary- 2011 and 2012 certified financial statements of Hastings Health System, Inc.
BFA Attachment D	Financial Summary- 2013 internal financial statements of Hastings Health System, Inc.

Public Health and Health Planning Council

Project # 132362-C

New York Presbyterian Hospital - Weill Cornell Medical Center

County: New York
Purpose: Construction
Program: Hospital
Acknowledged: January 2, 2014

Executive Summary

Description

New York Presbyterian Hospital, part of a 2,478-bed not-for-profit hospital system, requests approval for the construction of a new Ambulatory Care Center to be located at 1283 York Avenue, New York. The proposed ACC building will be an extension clinic and will be located across the street from NYP-New York Weill Cornell Center Campus (NYP-WC) at 525 East 68th Street, New York. This project amends and supercedes CON#122314. The 2,478 beds at New York Presbyterian Hospital consist of the following campuses with the following bed counts: NYP/Columbia University Medical Center (977 beds); NYP/Weill Cornell Medical Center (850 beds); NYP/Westchester Division (270 beds); NYP/Allen Hospital (201 beds) and NYP/Lower Manhattan Hospital (180 beds).

The historic NYP-WC campus was built in 1932, and the facility is unable to accommodate the rapidly changing demands of the new healthcare technology within the existing footprint. Clinical programs are dispersed throughout the hospital, which can create a disorienting feeling for patients, as well as operational inefficiencies.

This project seeks to address those concerns in the most logical way possible by constructing a new Ambulatory Care Center to move outpatient programs from the main campus at NYP-WC into a concentrated location across York Avenue. The new facility will transform the way the Hospital delivers care to its ambulatory patients and provide the necessary space in the existing hospital to renovate and upgrade other clinical programs.

The proposed ACC building will include the following services: Ambulatory Surgery- Multispecialty, Primary Medical Care O/P (including infusion therapy services), Radiology, Magnetic Resonance Imaging, PET Scanner and Linear Accelerator Services. By moving selected services to a dedicated ambulatory care setting in the proposed ACC, it will be possible to provide state-of-the-art technology, enhance the ambulatory patient care experience, increase operational efficiencies and recapture outpatient business that is being referred elsewhere solely due to physical plant inadequacies. Capacity for other services can be expanded in the main hospital building.

This amendment reflects revisions to the original building design to support additional emergency preparedness measures as a result of the effects of Super Storm Sandy. Concurrently, a few program functions were modified, which now include additional patient support areas and additional non-Article 28 leased space. In addition, this modification also includes a proposed six story overbuild shell space which will allow NYP Hospital to build out space in the building for future programs.

DOH Recommendation

Contingent Approval

Need Summary

Ambulatory care services are interspersed throughout New York Presbyterian Hospital – New York Weill Cornell. This project will allow these services to be consolidated into one site across the street from the main campus and will create efficiencies in operations and patient care.

Program Summary

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

Financial Summary

Project costs for the Article 28 and non-Article 28 space are estimated at $1,112,677,560, which will be met as follows: $612,677,560 from fundraising and a mortgage of $500,000,000 at an interest rate of 4.50% for a twenty five year term. The applicant has indicated that if they don't achieve their projected fundraising proceeds they will provide equity from operations.

Total Reimbursable Project Cost is limited to $820,637,584.

Incremental Budget:	
Revenues	$63,177,735
Expenses	129,158,007
Excess of Revenues over Expenses	($65,980,272)

Enterprise Budget:	
Revenues	$3,910,802,735
Expenses	3,782,159,007
Excess of Revenues over Expenses	$ 128,643,728

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 construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a commitment that is acceptable to the Department of Health, for a permanent mortgage from a lending institution at a prevailing rate of interest within 120 days of receipt from the Department of Health, Bureau of Architectural and Engineering Facility Planning of approval of final plans and specifications and before the start of construction. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
3. Submission of documentation acceptable to the Department of Health, of contributions to be used as the source of financing. [BFA]
4. The applicant is required to submit design development drawings, complying with requirements of 10NCYRR Part 710.4, for review and approval by DASNY. [DAS]
5. Per 10NCYRR Part 711.9, approval of waiver with justification for elimination of the dark room required by FGI-2010 2.2-3.6.4.3. [DAS]
6. Per 10NCYRR Part 711.9, approval of waiver with justification for alternate arrangement of staff lounge, toilet facilities, change areas, and showers required by FGI-2010 3-7.3.7, 2-2.3.5.7, and 3-9.3.7. [DAS]
7. Per 10NCYRR Part 711.9, approval of waiver with justification for alternate arrangement of toilet at patient uptake rooms required by FGI-2010 2.2-3.6.3.5. [DAS]
8. Per 10NCYRR Part 711.9, approval of waiver with justification for alternate arrangement of patient change areas required by FGI-2010 3-7.3.8. [DAS]
9. Per 10NCYRR Part 711.9, approval of waiver with justification for alternate location of patient privacy curtain required by FGI-2010 3-7.3.4.2.2. [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. 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]
7. The approved Total Project Cost for reimbursement purposes shall be limited to $820,637,584 until such time as these spaces are approved for Article 28 use (via future CON) by the DOH. The facility shall submit a letter to the DOH acknowledging this limitation of reimbursable Total Project Costs. [BFA]

Council Action Date

April 10, 2014

Need Analysis

Background

New York Presbyterian Hospital - New York Weill Cornell Medical Center seeks to construct an ambulatory care center, the David H. Koch Center, at 1283 York Avenue, New York, 10065, at the NYP-Weill Cornell Medical Center Campus in New York County. The proposed services are ambulatory surgery-multi specialty; primary care O/P including infusion, radiology-therapeutic interventional O/P, MRI and PET scanner services. The proposed project will provide radiation-oncology services through the use of two linear accelerators and one cyber-knife.

Analysis

New York Presbyterian Hospital - New York Weill Cornell Medical Center (NYP-WC) has the following certified beds and services:

<u>Licensed Beds</u>

AIDS	30	Medical/Surgical	402
Bone Marrow Transplant	15	Neonatal Continuing Care	16
Burns Care	40	Neonatal Intensive Care	15
Chemical Dependence - Detoxification	3	Neonatal Intermediate Care	19
Chemical Dependence - Rehabilitation	14	Pediatric	30
Coronary Care	20	Pediatric ICU	23
Intensive Care	65	Physical Medicine and Rehabilitation	22
Maternity	68	Psychiatric	68
		Total	**850**

<u>Certified Services</u>

AIDS	Magnetic Resonance Imaging
AIDS Center	Maternity
Ambulance	Medical Social Services
Ambulatory Surgery - Multi Speciality	Medical/Surgical
Audiology O/P	Methadone Maintenance O/P
Burn Center	Neonatal Continuing Care
Burns Care	Neonatal Intensive Care
Cardiac Catheterization - Adult Diagnostic	Neonatal Intermediate Care
Cardiac Catheterization - Electrophysiology (EP)	Nuclear Medicine - Diagnostic
Cardiac Catheterization - Pediatric Diagnostic	Nuclear Medicine - Therapeutic
Cardiac Catheterization - Pediatric Intervention Elective	Pediatric
Cardiac Catheterization - Percutaneous Coronary Intervention (PCI)	Pediatric Intensive Care
Cardiac Surgery - Adult	Pediatric O/P
Cardiac Surgery - Pediatric	Pharmaceutical Service
Certified Mental Health Services O/P	Physical Medical Rehabilitation
Chemical Dependence - Detoxification	Physical Medicine and Rehabilitation O/P
Chemical Dependence - Rehabilitation	Prenatal O/P
Chemical Dependence - Rehabilitation O/P	Primary Medical Care O/P
Chemical Dependence - Withdrawal O/P	Psychiatric
Clinic Part Time Services	Radiology - Diagnostic
Clinical Laboratory Service	Radiology-Therapeutic
Coronary Care	Renal Dialysis - Acute
CT Scanner	Renal Dialysis - Chronic
Dental O/P	Respiratory Care
Emergency Department	Therapy - Occupational O/P
Epilepsy Comprehensive Services	Therapy - Physical O/P
Family Planning O/P	Therapy - Speech Language Pathology

Health Fairs O/P	Transplant - Bone Marrow
Intensive Care	Transplant - Kidney
Linear Accelerator	Transplant - Liver
Lithotripsy	

NYP-WC has 10 hospital extension clinics, eight school-based hospital extension clinics, and the following NYS designations:

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

The service area includes New York, Bronx, Kings, Queens, and Westchester Counties.

In recent years, NYP-WC has increased its volume of all the services that will be offered at the new site. Ambulatory surgery increased by 18.9% from 12,689 in 2009 to 15,090 in 2011. Infusion therapy visits increased by 46.5% from 16,345 in 2009 to 23,942 in 2011. Interventional radiology visits increased by 18.1% from 6,475 in 2009 to 7,648 in 2011. Radiation therapy visits increased from 17,779 visits in 2007 to 18,749 in 2009. Visits decreased in the next two years because of equipment upgrades. NYP-WC also expects to perform 47,954 treatments with its five linear accelerators, which include three in operation and two proposed, and with one cyber-knife.

The following numbers of visits are expected within the first three years of operation at the new site. It is expected that the number of visits will increase beyond these projections in subsequent years.

Service	First Year	Third Year
Ambulatory Surgery Services, Multi-Specialty	2,058	9,670
Infusion Services	2,930	4,395
Radiology-Therapeutic (Interventional)	1,034	3,189
Radiation Oncology	996	7,168

Radiation Oncology – Linear Accelerator

Based on the need methodology set forth in 10 NYCRR section 709.16, the public need for linear accelerators in New York City is 15. Approval of this project will result in a need for 13. NYP-WC also proposes to relocate a cyber-knife from NYP-Columbia Presbyterian Medical Center that was approved but never installed.

Number of Cancer Cases per Year, 2009 (NYSDOH-Cancer Registry, 2009)	37,840
60% will be candidates for Radiation Therapy	22,704
50% of 'b' will be Curative Patients	11,352
50% of 'b' will be Palliative Patients	11,352
Course of Treatment for Curative Patients @ 35 Treatments/Patient	397,322
Course of Treatment for Palliative Patients @ 15 Treatments/Patient	170,280
Total Number of Treatments	567,603

Need for MEV Machines in New York City*	87
Existing Resources in New York City	66
Approved Resources in New York City	6
Total Resources in New York City	72
Remaining Need for MEV Machines in NYC	15
*MEV Machine Capacity is 6,500 Treatments/Machine	

Cancer Incidence in New York City, 2009

Conclusion

This project will provide a dedicated building for ambulatory care services and will allow NYP-WC to meet increasing demand for ambulatory care. The consolidation of ambulatory services into one building will provide increased efficiencies in operations and give patients a more seamless care experience.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

New York-Presbyterian Hospital (NYP) seeks approval to construct an extension clinic with a six story overbuild shell space (for future programs) located at 1283 York Avenue, on the New York-Presbyterian/Weill Cornell (NYP-WC) Medical Center campus. The new center will move outpatient programs from the main campus at NYP-WC into a consolidated space. Upon approval, the Center will be known as the David H. Koch (DHK) Center.

Additionally, NYP is requesting certification of a PET scanner to be housed in the new building. The decanting of outpatient services is expected to create efficiencies and modernization of services for patients and staff and free up space within the hospital to renovate and upgrade inpatient services. (Such changes will be the subject of future CONs.) The new Ambulatory Care Center will include ambulatory surgery, primary medical care, infusion services, therapeutic radiology, MRI, linear accelerator and, requested as part of this project, newly certified PET scanner services. In addition, there will be space in the new building for private physician practices. It is anticipated that staffing will increase by 303 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

Real Estate Purchase Agreement

The applicant has submitted an executed real estate purchase agreement for the site where the Ambulatory Care Center will be located, which is summarized below:

Premises:	Certain land and improvements known as 436 East 69th Street and 445 East 68th Street, New York, New York.
Transferor:	Royal Charter Properties, Inc.
Transferee:	The New York Presbyterian Hospital
Transfer Price:	$0

Total Project Cost and Financing

Total project cost, which is for building acquisition, new construction and the acquisition of moveable equipment, is estimated at $1,112,677,560, further broken down as follows:

Building Acquisition	$ 7,600,000
New Construction	592,580,210
Site Development	1,000,000
Temporary Utilities	1,854,716
Asbestos Abatement or Removal	16,825,000
Survey Tests and Borings	7,183,188
Other Project Costs	9,954,409
Design Contingency	59,258,021
Construction Contingency	29,629,011
Planning Consultant Fees	12,095,562
Architect/Engineering Fees	64,845,275
Construction Manager Fees	11,646,250
Other Fees	33,903,709
Moveable Equipment	138,848,628
Telecommunications	45,885,600
AMPO	10,000,000
Financing Costs	12,474,189
Interim Interest Expense	52,551,661
Con Fee	2,000
Additional Processing Fee	4,540,131
Total Project Cost	$1,112,677,560
Reimbursable Total Project Cost:	**$820,637,584**

Project costs are based on a July 18, 2014 construction start date and a forty-two month construction period. NYP Hospital's affiliated not-for-profit corporation, Royal Charter Properties, owns the two adjacent properties that constitute the Project site and will transfer the title to NYP Hospital, for no consideration, once the buildings have been vacated by all current occupants. With regard to the $7.3 million funding identified in Building Acquisition, these funds are allocated to costs related to vacating to two existing structures on the property. These funds will be used to relocate the residential tenants located in this building as well as for relocating the various hospital administrative offices, which occupy the lower floors.

The Bureau of Architectural and Engineering Facility Planning has determined that this project includes shell space costs of $292,039,976 for future expansion; private physician space and relocating expenses. As a result, the total approved project cost for reimbursement purposes shall be limited to $820,637,584 until such time as the shell space is approved for use (under a future CON) by the Department. The applicant per CON#122314, already paid an additional processing fee of $4,540,131. As a result, there is no additional processing fee required.

The applicant's financing plan appears as follows:

Fundraising	$612,677,560
Loan (4.50% interest rate for a twenty five year term	500,000,000

The applicant has indicated that if they don't achieve their projected fundraising goals, they will provide equity from operations.

Operating Budget

The applicant has submitted an operating budget, in 2014 dollars, for the entire operation, which includes this project, summarized below:

	Year One	Year Three
Operating Revenue	$3,651,593,224	$3,690,343,735
Other	220,459,000	220,459,000
Total Revenues	$3,872,052,224	$3,910,802,735
Expenses:		
Operating	$3,399,830,431	$3,425,785,050
Capital	361,900,157	356,373,957
Total Expenses	$3,761,730,588	$3,782,159,007
Excess of Revenues over Expenses	$110,321,636	$128,643,728
Utilization:		
Visits	1,799,601	1,822,586
Discharges	117,358	117,358

The applicant has indicated that the projected incremental budget indicates an excess of expenses over revenues of $84,302,364 and $65,980,272 during the first and third years, respectively. Staff notes that $71,143,157 and $65,616,957 are capital costs (interest and depreciation) during the first and third years, which equates to 65.43% and 50.80% of incremental expenses.

Expense and utilization assumptions are based on the historical experience of the hospital.

Capability and Feasibility

Total project cost of $1,112,677,560 for Article 28 and non-Article 28 purposes will be met as follows: Fundraising of $612,677,560 and a FHA insured Mortgage of $500,000,000 at an interest rate of 4.5% for a twenty-five year term. If the hospital does not achieve their desired fundraising proceeds, then they will contribute funds from operations. BFA Attachment A is the internal financial statement of New York Presbyterian Hospital, which indicates the availability of sufficient funds for the equity contribution. As mentioned in a previous section, the reimbursable total project cost is $820,637,584.

The submitted budget for the entire operation projects an excess of revenues over expenses of $110,321,636 and $128,643,728 during the first and third years, respectively. Revenues reflect current reimbursement methodologies.

BFA Attachment B is the 2011 and 2012 certified financial statements of New York Presbyterian Hospital during the period 2011 through 2012. As shown on Attachment B, the hospital had an average positive working capital position and an average positive net asset position from 2011 through 2012. Also, the hospital achieved an average operating income of $187,337,000 from 2011 through 2012.

As shown on Attachment A, the hospital had a positive working capital position and a positive net asset position through November 30, 2013. Also, the hospital achieved an operating excess of revenues over expenses of $149,287,000 through November 30, 2013.

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	November 30, 2013 internal financial statements of New York Presbyterian Hospital
BFA Attachment B	Financial Summary- New York Presbyterian Hospital

Public Health and Health Planning Council

Project # 132370-E
NYP Community Services, Inc.

County: **Westchester**
Purpose: **Establishment**
Program: **Hospital**
Acknowledged: **January 7, 2014**

Executive Summary

Description

NYP Community Services, Inc. (NYPCS) a not-for-profit corporation located in New York County, seeks approval to be established as the active parent and co-operator for the Lawrence Hospital Center (LHC), a 291-bed not-for-profit hospital located in Westchester County. Approval of this application will give NYPCS the ability, as sole corporate member of LHC, to exercise Article 28 active powers. Also, it should be noted that The New York and Presbyterian Hospital is currently the passive parent of NYPCS.

Approval of the proposed establishment would grant NYPCS power over LHC, including the Hospital's day-to-day operations. The applicant states that approval of the proposed application will result in a coordinated, highly integrated health system that will improve quality, increase access and lower the costs of health care in communities served by LHC.

Under the proposed active parent arrangement. NYPCS would exercise the following powers:

a) elect and remove Directors;
b) dismiss the Chief Executive Officer;
c) approve operation and capital budgets and financial and strategic/business plans;
d) approve non-budgeted expenditures of the operating budget of the Corporation;
e) conduct financial planning, and monitor and assure long-term financial performance;
f) approve applications for certificates of need;
g) approve contracts for the management of the corporation, reorganization, and the establishment of, investment in or purchase of, corporations, limited liability companies, partnerships, joint ventures, and other entities or affiliations; approve initiation or settlement of litigation or administrative proceedings;
h) approve any amendments to the Certificate of Incorporation or Bylaws of the Corporation, and
i) ensure that the Corporation pursues a consistent mission, philosophy and goals and promote a consistent culture and community service orientation.

DOH Recommendation

Approval

Need Summary

NYP Community Services, Inc. seeks approval to be established as the active parent and co-operator of the Lawrence Hospital Center. The approval of this application will give NYP Community Services Inc. active powers over the Hospital and control over the affiliated operations. 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 costs associated with the subject application. Lawrence Hospital Center will remain a separate not-for-profit Article 28 corporation and maintain a separate operating certificate. There will be no change in authorized services or number or type of bed complements for LHC or NYPCS as a result of the proposed establishment action.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Health Systems Management

Approval contingent upon:

1. Submission of the executed Restated Certificate of Incorporation of NYP Community Services, Inc., acceptable to the Department. [CSL]
2. Submission of the finalized bylaws of NYP Community Services, Inc., acceptable to the Department. [CSL]
3. Submission of the executed Certificate of Amendment to the Certificate of Incorporation of Lawrence Hospital Center, acceptable to the Department. [CSL]
4. Submission of the finalized bylaws of Lawrence Hospital Center, 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]

Council Action Date

April 10, 2014

Need Analysis

Project Description

NYP Community Services, Inc. (NYPCS) an existing not-for-profit corporation is seeking approval to be established as the active parent and co-operator of Lawrence Hospital Center (LHC).

Bed Category	Lawrence Hospital Center
Coronary Care	10
Intensive Care	8
Maternity	23
Medical / Surgical	228
Neonatal Intermediate Care	7
Pediatric	12
Total	**288**

Lawrence Hospital State Designations:

- Level 2 Perinatal center
- Stroke Center

Displayed in Table 3 below are the inpatient utilization statistics for LHC. In 2011, the hospital recorded 11,324 total inpatient discharges; by 2012 these discharges increased by .07 percent to 11,333. During the same period, total Average Length of Stay decreased by 2.7 percent from 27.3 in 2011 to 26.7 in 2012.

Table 3: Lawrence Hospital Center: Inpatient Utilization by Major Service Category.
Source: SPARCS 2011 - 2012

	Discharges		**Average Daily Census**		**Average Length of Stay**		**Occupancy Based on Current Beds**	
Service	**2011**	**2012**	**2011**	**2012**	**2011**	**2012**	**2011**	**2012**
Medical/Surgical	8,833	8,808	128	124	5.3	5.1	51.9	50.4
Pediatric	434	422	3	3	2.3	2.3	22.5	21.7
Obstetric	1,828	1,841	16	15	3.1	3.1	67.4	67
General Psychiatric	34	25	0	0	4	4.2	0	0
Chemical Dependency	50	51	1	1	5	4.1	0	0
High Risk Neonates	145	186	3	4	7.6	7.9	30	40
Total	11,324	11,333	151	147	27.3	26.7	52.2%	50.5%

Conclusion

This proposal will give NYP Community Services, Inc. active powers over Lawrence Hospital Center and control over its operations. It will allow NYPCS to produce a health system that will focus on improving quality, safety and efficiency in the delivery of services to the communities served by the hospital.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

NYP Community Services, Inc. (NYPCS), an existing not-for-profit corporation, seeks approval to become the active parent and co-operator of Lawrence Hospital Center (LHC). The purpose of this transaction is to establish a coordinated and integrated system with the objective of improving quality, increasing access and lowering the costs of health care in the communities served by LHC.

There are no projected changes in staffing, authorized services, or the number or type of beds at either Hospital as a result of the proposed change in governance structure.

NYP Community Services, Inc. will become the sole corporate member of Lawrence Hospital Center upon project approval.

Character and Competence

The proposed Directors for NYP Community Services, Inc. are:

NYPCS	Title
John J. Mack	New York-Presbyterian Hospital, Trustee
Jeffrey W. Greenberg	New York-Presbyterian Hospital, Trustee
Arthur J. Hedge, Jr.	New York-Presbyterian Hospital, Trustee
Algred F. Kelly, Jr.	New York-Presbyterian Hospital, Trustee
Ivan G. Seidenberg	New York Presbyterian Hospital, Trustee
Seymour Sternberg	New York-Presbyterian Hospital, Trustee
Steven J. Corwin, MD	New York-Presbyterian Hospital, CEO & Trustee
Richard Dresdale	Lawrence Hospital Center, Chairman
Dennis E; Glazer	Lawrence Hospital Center, Former Chair

All proposed board members for NYP Community Services, Inc. are subject to a character and competence review. Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant’s ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Capability and Feasibility

There are no significant issues of capability or feasibility associated with the subject application.

BFA Attachment A is the financial summary for The New York and Presbyterian Hospital. As shown on Attachment A, the facility has maintained an average positive working capital position and an average positive net asset position during the period shown. Also, The New York and Presbyterian Hospital achieved an average operating excess of revenue over expenses totaling $187,337,000 for the period shown.

BFA Attachment B is the financial summary for LHC. As shown on Attachment B, the facility has maintained an average positive working capital position and an average net asset position during the period shown. LHC achieved an average operating income of $11,779,172 during the period shown.

As previously stated, NYPSC, Inc. and LHC will remain separate corporations subsequent to approval. However, the applicant's proposal to become active parent to LHC is consistent with its governance restructuring effort to streamline and strengthen the community system. The applicant is committed to expanding access to care and lowering health care costs to further enhance revenue from its community integrated health system.

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Financial Summary – The New York and Presbyterian Hospital
BFA Attachment B	Financial Summary – LHC, Inc.
BFA Attachment C	Organizational Chart – NYPCS, Inc. (post approval)

Public Health and Health Planning Council

Project # 141018-E

RU System

County: **Monroe**
Purpose: **Establishment**
Program: **Hospital**
Acknowledged: **January 17, 2014**

Executive Summary

Description

RU System, a/k/a Newco, a to-be-formed corporation, requests approval to become the active parent and co-operator of the licensed health care affiliates of Rochester General Health System (RGHS) and the licensed health care affiliates of Unity Health System (UHS). RU System is the working title for CON submission purposes and the actual name will be developed prior to final PHHPC approval.

RU System will be active parent/ co-operator of the entities within Rochester General Health System and Unity Health System: Rochester General Hospital (528 beds); Newark-Wayne Community Hospital (120 beds); Wayne Health Care (Demay Living Center) (180-bed nursing home); Rochester General Long Term Care, Inc. d/b/a Hill Haven Nursing Home (341-bed nursing home); The Unity Hospital of Rochester (284 beds); The Unity Hospital of Rochester – St. Mary's Campus (73 beds); Unity Living Center (12-bed nursing home); Park Ridge Nursing Home, Inc. d/b/a Park Ridge Living Center (120-bed nursing home); North Park Nursing Home, Inc. d/b/a Edna Tina Living Center (120-bed nursing home); Unity Ambulatory Surgery Center, Inc.; PRCD, Inc.; Unity Health System Foundation; Rochester General Hospital Foundation, Inc.; Behavioral Health Network, Inc.; Independent Living for Seniors, Inc.; GRHS Foundation, Inc.; Rochester General Long Term Care, Inc.; Unity Linden Oaks Surgery Center, LLC; Park Ridge Housing, Inc.; Newark-Wayne Community Hospital Foundation, Inc. and GRHS, LLC d/b/a Rochester Ambulatory Surgery Center. BFA Attachment A, is the organizational chart of RU System.

The applicant will exercise the following active powers:

- Appointment or dismissal of hospital management level employees and medical staff, except the election or removal of corporate officers;
- Approval of hospital operating and capital budgets;
- Adoption or approval of hospital operating policies and procedures;
- Approval of certificate of need applications filed by or on behalf of the hospital and to ensure that they conform to the facility's stated mission and philosophy.
- Approval of hospital debt necessary to finance the cost of compliance with operational or physical plant standards required by law;
- Approval of hospital contracts for management or for clinical services;
- Approval of settlements of administrative proceedings or litigation to which the hospital is a party, except approval of settlements of litigation that exceed insurance coverage or any applicable self insurance fund.

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 in the number or type of bed complement of the facilities.

DOH Recommendation

Contingent Approval

Need Summary

RU System, a/k/a Newco, seeks CON approval to be established as the active parent and co-operator of Rochester General Health System (RGHS) and Unity Health Systems and all the affiliates. The merger of these two health systems will help provide integrated care to the community while lowering costs. In addition, it will increase patient access.

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 no budgets associated with this application.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Health Systems Management

<u>Approval contingent upon</u>:

1. Submission of approval from the Office for Mental Health. [PMU]
2. Submission of approval from the Office for Alcohol and Substance Abuse Services. [PMU]
3. Submission of an acceptable name. [HSP]
4. Submission of the applicant's executed Certificate of Incorporation, acceptable to the Department. [CSL]
5. Submission of the applicant's bylaws, acceptable to the Department. [CSL]
6. Submission of an executed Certificate of Amendment of the Certificate of Incorporation of The Rochester General Hospital, acceptable to the Department. [CSL]
7. Submission of the amended bylaws of The Rochester General Hospital, acceptable to the Department. [CSL]
8. Submission of the Certificate of Incorporation of Newark-Wayne Community Hospital, and any amendments thereto, acceptable to the Department. [CSL]
9. Submission of the amended bylaws of Newark-Wayne Community Hospital, acceptable to the Department. [CSL]
10. Submission of an executed Certificate of Amendment of the Certificate of Incorporation of Rochester General Long Term Care, Inc., acceptable to the Department. [CSL]
11. Submission of the amended bylaws of Rochester General Long Term Care, Inc., acceptable to the Department. [CSL]
12. Submission of an executed Certificate of Amendment of the Certificate of Incorporation of Independent Living for Seniors, Inc., acceptable to the Department. [CSL]
13. Submission of the amended bylaws of Independent Living for Seniors, Inc., acceptable to the Department. [CSL]
14. Submission of an executed Certificate of Amendment of the Certificate of Incorporation of Behavioral Health Network, Inc., acceptable to the Department. [CSL]
15. Submission of the amended bylaws of Behavioral Health Network, Inc., acceptable to the Department. [CSL]
16. Submission of an executed Certificate of Amendment of the Certificate of Incorporation of GRHS Foundation, Inc., acceptable to the Department. [CSL]
17. Submission of the amended bylaws of GRHS Foundation, Inc., acceptable to the Department. [CSL]
18. Submission of an executed Certificate of Amendment of the Certificate of Incorporation of Rochester General Hospital Foundation, Inc., acceptable to the Department. [CSL]
19. Submission of the amended bylaws of Rochester General Hospital Foundation, Inc., acceptable to the Department. [CSL]
20. Submission of an executed Certificate of Amendment of the Certificate of Incorporation of Newark-Wayne Community Hospital Foundation, Inc., acceptable to the Department. [CSL]
21. Submission of the amended bylaws of Newark-Wayne Community Hospital Foundation, Inc., acceptable to the Department. [CSL]
22. Submission of an executed Certificate of Amendment of the Certificate of Incorporation of The Unity Hospital of Rochester, acceptable to the Department. [CSL]
23. Submission of the amended bylaws of The Unity Hospital of Rochester, acceptable to the Department. [CSL]
24. Submission of an executed Certificate of Amendment of the Certificate of Incorporation of North Park Nursing Home, Inc., acceptable to the Department. [CSL]
25. Submission of the amended bylaws of North Park Nursing Home, Inc., acceptable to the Department. [CSL]

26. Submission of an executed Certificate of Amendment of the Certificate of Incorporation of Park Ridge Nursing Home, Inc., acceptable to the Department. [CSL]
27. Submission of the amended bylaws of Park Ridge Nursing Home, Inc., acceptable to the Department. [CSL]
28. Submission of an executed Certificate of Amendment of the Certificate of Incorporation of Park Ridge Housing, Inc., acceptable to the Department. [CSL]
29. Submission of the amended bylaws of Park Ridge Housing, Inc., acceptable to the Department. [CSL]
30. Submission of an executed Certificate of Amendment of the Certificate of Incorporation of Unity Ambulatory Surgery Center, Inc., acceptable to the Department. [CSL]
31. Submission of the amended bylaws of Unity Ambulatory Surgery Center, Inc., acceptable to the Department. [CSL]
32. Submission of an executed Certificate of Amendment of the Certificate of Incorporation of Unity Health System Foundation, acceptable to the Department. [CSL]
33. Submission of the amended bylaws of Unity Health System Foundation, 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
April 10, 2014

Need Analysis

Background

RU System, a/k/a Newco, seeks CON approval to be established as the active parent and co-operator of Rochester General Health System (RGHS) which includes each of the following and other existing entities, The Rochester General Hospital, Hill Haven Nursing Home, ElderOne, Rochester Ambulatory Surgery Center, The Unity Hospital of Rochester, The Unity Hospital of Rochester St. Mary's, and Newark-Wayne Community Hospital.

Analysis

The hospitals in RGHS have a total of 1,005 inpatient beds. Collectively, the majority of the patients served in the system hospitals reside in Monroe and Wayne Counties. These two counties have a combined 2012 population estimate of 840,775 residents. Monroe County has seen a 0.5% population increase from 2010 to 2012, while Wayne County has seen a 0.9% population decrease for the same period.

In 2011 and 2012, these hospitals averaged 75,962 total inpatient discharges and 208,731 total Emergency Department visits.

RGHS indicates that, as an active parent, the following can be achieved:

- Consistent corporate policies and procedures across the system
- Consistent approach to regulatory compliance, standards of care and medical staff credentialing
- Organize its network of providers in an efficient and accessible continuum of care that is responsive to community needs
- Collaborate and conserve resources such as joint purchasing
- Facilitate clinical integration and use of best practices
- Share resources
- Exhibit common mission, philosophy, values and purpose

Conclusion

The approval of an active parent over the facilities within Unity Health Systems and Rochester General Health System is expected to have the following benefits in the community:

- A high performing, integrated, community based healthcare system
- Coordination of patient care and support services
- Enhanced ability of these healthcare system's affiliates to address the requirements of the Affordable Care Act and additional health care reform initiatives

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Proposal

Establish RU System, a/k/a Newco, a to-be formed corporation, as the active parent and co-operator of licensed health care affiliates of two not-for-profit, tax-exempt corporations, Rochester General Health System (RGHS) and Unity Health System (UHS). Approval will provide RU System (the working title for CON submission purposes only; the name for RU System will be developed prior to final PHHPC approval) with the ability, as sole corporate member, to exercise active powers over the hospitals and other healthcare affiliates and to gain oversight with respect to day-to-day-operations. The applicant's objective is to establish a coordinated, integrated system aimed at improving quality, increasing access and lowering the costs of health care in the communities served by RGHS and UHS. There will be no costs associated with the subject application. The facilities will remain separate not-for-profit corporations, and maintain separate operating certificates. The applicant does not anticipate any change in authorized services or number or type of bed complement of the facilities.

RU System will be active parent/co-operator over:

- Rochester General Hospital
- Rochester General Hospital Foundation, Inc.
- Newark-Wayne Community Hospital (which is the sole member of Newark-Wayne Community Hospital Foundation, Inc.)
- Behavioral Health Network Inc./Rochester Mental Health Center
- Independent Living for Seniors, Inc.
- Rochester General Long-Term Care Inc.
- GRHS Foundation, Inc. (which is the single member of GRHS, LLC d/b/a Rochester Ambulatory Surgery Center)
- Unity Ambulatory Surgery Center, Inc. (which is the sole member of Unity Linden Oaks Surgery Center, LLC)
- PRCD, Inc.
- North Park Nursing Home, Inc.
- Park Ridge Nursing Home, Inc.
- Unity Health System Foundation
- The Unity Hospital of Rochester
- Park Ridge Housing, Inc.

Character and Competence

The proposed board members for RU System are:

Name	
Robert A. Dobies	Chair
Michael R. Nuccitelli	Vice Chair
Robert S. Sands	Secretary
Faheem A. R. Masood	Treasurer

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Unity Living Center was fined $1,000 in a Stipulation and Order dated 8/2/04 for deficient practices related to Quality of Care (Dignity) discovered during an inspection dated 2/21/03.

F. F. Thompson Senior Communities, Inc. - Clark Meadows at Ferris Hills was fined $1,000 for deficiencies related to endangerment and supervision discovered during a survey of 3/30/04.

Park Ridge Nursing Home was issued a Stipulation and Order (S&O) on three (3) occasions in the last 10 years. The facility was fined $1,000 in a Stipulation and Order dated 10/27/07, $1,000 in a Stipulation and Order dated 1/27/10, and $2,000 in a Stipulation and Order dated 3/1/11. All three fines were related to deficient practices in the area of Quality of Care (i.e., accidents, medication errors, and highest practicable potential, respectively).

M. M. Ewing Continuing Care Center was fined $10,000 in a Stipulation and Order dated 3/11/13 based on Quality of Care issues (i.e., highest practicable potential) discovered during an inspection completed on 6/24/11.

Recommendation

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

From a programmatic perspective, approval is recommended.

Financial Analysis

Capability and Feasibility

There are no project costs or no budgets associated with this application.

BFA Attachment B is the 2011 and 2012 certified financial statement of Rochester General Health System and Affiliates. As shown, the entity had an average positive working capital position and an average positive net asset position from 2011 through 2012. Also, the entity achieved an average income from operations of $20,746,182 from 2011 through 2012.

BFA Attachment C is the September 30, 2013 internal financial statements of Rochester General Health System and Affiliates. As shown, the entity had a negative working capital position and a positive net asset position through September 30, 2013. The applicant has indicated that the reason for the negative working capital position is due to the interim/internal nature of the financial statements. All estimated third party payables ($105,672,413) are classified as current liabilities on the September 30, 2013 balance sheet. The applicant has indicated that approximately 70% of these payables are long term liabilities and will be classified as such when the 2013 certified financial statements are prepared. Also, the entity achieved an income from operations of $21,022,448 through September 30, 2013.

BFA Attachment D is the 2011 and 2012 certified financial statement of Unity Health System, Inc. and Subsidiaries. As shown, the entity had an average positive working capital position and an average positive net asset position from 2011 through 2012. Also, the entity achieved an average income from operations of $19,918,500 from 2011 through 2012.

BFA Attachment E is the September 30, 2013 internal financial statements of Unity Health System, Inc. and Subsidiaries. As shown, the entity had a positive working capital position and a positive net asset position through September 30, 2013. Also, the entity achieved an income from operations of $13,433,000 through September 30, 2013.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Organizational Chart
BFA Attachment B	Financial Summary- 2011 and 2012 certified financial statements of Rochester General Health System
BFA Attachment C	Financial Summary- September 30, 2013 internal financial statements of Rochester General Health System
BFA Attachment D	Financial Summary- 2011 and 2012 certified financial statements of Unity Health System
BFA Attachment E	Financial Summary- September 30, 2013 internal financial statements of Unity Health System, Inc.

Public Health and Health Planning Council

Project #131347-B

Southtowns Ambulatory Surgery Center, LLC

County: **Erie (Orchard Park)**
Purpose: **Establishment and Construction**
Program: **Ambulatory Surgery Center**
Acknowledged: **July 2, 2013**

Executive Summary

Description

Southtowns Ambulatory Surgery Center, 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 orthopedics, urology, podiatry, chiropractic and general surgery. The center will be located in approximately 16,082 square feet on the first floor of a newly constructed building located at 5959 Big Tree Road, Orchard Park. The center will consist of four operating rooms, sixteen recovery bays, six pre-op areas, soiled utility room, staff lounge and dressing areas, administration offices, waiting room, nursing station, staff work spaces and patient and staff restrooms. The center will be staffed with 19 physicians consisting of three board certified physicians in general surgery, thirteen board certified physicians in orthopedics, and three board certified physicians in urology. The center will also have two podiatrists and one chiropractor.

Southtowns Ambulatory Surgery Center, LLC is a joint venture between twenty two physicians with 2.25% ownership each (49.5%) and KH Venture Services (50.5%), a subsidiary of Kaleida Health. BFA Attachment A, is a list of proposed members and their ownership percentages.

DOH Recommendation

Contingent approval with an expiration of the operating certificate five (5) years from the date of its issuance.

Need Summary

Southtowns Venture proposes to provide multi-specialty ambulatory surgery services specializing in orthopedic and general outpatient surgical services. This is a joint venture between physicians and Kaleida Health Ventures Services, a subsidiary of Kaleida Health. The number of projected surgical procedures to be performed is 4,160 in the first 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 Buffalo General Medical Center.

Financial Summary

Total project costs of $2,657,652, will be met with a $2,391,887 bank loan and $265,765 in member's equity. Total purchase price of $2,290,896 will be financed from proposed member's equity.

Budget:

Revenues:	$7,373,272
Expenses:	6,496,832
Net Income:	$876,440

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

Recommendations

Health Systems Agency

There will be no HSA recommendation of this application.

Office of Health Systems Management

Approval with an expiration of the operating certificate 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 personal loan from Dr. Joshua Jones, acceptable to the Department. [BFA]
8. Submission of an executed administrative services agreement, acceptable to the Department. [BFA]
9. Submission of an executed subscription agreement from each proposed member, acceptable to the Department. [BFA]
10. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
11. Submission of a photocopy of the applicant's executed and Amended Articles of Organization, acceptable to the Department. [CSL]
12. Submission of a photocopy of the applicant's executed Operating Agreement, acceptable to the Department. [CSL]
13. Submission of a photocopy of an executed assignment of the Lease 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]
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 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
April 10, 2014

Need Analysis

Background

Southtowns Ambulatory Surgery Center, LLC, a for-profit limited liability company, is seeking approval to establish and construct a diagnostic and treatment center to provide multi-specialty ambulatory surgery services at 5959 Big Tree Road, Orchard Park, 14127, in Erie County.

Analysis

The service area is Erie County. The number of projected surgical procedures to be performed is 4,560 in Year 1 and 4,651 in Year 3. The applicant reports that the participating physicians intend to relocate cases from a variety of locations, thus having minimal impact on the existing facilities.

Erie County has a total of seven freestanding multi-specialty ASCs and two freestanding single-specialty ASCs.

Existing Ambulatory Surgery Centers: Erie County (Source: SPARCS 2012)

ASC Type	Facility	2012 Patients
Multi-Specialty	Amb Surgery Ctr of Western NY	4,995
Multi-Specialty	Buffalo Ambulatory Surgery Ctr	9,106
Multi-Specialty	Buffalo Surgery Center LLC*	5,721
Multi-Specialty	Center for Amb Surgery LLC	7,924
Multi-Specialty	Endoscopy Ctr Western NY LLC	10,530
Ophthalmology	Eye Health Associates Inc	4,599
Multi-Specialty	Millard Fillmore Amb Surg Ctr	6,167
Multi-Specialty	Sterling Surgical Center LLC	5,594
Single Specialty (Pain Management)	WNY Medical Management (Opened April 10, 2013)	n/a
Total		54,636

*Became a Multi-Specialty ASC effective June 28, 2013.

The applicant has provided a statement that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws with consultation of the legal counsel. This statement is acceptable to the Department.

The applicant is committed to serving all persons in need of surgery regardless of their ability to pay or the source of payment.

Conclusion

The proposed ASC, a joint venture between physicians and KH Ventures Services, will improve access to outpatient surgical services for the communities of Erie County.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Program Description

Southtowns Venture, LLC, a for-profit limited liability company, requests approval to establish and construct a multi-specialty ambulatory surgery center (ASC) in Orchard Park, NY. Upon approval, the name of the company will be changed to Southtowns Ambulatory Surgery Center, LLC. The proposed ASC will include 4 operating rooms and aims to improve access to and availability of ambulatory surgery services for patients within Erie County.

Proposed Operator	Southtowns Venture, LLC
Site Address	5959 Big Tree Road, Orchard Park
Surgical Specialties	Multi-Specialty (predominately orthopedic and general surgery)
Operating Rooms	4 (Class C)
Procedure Rooms	0
Hours of Operation	Monday through Friday, from 7:30 am to 5:00 pm
Staffing (1st Year / 3rd Year)	26.25 FTEs / 27.25 FTEs
Medical Director(s)	Michael Rauh, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Kaleida Health Buffalo General Medical Center 14.7 miles/17 minutes
On-call service	The surgeon's contact information will be provided to patients verbally and on discharge instructions.

Character and Competence

The Center will be a joint venture between physicians (42.75% owner) and KH Venture Services (57.25% owner), a subsidiary of Kaleida Health. A manager has not yet been identified. Members of the Corporation are:

Name	Percentage
Physician Members	**42.75%**
Shirley Anain, MD (General Surgery)	2.25%
Marc J. Anders, MD (Orthopedics)	2.25%
Geoffrey A. Bernas, MD (Orthopedics)	2.25%
Leslie J. Bisson, MD (Orthopedics)	2.25%
Lindsey Dolan Clark, MD (Orthopedics)	2.25%
Kenneth H. Eckhert III, MD (General Surgery)	2.25%
Marc Fineberg, MD (Orthopedics)	2.25%
Edward T. Fitzpatrick, DPM (Podiatry)	2.25%
Robert Galpin, MD (Orthopedics)	2.25%
Jennifer Gurske-dePerio, MD (Orthopedics)	2.25%
Christopher L. Hamill, MD (Orthopedics)	2.25%
Joshua Jones, MD (Orthopedics)	2.25%
Stephen A. Novelli, DC (Chiropractic)	2.25%
Daniel J. Patterson, DO (General Surgery)	2.25%
Sridhar Rachala, MD (Orthopedics)	2.25%
Michael A. Rauh, MD (Orthopedics)	2.25%
Peter J. Riznyk, DPM (Podiatry)	2.25%
Robert J. Smolinski, MD (Orthopedics)	2.25%
William M. Wind, Jr., MD (Orthopedics)	2.25%
KH Venture Services	**57.25%**
Donald N. Boyd (President)	
Robert J. Nolan, JD (Secretary)	
Joseph M. Kessler (Treasurer)	

Nineteen (19) of the members are practicing surgeons. The board of KH Venture Services consists of the three (3) individuals: an MBA-prepared Senior Vice President of a healthcare organization, a Harvard Law graduate with experience as General Counsel for a healthcare corporation, and a former certified public accountant (CPA) who has experience as a Chief Financial Officer.

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. Bernas and Rauh each disclosed one (1) settled malpractice case. Drs. Patterson and Eckhert each disclosed two (2) pending malpractice cases.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

On 10/4/05, Kaleida – Millard Fillmore Suburban Hospital was fined $4,000 based on an investigation where a patient was admitted for left sided hernia repair. The consent and marking indicated the left side, however, the operation proceeded on the right side and the error was not noted until the surgeon was dictating post-operative notes and others were closing the wound. The operation resumed at that point and the correct side was operated on.

On 12/14/06, Kaleida - Millard Fillmore Suburban Hospital was fined $10,000 based on a complaint investigation of inadequate emergency care including ordered tests that were not done. Upon readmission, restraints were ordered without physical examination of the patient who deteriorated and died.

On 7/23/07, Kaleida - Woman's and Children's Hospital of Buffalo was fined $24,000 based on a complaint investigation that revealed delayed emergency care and/or inappropriate treatment was rendered to two teenagers in the facility's ER which resulted in death in both cases.

Integration with Community Resources

The facility will ensure that patients have access to primary care services through its majority owner's relationship with Kaleida Health, a not-for-profit Article 28 health care delivery system operating in the Buffalo area.

The applicant did not indicate interest in becoming a part of an Accountable Care Organization (ACO). The applicant does intend on using an electronic medical record (EMR) system, as well as potentially to affiliate with a regional health information organization (RHIO) and/or Health Information Exchange (HIE).

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Lease Rental Agreement

The applicant will lease approximately 16,082 square feet on the first floor of a newly constructed building located at 5959 Big Tree Road, Orchard Park, under the terms of the executed lease agreement summarized below:

Date:	November 1, 2012
Landlord:	Quaker 20A Realty, LLC
Lessee:	Kaleida Health
Term:	20 years
Rental:	$355,500/year ($22.11 per sq. ft.) increasing 2% yearly
Provisions:	Lessee responsible for utilities, taxes, insurance and maintenance.

The members of Quaker 20A Realty, LLC are 5959 Big Tree Road, LLC (50%) and Bonedoc, LLC (50%), in which proposed member Dr. Michael A. Ruah is a member. Therefore, the lease is a non- arm's length agreement and letters of opinion from Licensed Commercial Real Estate Brokers have been submitted indicating rent reasonableness. Other non-related parties occupy the remainder of the building.

Subscription Agreement

The applicant has submitted proposed subscription agreements for each member, the terms of which are summarized below:

Purpose:	Purchase 2.25% membership interest in Southtowns Venture, LLC, to be renamed Southtowns Ambulatory Surgery Center, LLC upon CON approval.
Seller:	Southtowns Venture, LLC
Purchaser:	Twenty two physician members
Purchase Price:	$51,545.16 each
Payment:	$5,154.52 deposit upon execution of the subscription agreement with the remaining $46,390.64 due upon CON approval.
Purpose:	Purchase 50.5% membership interest in Southtowns Venture, LLC, to be renamed Southtowns Ambulatory Surgery Center, LLC upon CON approval.
Seller:	Southtowns Venture, LLC
Purchaser:	KH Venture Services, Inc.
Purchase Price:	$1,156,902.48
Payment:	$115,690.25 deposit upon execution of the subscription agreement with the remaining $1,041,212.23 due upon CON Approval

Administrative Services Agreement

The applicant has submitted a draft administrative services agreement, the terms of which are summarized below:

Facility Operator:	Southtowns Venture, LLC
Provider:	Kaleida Health
Services Provided:	Financial services; licensing; certification; credentialing services; equipment and facilities services; information system development and support and risk management.
Term:	One year renewing automatically for successive terms of one year each.
Compensation:	$50,000/year

Total Cost and Financing

Total project costs for fixed and movable equipment are estimated at $2,657,652, broken down as follows:

Fixed Equipment	$1,308,301
Movable Equipment	832,825
Telecommunication	500,000
Application Fee	2,000
Additional Processing Fee	14,526
Total Project Cost	$2,657,652

The applicant's financing plan appears as follows:

Bank Loan (5yr, 4.5%)	$2,391,887
Member's Equity	$265,765

A letter of interest from Key Bank has been submitted by the applicant. Kaleida Health will be providing KH Venture's portion of the project equity. A letter from Kaleida Health stating they are committed to contributing equity on behalf of KH Venture Services has been submitted by the applicant. BFA Attachment C is the financial summary of Kaleida Health, which indicates sufficient funds available.

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
Revenue:	$6,813,741	$7,373,272
Expenses:		
Operating	$4,800,147	5,180,121
Capital	1,194,545,	1,316,711
Total Expenses:	$5,994,692	$6,496,832
Net Income:	$819,049	$876,440
Utilization: (procedures)	4,560	4,651
Cost per procedure	$1,314.63	$1,396.87

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

	Year One and Three
Commercial Managed Care	70.4%
Medicare Fee for Service	6.6%
Medicare Managed Care	6.8%
Medicaid Managed Care	1.2%
Private Pay/Other	13.0%
Charity Care	2.0%

Cost per visit increases in year three are due to projected costs increasing more rapidly than visit volume. 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.
Dr. Rauh, managing member, has provided a letter attesting to the number and types of procedures expected to be performed per year by all physicians expressing an interest in practicing at the center.

Capability and Feasibility

Total project costs of $2,657,652, will be met with a $2,391,887 bank loan from Key Bank at stated terms, with the remaining $265,765 from proposed member's equity. Total purchase price of $2,290,896 will be financed from proposed members' equity. Kaleida Health has committed to providing equity on behalf of KH Venture Services. BFA Attachment A is the net worth statement of the proposed members, which indicates the availability of sufficient funds for all except Joshua Jones, MD. Dr. Jones has submitted a letter of interest from Key Bank for his equity portion. As shown on BFA Attachment C, the financial summary of Kaleida Health indicates the availability of sufficient funds.

Working capital needs are estimated at $1,082,805 based on two months of third year expenses, which will be funded by member's equity. BFA Attachment E is the pro-forma balance sheet of Southtowns Ambulatory Surgery Center, LLC as of the first day of operation, which indicates positive member's equity of $1,305,292.

The submitted budget indicates a net income of $819,049 and $876,440 during the first and third years of operation, respectively. Department staff has noted that chiropractic procedures included in the submitted budget are non-surgical; therefore the projected budgets have been sensitized to exclude these procedures for year one and year three, as shown on BFA Attachment F. Revenues are based on current reimbursement methodologies for ambulatory surgery centers. The budget appears reasonable.

As shown on BFA Attachment C, the financial summary for Kaleida Health indicates the facility has maintained positive working capital, net assets and generated a net income from operations of $15,610,000 for 2012. BFA Attachment D is the financial summary as of November 20, 2013 for Kaleida Health, and indicates the facility has maintained positive working capital, net assets and experienced a net loss from operations of $17,068,000. The applicant has indicated the reason for the losses in 2013 is due to lagging inpatient volume, continued shifts from inpatient services to outpatient services, cuts in reimbursement and significant increases in length of stay. Key initiatives to improving operating results include process enhancements to reduce length of stay, productivity improvements, service line review and integration, corporate and fixed cost review and reductions and growth initiatives.

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	Proposed Members and Membership Percentages
BFA Attachment B	Net Worth Statement
BFA Attachment C	Financial Summary 2012, Kaleida Health
BFA Attachment D	Financial Summary as of November 20, 2013 Kaleida Health
BFA Attachment E	Pro-forma Balance Sheet
BFA Attachment F	Budget Sensitivity Analysis

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: Erie County Medical Center -- **No Response**
462 Grider Street
Buffalo, New York 14215

Facility: Catholic Health System
2121 Main Street
Buffalo, New York 14214

Mercy Hospital of Buffalo

Current OR Use (% of capacity)	Surgery Cases		Amb. Surg. Cases by Applicant Physicians	Reserved OR Time for Applicant Physicians
	Ambulatory	**Inpatient**		
50.6%	6,517	5,308	2,065	Yes

Sisters of Charity Hospital

Current OR Use[1] (% of capacity)	Surgery Cases[2]		Amb. Surg. Cases by Applicant Physicians[3]	Reserved OR Time for Applicant Physicians
	Ambulatory	**Inpatient**		
80.4%	8,472	5,712	741	Yes

Catholic Health System's (CHS) estimate of the projected impact of the proposed ASC on its surgical revenues is based on the assumption that the application's total projected ASC caseload for each applicant physician who practices at CHS will migrate from CHS to the ASC. Using this volume of cases and the current average revenue per case for the 16 physicians associated with the proposed ASC who practice at Catholic Health System (CHS) facilities, CHS estimates that this transfer of cases to the ASC would result in a total loss to CHS facilities of $3.3 million annually.

CHS speculates further that if the proposed ASC is approved, the participating physicians will eventually move all their current cases performed at CHS hospitals to the ASC, not merely the cases projected in the ASC application. CHS estimates that this would result in a loss to its hospitals of $6.5 million annually.

CHS states that the projected loss of revenues to the ASC would adversely affect its six community-based clinics and outpatient sites, which provide primary care, OB and other services to large numbers of

[1] OR use at Sisters of Charity main site only. OR use at Sisters of Charity/St. Joseph's campus is 56.6%.
[2] Combined cases from Sisters of Charity main site and Sisters of Charity/ St. Joseph's campus.
[3] Total from the two Sisters of Charity sites combined.

Medicaid clients and charity care patients. CHS also anticipates that the loss of revenues to the proposed ASC would jeopardize the system's community-oriented health screening, patient education and flu vaccination programs.

CHS also argues that, once established, the ASC will aggressively recruit surgeons with offices located in the vicinity of the proposed facility. CHS also speculates that the ASC, as an LLC, may incrementally expand its ownership without the benefit of PHHPC review, and that this carries the potential for additional ownership of the ASC by CHS surgeons, with an associated loss of more CHS surgical cases and revenues to the proposed facility.

In 2012, Mercy Hospital had expenses of $335.1 million on net patient revenue of $339.6 million. In 2011, the hospital had expenses of $305.9 million on net patient revenue of $310.1 million. The hospital's current assets in 2012 were $117.0 million and current liabilities were $96.6 million, for a working capital ratio of 1.2 to1.0. In 2011, Mercy Hospital's current assets were $95.4 million, and current liabilities $85.7 million, for a working capital ratio of 1.1 to 1.0. In 2012, Mercy Hospital incurred bad debt costs of $9.8 million and provided charity care of $2.3 million. In 2011, Mercy Hospital incurred bad debt costs of $8.2 million and provided charity care in the amount of $3.1million.

In 2012, Sisters of Charity Hospital had expenses of $309.0 million on net patient revenue of $307.7 million. In 2011, the hospital had expenses of $291.0 million on net patient revenue of $293.2 million. The hospital's current assets in 2012 were $169.3 million and current liabilities were $93.7 million, for a working capital ratio of 1.8 to1.0. In 2011, Sisters of Charity Hospital's current assets were $153.1 million, and current liabilities $87.8 million, for a working capital ratio of 1.7 to 1.0. In 2012, Sisters of Charity Hospital incurred bad debt costs of $10.3 million and provided charity care of $3.3 million. In 2011, Sisters of Charity Hospital incurred bad debt costs of $6.1 million and provided charity care in the amount of $3.2 million.

Facility: Lake Erie Regional Health System of New York
529 Central Avenue
Dunkirk, NY 14048

The Lake Erie Regional Health System of New York (LERHSNY) operates Brooks Memorial Hospital in Dunkirk and TLC Health at Lake Shore Health Care Center in Irving. LERHSNY submitted an unsolicited letter in opposition to the Southowns ASC application, stating that approval of the application would jeopardize LERHSNY's efforts to reorganize and operate the system's TLC/Lakeshore Hospital as an ambulatory services center offering urgent care, diagnostic services, primary care, chemical dependency clinics and ambulatory surgery. Ambulatory surgery is intended to be the linchpin of the redesigned facility, with orthopedics, gastroenterology and general surgery as the primary service lines. LERHSNY states that approval of the Southtowns ASC would financially cripple Lake Shore, since ambulatory surgery is expected to generate the bulk of the expected net revenue for the reorganized operation.

LERHSNY provided no additional financial information or other data on its current or projected services and associated revenues.

Facility: Bertrand Chaffee Hospital
224 East Main Street
Springville, NY 14141

Current OR Use (% of capacity)	Surgery Cases		Amb. Surg. Cases by Applicant Physicians	Reserved OR Time for Applicant Physicians
	Ambulatory	**Inpatient**		
42%	1,638	28	54	Yes

Bertrand Chaffee Hospital opposes the application, stating that lost case volume from the two applicant physicians who currently perform surgeries at the hospital would come $16,000 per year. The hospital also speculates that additional physicians may choose to participate in the proposed ASC in the future, bringing a an additional potential loss of revenues for Bertrand Chaffee. The hospital does not specify the impact that any loss of revenues to the ASC would have on its operations or community-oriented programs.

Bertrand Chaffee had a working capital ratio of 1.28 in 2011 and 1.84 in 2012. In 2011, the hospital had unrestricted operating revenues and gains of $17,529,126 on operating expenses of $17,509,227. In 2012, the hospital had unrestricted operating revenues and gains of $19,381,924 on operating expenses of $18,377,541. In 2012, the hospital experienced bad debt and charity care of $1,108,576. In 2013, bad debt and charity care totaled $1,007,434.

Supplemental Information from Applicant

Need and Sources of Cases: The applicant states that the facility will be located in an area that lacks community-based ambulatory surgical facilities and in a region that has proportionately fewer ASC's than the rest of the State. The applicant also states that the project responds to physician preferences, which drive volume, and that the benefits of surgery in an ambulatory setting, including on-time procedure schedules, will attract both physicians and patients. The applicant also believes that the closure of operating rooms at the Lake Shore Health Center is a potential source of cases, but this is not quantified. The applicant further expects that a projected increase in the over-55 population in Erie County will contribute to demand for the ASC's services.

Staff Recruitment and Retention: The applicant proposes to recruit staff through traditional means, such as local newspapers and on-line advertising. Positions will also be open to current Kaleida Health employees wishing to work in the ASC setting. The applicant also expects to recruit staff from among personnel displaced by the forthcoming closure of the Lake Shore health Center. The applicant expects to retain staff through competitive salary and benefit packages and through the operation of a regular-hours Monday through Friday schedule.

Office-Based Cases: The applicant states that none of the procedures for the proposed ASC would be considered office-based procedures.

DOH Comment

The Department acknowledges that CHS's anticipated loss of cases to the proposed ASC may have an adverse impact on CHS facilities and services. However, CHS's prediction assumes that the applicant physicians who currently practice at CHS facilities would transfer all their current cases to the ASC. This seems unlikely, given that in any particular instance the patient or the physician may prefer to undergo or perform a procedure at a CHS facility—because of familiarity with staff and surroundings, distinctive amenities, geographic proximity or other reasons (we note that CHS furnished no patient origin data for any of its current cases projected to be lost to the proposed ASC). We must also consider speculative CHS's assumption that additional losses of CHS cases to the ASC would occur as a result of possible aggressive recruitment of additional area physicians by the ASC once it is established or by the future expansion of ASC ownership to include more physicians. We also note that in these instances CHS would not be precluded from mounting its own efforts to recruit additional physicians from the area or from entering into new participatory arrangements with its current physicians.

Because the Kaleida Health System (Kaleida) is a primary financing source for the proposed ASC, CHS has characterized the proposed ASC as "a Kaleida system driven profit venture." While the Department notes that the proposed Southtowns ASC, LLC is a legal entity entirely separate from Kaleida, it is doubtful that the project would have been developed without Kaleida's support and considerable financial participation through a subsidiary. It is arguable, then, that CHS is correct in characterizing the proposed facility as an effort by Kaleida to expand its surgical market share in the region.

If CHS's characterization of Kaleida's involvement with the proposed ASC is accurate, then CHS's comments on the project can also be seen as the objections of one health care entity to competition from another. Regardless of the merits of competition in the health care system, it is incumbent on any institution to adapt to changing circumstances, including the entry of new providers. The fact that a proposed provider would bring additional competition to a health care market, especially a market as large as Erie County and its contiguous southern counties, is not sufficient to dismiss the proposed entity from consideration for CON approval.

The Department notes the concerns of LERHSNY regarding the potential impact of the proposed ASC on the new Lake Shore arrangement. However, in the absence of more specific, measurable data on the possible effects of the proposed ASC on the cases and revenues of the reorganized Lake Shore operation, the Department has insufficient information on which to evaluate the strength of LERHSNY's objections. We also note that LERHSNY's conversion of a former inpatient site to a comprehensive ambulatory services facility is a model that has met with some success in other areas of the State; and that the facility's reorganized, integrated and more efficiently operated services may make it less dependent on ambulatory surgery revenues than its operators expect.

The Department concludes that the comments of CHS, the Lake Shore Health System and Bertrand Chaffee Hospital do not provide a sufficient basis for reversal or modification of the recommendation for limited life approval of the proposed Southtowns ASC, LLC, based on public need, financial feasibility and operator character and competence.

Public Health and Health Planning Council

Project # 132281-B
Northern EC, LLC d/b/a Northern GI Endoscopy Center

County: **Warren**
Purpose: **Establishment and Construction**
Program: **Ambulatory Surgery Center**
Acknowledged: **November 22, 2013**

Executive Summary

Description

Northern EC, LLC, requests approval for the establishment and construction of Northern GI Endoscopy Center, a single specialty freestanding ambulatory surgery center providing gastroenterological (colonoscopy and endoscopy) procedures. The facility, which will include three procedure rooms, will be located within approximately 5,167 square feet of leased space at 5 Irongate Center, Glens Falls, NY. Approximately 3,575 square feet is currently occupied by an office-based surgical practice owned and operated by the members of Northern EC, LLC. The Center will be a consolidation into an Article 28 facility of the ambulatory surgery procedures that are now being performed in an office-based setting.

The ownership of Northern EC, LLC is as follows:

Dr. Kevin J. Herlihy	19%
Dr. Howard P. Fritz	19%
Dr. Joseph C. Yarze	19%
Dr. Michael P. Chase	19%
Dr. William M. Bauer	19%
Dr. John M. Coombes	5%

DOH Recommendation

Contingent approval with an expiration of the operating certificate five (5) years from the date of its issuance is recommended.

Need Summary

Currently, the proposed project is an office-based endoscopy facility that is being operated by Gastroenterology Associates of Northern New York, P.C. The number of projected procedures is 3,000 in year 1.

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 Glens Falls Hospital

Financial Summary

Project costs of $545,046 will be met as follows: Equity of $55,000, a 36-month movable equipment lease of $239,110, and a bank loan of $245,966 at an interest rate of 4.50% for a 5 year term.

Budget:

Revenues	$2,140,113
Expenses	1,275,637
Net Income	$864,476

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Health Systems Management

<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 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 with a locale acute care hospital, acceptable to the Department. [HSP]
6. Submission of a bank loan, acceptable to the Department. [BFA]
7. Submission of a working capital loan, acceptable to the Department. [BFA]
8. Submission of an executed movable equipment lease, acceptable to the Department. [BFA]
9. Submission of amended and executed Articles of Incorporation, which must state the location of the principal office of the LLC by specific address, which must be the same address as the facility, acceptable to the Department. [CSL]
10. Submission of an 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]

<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]

Council Action Date
April 10, 2014

Need Analysis

Background
Northern EC, LLC is seeking approval to establish and construct an Article 28 diagnostic and treatment center, Northern GI Endoscopy Center, to provide single specialty ambulatory surgery services specializing in gastroenterology (colonoscopy and endoscopy). The proposed location is 5 Irongate Center, Glens Falls, 12801, Warren County.

Analysis
The service area will correspond to that of the current office-based medical practice to be converted to the proposed ASC and includes Washington County, (40%), Warren County, (35%), Saratoga County, (20%), and Hamilton County, (5%).

Warren County has no freestanding single-specialty or multi-specialty ambulatory surgery centers. The county has one hospital, Glens Falls Hospital, which provides multi-specialty ambulatory surgery services. The hospital had a total of 17,342 ambulatory surgery patients in 2012 (SPARCS).

The number of projected procedures is 3,000 in year 1 and 3,300 in year 3. The projected caseload will come from the existing office-based practice currently operated by the applicant physicians. The applicant reports that procedures are not projected to migrate from local hospitals.

The proposed project will serve individuals needing care regardless of their ability to pay or the source of payment.

Conclusion
Approval of the proposed Center would bring under Article 28 regulation a provider of ambulatory surgery to serve the area.

Recommendation
From a need perspective, contingent approval is recommended for a limited life of five (5) years.

Program Analysis

Project Proposal
Northern EC, LLC is seeking approval to establish and construct an Article 28 single-specialty ambulatory surgery center (ASC) specializing in gastroenterological procedures. Upon approval, the ASC will be known as Northern GI Endoscopy Center.

Proposed Operator	Northern EC, LLC
Site Address	Five Irongate Center, Glens Falls
Surgical Specialties	Single Specialty: Endoscopy
Operating Rooms	0
Procedure Rooms	3 (Class A)
Hours of Operation	Monday through Friday from 7:00 am to 3:00 pm (Weekend and/or evening surgery will be available, if needed, to accommodate patient scheduling issues.)
Staffing (1st Year / 3rd Year)	7.1 FTEs / 7.75 FTEs
Medical Director(s)	Kevin J. Herlihy, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Glens Falls Hospital 0.39 miles / 1 minute

On-call service	Patients will be provided the number of their surgeon's answering service to address any needs or concerns during the hours the center is closed.

Character and Competence
The members of the LLC are:

Name	
Kevin J. Herlihy, MD	19%
Howard P. Fritz, MD	19%
Joseph C. Yarze, MD	19%
Michael P. Chase, MD	19%
William M. Bauer, MD	19%
John M. Coombes, MD	5%

The six (6) members of Northern EC, LLC are practicing surgeons/board-certified gastroenterologists with Dr. Herlihy 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.

Integration with Community Resources
Whenever possible, the facility will require patients to have a medical clearance appointment with a primary care physician prior to surgery. For those patients who do not have a primary care physician, the members will encourage the establishment of one. The facility will reach out to ensure physician groups and the community are aware of the facility and its capabilities. Patients will not be excluded based on ability to pay and charity care will be provided. The facility does plans on participating in an Accountable Care Organization or Medical Home. It also intends on using an electronic medical record (EMR) and would consider participating in a Regional Health Information Organization (RHIO) and/or Health Information Exchange.

Recommendation
From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Lease Rental Agreement
The applicant has submitted an executed lease arrangement for the site that they will occupy, which is summarized below:

Date:	November 13, 2013
Premises	5,167 square feet located at Irongate Center, Building #5 Suite 1A, Corner of Elm Street and Pine Street, Glens Falls, NY
Lessor	Irongate Center, Inc.
Lessee	Northern EC, LLC
Term	10 years with (3) 5 year renewal terms
Rental	$126,126.47 annually Years 1-10 ($10,510.54 monthly) the renewal terms are the same as the current terms.
Provisions	The lessee shall be responsible for utilities of the demised premise and the cost of waste removal.

The applicant has indicated via an affidavit that the lease arrangement will be an arms-length lease arrangement. The applicant has submitted letters from licensed real estate brokers attesting to the reasonableness of the rental.

Total Project Cost and Financing

Total project cost, which is for consultant fees and the acquisition of moveable equipment, is estimated at $545,046, further broken down as follows:

Other Fees (Consultant)	$55,000
Moveable Equipment	485,076
CON Fee	2,000
Additional Processing Fee	2,970
Total Project Cost	$545,046

The applicant's financing plan appears as follows:

Equity	$59,970
Bank Loan (4.5% interest rate for a 5 year term)	245,966
Movable equipment lease with Olympus with a 36 month term($6,641.94 per month) and a Fair market value buy out option	239,110

Operating Budget

The applicant has submitted an operating budget, in 2014 dollars, for the first and third years; summarized below:

	Year One	Year Three
Revenues	$2,048,250	$2,140,113
Expenses:		
Operating	$1,023,926	$1,090,505
Capital	194,249	185,132
Total Expenses	$1,218,175	$1,275,637
Net Income	$830,075	$864,476
Utilization: (Procedures)	3,000	3,300
Cost Per Procedure	$406.06	$386.56

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

	Year One	Year Three
Medicaid Managed Care	5%	7%
Medicare Managed Care	14%	19%
Commercial Managed Care	79%	72%
Charity Care	2%	2%

Expense and utilization assumptions are based on the historical experience of the private practices. BFA Attachment C is a summary of the detailed budget.

Capability and Feasibility

The applicant will finance $245,966 at an interest rate of 4.5% for a five year term, have a movable equipment lease of $239,110 for 36 months with a fair market buy out option, with the remainder, $59,970, to be met via equity from the proposed members' personal resources.

Working capital requirements are estimated at $212,606, which appears reasonable based on two months of third year expenses. The applicant will finance $90,000 at an interest rate of 4.25% for a three year term, of which a letter of interest has been provided from Glens Falls National Bank and Trust Company. The remainder, $122,606, will be provided by the proposed members of Northern EC, LLC. BFA Attachment A is the personal net worth statements of the proposed members of Northern EC, LLC, which indicates the availability of sufficient funds to meet the equity contributions for both the establishment and construction and working capital.

BFA Attachment B is the pro-forma balance sheet of Northern EC, LLC as of the first day of operation, which indicates a positive members' equity position of $177,606.

The submitted budget projects a net income of $830,075 and $864,476 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for ambulatory surgery services.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statement of Proposed Members of Northern EC, LLC
BFA Attachment B	Pro-forma Balance Sheet of Northern EC, LLC
BFA Attachment C	Summary of Detailed Budget
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: Glens Falls Hospital -- **No Response**
100 park Street
Glens Falls, NY 12801

Facility: Saratoga Hospital -- **No Response**
211 Church Street
Saratoga Springs, NY 12866

Supplemental Information from Applicant

Need and Source of Cases: The projected cases for the ASC will be drawn entirely from the applicant physicians' private practice. The applicant also expects that the demand for screening colonoscopies and other endoscopic procedures will increase as a result of the demographics of the proposed ASC's service area, the public's growing awareness of the need for screening colonoscopies and the expanded access to such services through the Affordable Care Act and expansion of Medicaid eligibility.

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 salaries 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: All of the projected cases for the proposed ASC are currently performed in the office setting. The applicant physicians anticipate continuing to perform outpatient procedures, at their current volumes, at Glens Falls Hospital and Saratoga Hospital, serving on their medical staffs and taking GI call as required.

DOH Comment

In the absence of comments from area hospitals, the Department finds no basis on which to consider reversal or modification of the recommendation for 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 # 132346-B
Northway SPC, LLC d/b/a The Northway Surgery and Pain Center

County:	**Saratoga**	***Program:***	**Ambulatory Surgery Center**
Purpose:	**Establishment and Construction**	***Acknowledged:***	**December 31, 2013**

Executive Summary

Description

Northway SPC, LLC proposes to develop a single specialty ambulatory surgery center to provide pain management services. The Center will be located at 1759 Route 9, Clifton Park, New York 12065. The ownership of Northway SPC, LLC will be 95% NSPC Holdings, LLC and 5% Heritage Ambulatory Surgery Center, LLC

The members of NSPC Holdings, LLC, which will have 95% membership in Northway SPC, LLC, is as follows:

Edward A Apicella, M.D.	35%
Martin Ferrillo, D.O.	35%
Charles Gordon, M.D.	15%
Quentin Phung, M.D.	15%

The members of Heritage Ambulatory Surgery Center, LLC, which will have 5% membership in Northway SPC, LLC, is as follows:

Robert Tiso, M.D.	37.50%
Joseph Catania, M.D.	5.00%
Eric Tallarico, M.D.	37.50%
Nameer Haider, M.D.	20.00%

Charles Gordon, M.D. and Quentin Phung, M.D. operate New York Pain Management, which provides office based surgery services in two procedure rooms currently in Clifton Park, NY. Heritage Ambulatory Surgery Center Alliance, LLC, will provide consulting services and provide administrative services to the ambulatory surgery center.

DOH Recommendation

Approval with an expiration of the operating certificate five (5) years from the date of its issuance is recommended.

Need Summary

The proposed project is a conversion of an office-based ambulatory surgery practice into an Article 28 diagnostic and treatment center to provide single-specialty ambulatory surgery services specializing in pain management. The number of projected procedures is 8,232 in the first year.

Program Summary

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

A transfer and affiliation agreement is expected to be provided by Saratoga or Ellis Hospital.

Financial Summary

The total project costs for establishment of this facility and moveable equipment is $979,655. The members will provide equity of $99,655 based on their percentage of membership. The residual $880,000 will be provided via bank loan to Northway SPC, LLC for a seven year term at 4.5% interest rate.

Budget:	Revenues:	$7,619,876
	Expenses:	3,564,058
	Gain/ (Loss)	$4,055,818

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

Recommendations

Health Systems Agency
There will be no HSA recommendation for this project.

Office of Health Systems Management
Approval with an expiration of the operating certificate 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 with a local acute care hospital, acceptable to the Department. [HSP]
6. Submission of executed equipment bank 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 affiliation agreement, acceptable to the Department. [BFA]
9. Submission of an executed lease agreement, acceptable to the Department. [BFA, CSL]
10. Submission of revised Articles of Incorporation of Northway SPC, LCC, stating the location of the principal office of the LLC by specific address, acceptable to the Department. [CSL]
11. Submission of the executed Operating Agreement of Northway SPC, LCC, acceptable to the Department. [BFA, CSL]
12. Submission of a revised Schedule 3B(I)(H), confirming the applicant intends to enter into an Administrative Services Agreement, acceptable to the Department. [CSL]
13. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP, CSL]
14. Submission of an amended an executed Operating Agreement of NSPC Holdings, LLC such that in Section 1.27 the term "person" shall mean only natural persons, acceptable to the Department. [CSL]

15. Submission of the list of members of Heritage Ambulatory Surgery Center Alliance, LLC that indicates indirect ownership percentage. [CSL]
16. Submission of the list of all managers of Heritage Ambulatory Surgery Center Alliance, LLC. [CSL]
17. Submission of the executed and dated Operating Agreement of Heritage Ambulatory Surgery Center Alliance, LLC, 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 that the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]

Council Action Date
April 10, 2014

Need Analysis

Project Description

Northway SPC, LLC d/b/a The Northway Surgery and Pain Center is requesting approval to establish and construct an Article 28 diagnostic and treatment center to provide single-specialty ambulatory surgery services specializing in pain management. The proposed location is 1759 Route 9, Clifton Park, 12065, in Saratoga County.

Analysis

The service area includes Albany, Rensselaer, Saratoga, Schenectady, Warren, and Washington Counties; it will also serve the neighboring communities in Fulton and Montgomery Counties.

In 2012, four of the sponsoring physicians performed a total of 9,700 procedures.

The number of projected procedures is 8,232 in year 1 and 9,961 in year 3.

Saratoga County currently has a freestanding endoscopy center that served 1,707 patients in 2013; a freestanding single specialty ambulatory surgery center specializing in ophthalmology services opened in the county in July 2013.

The applicant is committed to serving all persons without regard to their ability to pay or the source of payment.

Conclusion

The proposed project will bring procedures that are currently being performed in private physicians' offices under a regulated Article 28 entity.

Recommendation

From a need perspective, contingent approval is recommended with the expiration of the operating certificate five years from the date of issuance.

Program Analysis

Project Proposal

Northway SPC, LLC (NSPC) is seeking approval to establish and construct an Article 28 single-specialty ambulatory surgery center in Clifton Park. Upon approval, the center will be known as The Northway Surgery and Pain Center.

Proposed Operator	Northway SPC, LLC
Doing Business As	The Northway Surgery and Pain Center
Site Address	1759 Route 9, Clifton Park (Saratoga County)
Surgical Specialties	Single Specialty: Pain Management
Operating Rooms	4 (3 Class B and 1 Class C)
Procedure Rooms	0
Hours of Operation	Monday through Friday from 7:00 am to 3:00 pm
Staffing (1st Year / 3rd Year)	22.20 FTEs / 23.20 FTEs
Medical Director(s)	Edward Apicella, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by either Saratoga or Ellis Hospital 15 mi./19 min. & 11 mi./20 min., respectively
On-call service	An after-hours contact number will all be provided to patients as part of discharge instructions and all calls will be responded to by the appropriate on-call physician.

Character and Competence

The members of the LLC are:

Name	Percentage
NSPC Holdings, LLC	**95%**
Edward Apicella, MD (35%)	
Martin Ferrillo, DO (35%)	
Charles F. Gordon III, MD (15%)	
Quentin Phung, MD (15%)	
Heritage Ambulatory Surgery Center Alliance, LLC	**5%**
Robert L. Tiso, MD (37.50%)	
Eric A. Tallarico, MD (37.50%)	
Joseph A. Catania, MD (5%)	
Nameer Haider, MD (20%)	

The majority member Northway SPC, LLC (95%) is comprised of four (4) physicians from two practices. Heritage Ambulatory Surgery Center Alliance, LLC, a 5% member of the proposed Center, is comprised of four (4) physicians who will provide administration and consulting services to the center.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Dr. Tiso disclosed two (2) closed malpractice cases (one closed by settlement) and one (1) open malpractice case. Dr. Catania disclosed two (2) closed malpractice cases (both by settlement) and four (4) open malpractice cases.

Integration with Community Resources

The proposed ASC will specialize in Pain Management services and anticipates that the majority of patients will come from primary care physicians' referrals. For those patients who have a need for primary care follow-up and do not have a primary care physician, the center will provide a list of physicians located near the facility who are accepting new patients. The ASC staff will ensure that the list is maintained up-to-date by contacting the primary care offices several times per year. The center aims to provide quality pain management services to all who are referred to the physicians credentialed by the ASC without regard to their ability to pay. In addition to participating in both the Medicare and Medicaid programs, the center will welcome referrals from hospital emergency departments and hospital-based clinics which provide services for the indigent and underserved.

The applicant intends on utilizing an Electronic Medical Record (EMR) but has not yet identified the specific system it will use. The ASC's goal is to integrate into a Regional Health Information Organization (RHIO) and it is receptive to becoming a part of an Accountable Care Organization (ACO) or Medical Home based on regulatory and market demands.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total project cost for moveable equipment is estimated at $979,655 broken down as follows:

Moveable Equipment	$972,308
Applicant Fee	2,000
Additional Processing Fee	5,348
Total Project Costs	$979,655

Lease Rental Agreement

The applicant has submitted an executed lease rental agreement for the site to be occupied. The terms of which are summarized below:

Premises:	9,500 square feet located at 1759 Route 9 Associates, Saratoga County
Lessor:	The Northway SPC, LLC
Lessee:	1759 Route 9 Associates, LLC
Rental:	$396,060 annually ($42 per sq. ft.) Also, the annual increase in rent will be 2% over the ten year term.
Term:	10 years with 2 (5) year renewal options.
Provisions:	Tenant shall pay real estate taxes, insurance for liability costs, maintenance for its premises and any improvements that the tenant makes shall be paid for out of the tenant's obligations.

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.

Operating Agreement

The applicant has provided a draft operating agreement, the terms of which are summarized below.

Effective Date:	Upon execution of agreement by both parties, Northway SPC, LLC and Heritage Ambulatory Surgery Center, LLC.
Term:	10 years from date of execution.
Conditions:	Both parties have agreed to the stated terms: Northway SPC, LLC in cooperation with Heritage Ambulatory Surgery Center Alliance, LLC to 5% membership. Management shall be maintained by any beneficial owner of 10% or more membership. It is agreed that Heritage Ambulatory Surgery Center Alliance, LLC would be limited in scope in the organization to consulting and administrative services only.
Mandatory Redemption:	At any time on or after the 10th anniversary date, Northway SPC, LLC may exercise its option to buy back its membership from Heritage Ambulatory Surgery Center Alliance, LLC.
Dissolution of the Company:	The dissolution and termination of the company may be dissolved by a vote of the majority of Interest of Members at any time.

Administrative Service Agreement

The applicant has provided a draft administrative service agreement, the terms of which are summarized below.

Provider:	Heritage Ambulatory Surgery Center Alliance, LLC
Facility Operator:	Northway SPC, LLC
Services provided:	Billing and collections; data and coding services; claims collections; tracking accounts receivable; training of center staff and monthly and annual reports for claims; collections and receivables; manage billing software and vendor relationships; attend meetings to monitor compliance with Medicare and provide payroll, purchasing, accounts payable data entry services.
Compensation:	$270,000 annually which will be paid pro-rata monthly.
Term:	10 years

The Northway SPC, LLC will enter into a consulting and development services agreement with Heritage Ambulatory Surgery Center Alliance, LLC. It should be noted that Northway SPC, LLC will operate and maintain governance of the facility and will be responsible for all of its day-to-day operations and strategic decisions through the operating agreement and scope of the Administrative Service Agreement.

Operating Budget

The applicant has submitted an operating budget, in 2014 dollars, for the first of operation after the change in ownership, summarized below:

Revenues:		$6,297,418	$7,619,876
Expenses:			
	Operating	$ 2,525,970	$ 2,976,865
	Capital	584,953	587,193
	Total Expenses	$3,110,923	$3,564,058
	Net Income:	$3,186,495	$4,055,818
	Utilization: Visits	8,232	9,961
	Cost Per Visit:	377.90	357.80

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

	Year One & Three
Commercial Managed Care	53.0%
Medicare Fee-For-Service	24.0%
Medicaid Managed Care	6.0%
Charity Care	3.0%
Workers Compensation	13.95%
Private Pay	.05%

Expense and utilization assumptions are based on the historical experience of similar facilities that these Members have operating in the Saratoga County Region. Also, the Center is committed to reaching out to the un-insured or underinsured. The Center will work with Schenectady Family Health Center and other providers who care for this population in the surrounding area. This will in all probability increase Medicaid participation.

Capability and Feasibility

The total project costs for establishment of this facility and moveable equipment is $979,655. The members will provide equity of $99,655 based on their percentage of membership. The residual $880,000 will be provided via bank loan to Northway SPC, LLC for a seven year term at 4.5% interest rate. A letter of interest has been submitted.

BFA Attachment A is the personal net worth statements for the proposed members. Edward Apicella, M.D. and Martin Ferrillo, D.O. will each contribute $33,136 from their personal assets. Charles Gordon, M.D. and Quentin Phung, M.D. will each contribute $14,201 from their personal assets. Heritage Ambulatory Surgery Center, LLC is a new establishment and has no financial statements to date. The members of Heritage Ambulatory Surgery Center, LLC have submitted their net worth statements as BFA Attachment B, indicating they have sufficient equity resources to provide for their 5% ownership totaling $4,983. This will be distributed equally among Robert Tiso, M.D., Joseph Catania, M.D., Eric Tallarico, M.D., and Nameer Haider, M.D.

Working capital requirements, estimated at $594,010, appear reasonable based on two months of first year expenses. The proposed working capital requirement will be met via personal assets from the members of $325,000 and a bank loan of $269,010 at a rate of 4.5% for a term of seven years. A letter of interest has been submitted for the loan. Edward Apicella, M.D. and Martin Ferrillo, D.O. will each contribute $108,063 from their personal assets. Charles Gordon, M.D. and Quentin Phung, M.D. will each contribute $46,313 from their personal assets. As indicated on BFA Attachment A, the members have the ability to fund the working capital position. As shown on BFA Attachment B, Heritage Ambulatory Surgery Center Alliance, LLC is a new establishment with no financial statements. The members will use their personal equity to contribute a total of $16,250 allocated to each member $4,062.50 each. BFA Attachment B indicates sufficient resources to fund working capital. BFA Attachment C is the pro-forma balance sheet of Northway SPC, LLC, which indicates a positive shareholders' equity position of $417,308 as of the first day of operation.

The submitted budget projects a net income of $3,186,495 and $4,055,818 during the first 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.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statement- Northway SPC, LLC
BFA Attachment B	Personal Net Worth Statement- Heritage Ambulatory Surgery Center Alliance, LLC
BFA Attachment C	Pro-forma Balance Sheet- Northway SPC, LLC

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: Saratoga Hospital -- **No Response**
211 Church Street
Saratoga Springs, NY 12866

Facility: Ellis Hospital -- **No Response**
1101 Nott Street
Schenectady, NY 12308

Facility: St. Peter's Hospital
315 So. Manning Blvd.
Albany, NY 12208

Although the hospital states that none of the applicant physicians for the proposed ASC practice at St. Peter's, the hospital projects a loss of $988,000 per year based on referrals that these physicians currently make to St. Peter's for surgery for spinal cord stimulator placements and kyphoplasty. With the establishment of the ASC, the hospital would lose these referrals and the associated surgeries (and an indeterminate number of percutaneous discectomies). However, the Department found that none of the CPT codes for the spinal cord stimulatory placement, and kyphoplasty procedures referred to in the hospital's letter (by CPT code) match any of the descriptions or CPT codes for any of the procedures the applicants list in their CON application as those to be performed in the proposed ASC; nor does the applicant propose to perform percutaneous discectomies.

St. Peter's had a current ratio of 2.1 in 2011 and 1.6 in 2012. In 2011, the hospital's operating margin was 1.7%, which rose to 4.1% in 2012. In 2011, the hospital experienced $20.4 million in bad debt and $10.9 million in charity care. In 2012, bad debt was $19.2 million, and charity care $10.3 million.

Facility: Albany Medical Center Hospital -- **No Response**
43 New Scotland Avenue
Albany, NY 12208

Supplemental Information from Applicant

Need and Source of Cases: Cases will be drawn from those currently being performed in the office setting of the applicant physicians. The applicant also states that the ASC will meet an unmet need in the community by having the ability to perform more complex procedures than are currently available at the applicant physicians' practice site. Based on National Center for Health Statistics estimates of chronic pain prevalence in the adult population, the applicant calculates that there are an estimated 182,000 persons in the six-county service area of the proposed ASC who could benefit from pain management intervention.

Staff Recruitment and Retention: The applicant states that employees will be recruited from accredited schools and training programs, as well as through advertisements in local newspapers and professional publications. Employees will also move from the applicant physicians' practices to work in the ASC as permanent employees of the ASC. To retain good employees, the ASC will offer competitive wages and above-average benefits, as well as incentives for good performance.

Office-Based Cases: The applicant projects that approximately 90 percent of the procedures in the first year of operation would transfer from the practice's office-based surgery setting. By the third year of operation, it is projected that an additional 1,700 procedures not currently performed in an office-based setting would be performed in the proposed ASC.

DOH Comment

The information from the single hospital commenting on the application is based on the potential for referrals lost to the ASC for certain procedures currently performed in the hospital (St. Peter's). Since none of the applicant physicians currently perform surgeries at the hospital, any projected loss of revenues by the hospital to the proposed ASC must be considered speculative. This is especially true in view of the fact that none of the potential lost referrals described in the hospital's comments would involve procedures proposed to be performed in the new ASC. Therefore, the Department sees little prospect of financial loss to the hospital with the approval of this application. In view of this conclusion and in the absence of comments from the other hospitals invited to opine on the application, the Department finds no basis for reversal or modification of the recommendation for 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 # 132132-B

NewRad51, Inc.

County: **New York**
Purpose: **Establishment and Construction**
Program: **Diagnostic and Treatment Center**
Acknowledged: **September 10, 2013**

Executive Summary

Description

NewRad51, Inc. (the Center), a proposed New York State not-for-profit corporation, is seeking to establish an Article 28 diagnostic and treatment center specializing in radiology through conversion of an existing practice of Columbia University College of Physicians & Surgeons. The practice is located at 51 West 51st Street, 3rd floor, New York, New York 10019. This project is a collaboration between New York Presbyterian Hospital and the Trustees of Columbia University.

This proposal will advance better health outcomes and lower costs with higher volumes and provision of high quality services to multiple facilities. The Center will provide a full complement of imaging services, including:

- Magnetic Resonance Imaging (MRI)
- Computed Tomography (CT)
- Positron emission tomography (PET)/CT
- Ultrasound
- Mammography
- Diagnostic Radiology (X-ray)

The proposed ownership of NewRad51, Inc. after approval of this application is as follows:

NYP Programs, Inc.	50%
Columbia NewRad, Inc.	50%

New York Presbyterian Programs, Inc.'s passive parent is New York Presbyterian Foundation, Inc. Columbia NewRad Inc.'s passive parent is the Trustees of Columbia University in the City of New York.

DOH Recommendation

Contingent Approval

Need Summary

NewRad51, Inc. proposes to convert an existing faculty practice of Columbia University College of Physicians and Surgeons. Proposed services are CT scanner, MRI, PET scanner, radiology-diagnostic, and radiology-therapeutic.

The number of projected procedures is 69,643 in year 1 and 83,674 in year 3.

Program Summary

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

Financial Summary

There is no project cost associated with this application.

Budget:	Revenues:	$30,206,731
	Expenses:	$25,836,065
	Gain/ (Loss)	$ 4,370,666

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Health Systems Management

Approval contingent upon:

1. Submission of an executed transfer and affiliation agreement with a local acute care hospital, acceptable to the Department. [HSP]
2. Submission of a Medical Director Contract, acceptable to the Department. [HSP]
3. Submission of a Site Administrator job description, acceptable to the Department. [HSP]
4. Submission of an executed equipment lease agreement, acceptable to the Department. [BFA]
5. Submission of an executed subvention loan agreement with The Trustees of Columbia University in the City of New York, acceptable to the Department. [BFA]
6. Submission of an executed subvention loan agreement with New York Presbyterian Fund Inc., acceptable to the Department. [BFA]
7. Submission of an executed loan agreement with New York Presbyterian Fund Inc., acceptable to the Department. [BFA]
8. Submission of an executed loan agreement with The Trustees of Columbia University in the City of New York, acceptable to the Department. [BFA]
9. Submission of an executed sub-lease agreement, acceptable to the Department. [BFA]
10. Submission of an executed lease, acceptable to the Department. The lease agreement must contain provisions required by 10 NYCRR 600.2(d). [CSL]
11. Submission of a signed statement indicating that the proposed financial/referral structure has been assessed by legal counsel, in light of anti-kickback and self-referral laws, and it is concluded that proceeding with the proposal is appropriate, acceptable to the Department. [CSL]
12. Submission of revised Schedules 3B and 14C indicating that the Columbia NewRad entity will be a not-for-profit corporation rather than an LLC. [CSL]
13. Submission of executed Certificate of Incorporation of NewRad51, Inc., acceptable to the Department. [CSL]
14. Submission of executed bylaws of NewRad51, Inc., acceptable to the Department. [CSL]
15. Submission of an executed Certificate of Incorporation for the Columbia NewRad entity, acceptable to the Department. [CSL]
16. Submission of executed Bylaws for the Columbia NewRad entity, acceptable to the Department.[CSL]
17. Submission of an Administrative Services Agreement, acceptable to the Department. [CSL]
18. 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 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. All devices producing ionizing radiation must be licensed by the New York State Department of Health -- Bureau of Environmental Radiation Protection. [HSP]
7. 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]

Council Action Date

April 10, 2014

Need Analysis

Background

NewRad51, Inc., a proposed New York State not-for-profit corporation, is seeking approval to establish and construct an Article 28 diagnostic and treatment center specializing in radiology and imaging services at 51 West 51st Street-3rd Floor, New York, 10019, in New York County.

Analysis

The service area is Manhattan Community District 5 in Midtown Manhattan, which includes the Flatiron, Gramercy Park, Herald Square, Midtown, Midtown South, Murray Hill, Times Square, and Union Square neighborhoods. NewRad51 will also serve patients from Manhattan Community District 4, including Chelsea, Clinton, and Hudson Yards, and Manhattan Community District 6, including Beekman Place, Gramercy Park, Murray Hill, Peter Cooper Village, Stuyvesant Town, Sutton Place, Tudor City, and Turtle Bay.

The current utilization of the existing faculty practice of Columbia University College of Physicians and Surgeons is as follows:

Services/ Procedures	FY 2012-13	Est. FY 2013-14 (Based on July to September 2013 Volume)
MRI	4,787	6,212
CT	3,087	3,268
PET/CT	84	216
Mammogram	20,183	18,660
Ultrasound	8,449	7,556
X-Ray	16,065	15,876
Surgical	5,503	8,188
Misc.	1,172	724
Total	59,330	60,700

The applicant anticipates drawing a significant number of patients from the individuals who commute to work in Midtown Manhattan in addition to those who reside in the area of the proposed facility and the surrounding neighborhoods. The number of projected procedures is 69,643 in year 1 and 83,674 in year 3.

The applicant is committed to serving all individuals in need of care without regard to their ability to pay or the source of payment.

The proposed project will provide access to imaging services for the large population that commutes to work in Midtown Manhattan and also for the residents of the Midtown Manhattan area and the surrounding communities.

Conclusion

The proposed collaboration will improve access to care because of the specialty medical and tertiary care services available at NYPH and Columbia University Medical Center.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

NewRad51, Inc., a not-for-profit corporation, seeks to establish a diagnostic and treatment center specializing in radiology and imaging services, through conversion of an existing faculty practice of Columbia University College of Physicians and Surgeons known as ColumbiaDoctors.

Proposed Operator	NewRad51, Inc.
Site Address	51 West 51st Street 3rd Floor, New York
Services	CT Scanner Magnetic Resonance Imaging (MRI) PET Scanner Radiology - Diagnostic Radiology - Therapeutic
Hours of Operation	Monday through Friday from 7:00 am to 8:00 pm Saturday and Sunday from 9:00 am to 5:00 pm
Staffing (1st Year / 3rd Year)	62.95 FTEs / 78.99 FTEs
Medical Director(s)	Marc Brown, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by New York Presbyterian Hospital 1.9 miles/10 minutes away
On-call service	Patients will be provided with an after-hours number and calls will be directed to the physician on call.

Character and Competence

The proposed Board of Directors for NewRad51, Inc. is as follows:

Wayne Osten
Gary Zuar
Andria Castellanos
Mark McDougle
Joanne M. J. Quan
Louis Bigliani, MD

The expected administrators are Larry Schwartz, MD (President) and Marc Brown, MD (Medical Director).

The ownership of NewRad51, Inc. is as follows:

Name	
NYP Programs, Inc.	**50%**
Wayne Osten	
Gary Zuar	
Andria Castellanos	
Columbia NewRad, Inc.	**50%**
Mark McDougle	
Joanne M. J. Quan	
Lee Goldman, MD	
Anne Sullivan	

The passive sole member of NYP Programs, Inc. will be New York-Presbyterian Foundation, Inc., a New York not-for-profit corporation. The sole member of Columbia NewRad, Inc. will be The Trustees of Columbia University in the City of New York, a New York corporation formed by special act of the New York State legislature.

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.

Mssers. Osten and Zuar disclosed affiliation with Brooklyn Hospital Center which filed for bankruptcy on September 30, 2005. In 2007, the hospital emerged from bankruptcy after putting forth an acceptable plan of reorganization.

Mr. Osten disclosed affiliation with NY Westchester Square Hospital which filed for (Chapter 11) bankruptcy and remained in bankruptcy until it ceased operations in 2013.

Mr. Zuar disclosed affiliation with United Hospital Center which filed for bankruptcy in December 2004 and subsequently closed. All assets were liquidated thereafter.

Dr. Brown disclosed that, in 2011, he was named in a malpractice case which is still pending.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action. Based on this information, staff concluded that the applicant has provided a substantially consistent high level of care as defined in New York State Public Health Law 2810(a)(3) and 10NYCRR 600.2 during the past 10 years.

On April 2, 2007, a Stipulation and Order was issued to New York Methodist Hospital and the hospital was fined $6,000 based on an investigation of care rendered to a newborn operated on for inguinal hernia. Two days later, when serious symptoms developed, there was a delay in their recognition and further delays because the pediatric physician was not a full-time employee. The delays contributed to the newborn's death.

Recommendation
From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Master Lease Rental Agreement
The applicant has submitted an executed lease rental agreement for the site to be occupied, the terms of which are summarized below:

Premises:	118,000 square feet located at 51 West 51st , New York, New York 10019
Lessor:	HWA 1290 III LLC, 1290 IV LLC, HWA 1290 V LLC
Lessee:	The Trustees of Columbia University in the City of New York
Sublessor	The Trustees of Columbia University in the City of New York
Sublessee	NewRad51, Inc.
Rental:	Ground Floor Rent: (1000 Sq. Ft.)
	Year 1 - $365,900 or $30,491.67 per month
	Year 2 - $402,490 or $33,540.83 per month
	Year 3 - $439,080 or $36,590.00 per month
	Year 4 - $475,670 or $42,688.33 per month
	Year 5 - $512,260 or $42,688.33 per month
	Second Floor Rent: (8,000 Sq. Ft.)
	Year 1 - $461,358 or $38,446.50 per month
	Year 2- $501,828 or $41,819.00 per month
	Year 3 - $542,298 or $45,191.50 per month

	Year 4 - $607,050 or $50,587.50 per month
	Year 5 - $687,990 or $57,332.50 per month
	Third Floor Rent: (109,000 Sq. Ft.)
	Year 1 - $6,254,268 or $521,189 per month
	Year 2 - $6,802,888 or $566 907.33 per month
	Year 3 - $7,351,508 or $612,775 per month
	Year 4 - $8,229,300 or $685,775 per month
	Year 5 - $9,326,540 or $777,211.67 per month
Term:	24 years ending January 31, 2037
Provisions:	The term of the rent will be annually adjusted according to the Consumer Price Index for NY, NJ, CT, PA. (Tenant will pay for utilities, taxes and maintenance of the demised premises.

The applicant has provided two letters indicating the rent reasonableness. The applicant has indicated that the lease agreement will be a non- arms- length lease agreement. Also, the applicant provided the department with a certified market analysis indicating rent reasonableness provided by Newark Grubb Knight Frank real estate professionals.

The sublease agreement will be submitted to the Department at a later date as it is still being drafted. The applicant did share that the expected sublease will be approximately $2,300,000 per year for approximately 15,000 square feet on the 3rd floor of the building.

Equipment Lease

The applicant has provided a draft memorandum of understanding for the medical equipment lease between NewRad51, Inc. and The Trustees of Columbia University in the City of New York.

Equipment:	Medical equipment, office furniture and computer equipment
Lessor:	The Trustees of Columbia University in the City of New York
Lessee:	NewRad 51, Inc.
Rate:	$6,699,463 annually
Term:	The term has not been established to date but will listed as an acceptable contingency.

Some of the equipment is owned currently by Columbia University in the City of New York, and some is currently leased. Lease costs will be passed on to NewRad 51, Inc.

Subvention Agreements

The applicant has provided a draft subvention agreement, which is summarized below:

Subscriber:	New York Presbyterian Fund, Inc.
Corporation:	NewRad 51, Inc.
Loan Amount:	$5,557,358
Term:	The redemption agreement acknowledges that the subscriber shall not be entitled to fixed or periodic payments on the Subvention Contribution or any Subvention Loan.
Provisions:	$2,288,206 shall be used for leasehold improvements.

The subvention agreement has no stated interest rate or payment term with the stated draft subvention loan.

The applicant has provided a second draft subvention agreement, which is summarized below:

Subscriber:	The Trustees of Columbia University in the City of New York, Inc.
Corporation:	NewRad 51, Inc.
Loan Amount:	$5,557,357
Term:	The redemption agreement acknowledges that the subscriber shall not be entitled to

	fixed or periodic payments on the Subvention Contribution or any Subvention Loan
Provisions:	This amount stated above is for the working capital portion and to be used as a cash infusion for the newly formed corporation.

The subvention agreement has no stated interest rate or payment term with the stated draft subvention loan. It should be noted that the total cost of leasehold improvements is estimated at $11,540,411, which is integrated into the lease but will be amortized by the Center.

Loan Agreements

The applicant has provided a draft loan agreement, which is summarized below:

Lender:	New York Presbyterian Fund, Inc.
Borrower:	NewRad 51, Inc.
Loan Amount:	$3,482,000
Term:	20 years
Rate:	4.45% per annum
Provisions:	This amount stated above is for the working capital portion to be used for leasehold improvements.

Operating Budget

The applicant has submitted an operating budget, in 2014 dollars, for the first and third year of operation as summarized below:

	Year One	Year Three
Revenues:	$21,421,691	$30,206,731
Expenses:		
Operating	$16,274,640	$20,266,671
Capital	5,490,711	5,569,393
Total Expenses	$ 21,765,351	$ 25,836,064
Net Income:	($343,660)	$ 4,370,666
Utilization: Visits	69,641	83,674
Cost Per Visit:	$ 312.54	$ 308.77

Utilization by payor source for the first and third year of operations is as follows:

	Year One and Three
Commercial Fee-for-Service	1.3%
Commercial Managed Care	71.4%
Medicare Fee-for-Service	16.8%
Medicaid Fee-for-Service	3.0%
Private Pay	3.4%
Other	4.1%

Expense and utilization assumptions are based on the historical experience of New York Presbyterian Hospital and Columbia University.

Capability and Feasibility

There is no project costs associated with this application.

Working capital requirements, estimated at $4,306,011, appear reasonable based on two months' of third year expenses. The proposed working capital requirement will be met through a subvention agreement, whereby New York Presbyterian fund, Inc. will provide $3,269,152 and Columbia University in the City of New York will provide $1,036,859.

BFA Attachment A is the 2012 and 2013 certified financial statement of New York Presbyterian Fund, Inc., indicating sufficient equity to provide sufficient cash for NewRad51, Inc. As shown on BFA Attachment A, New York Presbyterian Fund, Inc. maintained an average positive working capital position and an average positive net asset position during the period shown. Also, the facility achieved an average annual excess operating revenues over expenses of $368,741,000 during the period shown.

BFA Attachment B is the 2012 and 2013 financial statements for The Trustees of Columbia University in the City of New York, indicating sufficient equity to provide sufficient cash equity for NewRad51, Inc. As shown on BFA Attachment B, The Trustees of Columbia University in the City of New York maintained an average positive working capital position and an average positive net asset position during the period shown. Also, the facility achieved an average annual excess operating revenues over expenses of $282,941,000 during the period shown.

BFA Attachment C is the pro-forma balance sheet of NewRad 51, Inc., which indicates a neutral net asset position of $0 as of the first day of operation.

The submitted budget projects an excess of revenues over expenses of ($343,660) and $4,370,666 during the first and third year of operations, respectively. Revenues are based on current reimbursement methodologies for radiology services. The budget appears reasonable.

BFA Attachment D is the organizational chart indicating the organization structure of the program. The Medical Director Agreement for NewRad 51, Inc. will be with The Trustees of Columbia University in the City of New York, and the Site Administrator will be directly engaged by NewRad 51, Inc.

Subject to the noted contingency, 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	Financial Summary of NYP Fund, Inc.
BFA Attachment B	Financial Summary of The Trustees of Columbia University in New York
BFA Attachment C	Pro-forma Balance Sheet - NewRad 51, Inc.
BFA Attachment D	Organization Chart of NewRad 51, Inc. structure.
BHFP Attachment	Map

Public Health and Health Planning Council

Project # 132252 B

Cornerstone Urgent Care Center

County: **Monroe County**
Purpose: **Establishment and Construction**
Program: **Diagnostic and Treatment Center**
Acknowledged: **November 4, 2013**

Executive Summary

Description

Cornerstone Southwest, LLC, a limited liability company, requests approval to establish an Article 28 diagnostic and treatment center. The center will be located at 3171 Chili Ave., Chili, New York. The proposed Center will provide urgent care and walk in services including laboratory services to residents of the southwest quadrant of Monroe County. In addition, the Center will integrate electronic medical records to promote continuity of care; provide digital radiology services on site, and pediatric services and lifesaving equipment. The sole member and operator of Cornerstone will be Godwin Ogbonna, Ph.D, FACB. The Center will hire a physician to serve as the Medical Director and a qualified team to staff the urgent care center.

Strong Memorial Hospital, the closest hospital to the facility, supports this application and will provide back-up hospital services as indicated by a submitted letter of support.

DOH Recommendation

Contingent Approval

Need Summary

Cornerstone Southwest, LLC (CSW) projects 8,943 visits in Year 1 and 15,115 in Year 3. CSW will provide urgent care and walk-in services and will have an after-hours on-call service available to patients 24 hours a day, 365 days a year.

Program Summary

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

Financial Summary

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at $338,307 which will be financed via cash equity.

Incremental Budget:

Revenues:	$1,765,137
Expenses:	$1,570,793
Gain/ (Loss)	$ 194,344

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

Recommendations

Health Systems Agency

The Finger Lakes HSA recommends approval of this project.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a statement and time-line by the applicant acceptable to the Department that the applicant will seek accreditation from the Urgent Care Association of America. [RNR]
3. Submission of the time-line by the applicant acceptable to the Department that the applicant will develop and implement an electronic medical records system; it will identify steps developed to be connected to the State Health Information Network NY (SHIN-NY), if possible. [RNR]
4. Submission of an executed transfer and affiliation agreement with a local acute care hospital, acceptable to the Department. [HSP]
5. Submission of an executed lease agreement, acceptable to the Department. [BFA, CSL]
6. Submission of amended and executed Articles of Organization, that must provide that the powers and purposes of the LLC are limited to the ownership and operation of the facility, specified by name and address, acceptable to the Department. [CSL]
7. Submission of an executed Operating Agreement, acceptable to the Department. Applicant should refer to Schedule 14B, Part II, items A through C. [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. All devices producing ionizing radiation must be licensed by the New York State Department of Health -- Bureau of Environmental Radiation Protection. [HSP]
7. Clinical Laboratory Services require licensure by the New York State Department of Health - Wadsworth Center. [HSP]

Council Action Date

April 10, 2014

Need Analysis

Background

Cornerstone Southwest, LLC (CSW) is seeking approval to establish and construct an Article 28 diagnostic and treatment center at 3171 Chili Avenue, Chili, 14624, in Monroe County. The proposed services are pediatric outpatient, primary medical care, radiology-diagnostic, and clinical laboratory services. CSW will provide urgent care and walk-in services.

Analysis

The primary service area zip codes are 14428, 14514, 14546, and 14624 in the Southwest quadrant of Monroe County. Cornerstone will also serve residents of the northeast corner of Genesee County, including the towns of Byron and Le Roy, and the village of Bergen and the Town of Caledonia in Livingston County.

CSW will provide urgent care and walk-in services. It is not intended that these services will replace primary care, and ongoing treatment will not be provided. Services will be provided for patients with acute illnesses that are not life-threatening or permanently disabling and which do not require hospital-level care. Once the condition has been treated, patients will be referred back to their primary care provider for ongoing care. The proposed project will use an electronic medical records system.

Monroe County has a total of 12 freestanding D&TCs that provide the same services as those proposed in the application. None is in zip code 14624, the site of the proposed project.

The number of projected visits is 8,943 in year 1 and 15,115 in year 3.

The applicant commits to serving all persons in need of care regardless of their source of payment.

Conclusion

CSW will improve access to urgent care and walk-in services for the communities of Monroe County.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Program Description

Cornerstone Southwest, LLC, requests approval to establish and construct a diagnostic and treatment center that will provide urgent care and walk-in services to the residents of the southwest quadrant of Monroe County. Upon approval, the applicant will submit a Restated Articles of Organization to the Department of State for a name change to "Cornerstone Urgent Care Center, LLC."

Proposed Operator	Cornerstone Southwest, LLC
Site Address	3171 Chili Avenue, Chili
Services	Clinical Laboratory Pediatrics Primary Medical Care Radiology - Diagnostic
Hours of Operation	Monday through Friday from 9:00 am to 9:00 pm Saturday and Sunday from 9:00 am to 6:00 pm
Staffing (1st Year / 3rd Year)	8.32 FTEs / 14.17 FTEs
Medical Director(s)	Jack Davidoff, MD
Emergency, In-Patient and	Expected to be provided by

Backup Support Services Agreement and Distance	Strong Memorial Hospital 9.0 miles/17 minutes away
On-call service	After hours on-call service available to patients 24 hours a day, 365 days a year.

Character and Competence

The sole member of Cornerstone Southwest, LLC is:

Name
Godwin Ogbonna, PhD

Dr. Ogbonna holds a PhD in Clinical Chemistry, and he has completed a fellowship program in Laboratory Medicine from Mayo Graduate School of Medicine, Mayo Clinic, Rochester, Minnesota and is a fellow of the National Academy of Clinical Biochemistry. Currently, Dr. Ogbonna is a principal scientist at Johnson & Johnson in Rochester, NY. Over the past 20 years he has been involved in the development of various medical diagnostic devices for use in clinical laboratories (from concept phase to end-user) in the areas of diabetes, metabolic disease, cardiovascular disease and prostate cancer, among others. As a principal scientist, Dr. Ogbonna has been responsible for planning, supervising and managing the team's activities, identifying and hiring qualified staff, setting goals, assembling teams and managing team interactions until goals are achieved. Dr. Ogbonna expressed an interest in healthcare and healthcare delivery and, upon identifying a need for an urgent care center in his region, consulted with numerous parties to formulate a course of action to establish an urgent care center to serve the population in southwest Monroe County.

Disclosure information was similarly submitted and reviewed for the Medical Director. Dr. Davidoff is a practicing physician who has been involved in healthcare for over 35 years, the past 26 years as a physician. He is Board-Certified in Emergency Medicine, Family Medicine and Disaster Medicine and has worked in urgent care, emergency departments, office and hospital settings.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Lease Agreement 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:	3,600 square feet located at 3171 Chili Avenue, Chili, New York.
Lessor:	Buckingham Properties, LLC
Lessee:	Cornerstone Southwest, LLC
Rental:	$52,200 annually ($14.50 per sq. ft.)
Term:	10 years
Provisions:	Utilities are not included, water, security or maintenance.

The applicant has provided two letters from licensed real estate agents indicating rent reasonableness. The applicant has indicated that the lease agreement will be a non-arm's length lease agreement.

Total Project Cost and Financing

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at $338,307 further broken down as follows:

Renovation & Demolition	$111,240
Design Contingency	11,124
Construction Contingency	11,124
Architect/Engineering Fees	8,899
Other Fees	48,410
Moveable Equipment	135,945
Telecommunications	7,725
CON Fee	2,000
Additional Processing Fee	1,840
Total Project Cost	$338,307

Project costs are based on a March 1, 2014 construction start date and two month renovation period. The applicant's financing plan appears as follows:

Cash Equity	$338,307

Operating Budget

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

	Year One	Year Three
Revenues	$1,044,333	$1,765,137
Expenses:		
Operating	$947,141	$1,491,581
Capital	79,212	79,212
Total Expenses	$1,026,353	$1,570,793
Net Income	$17,980	$194,344
Utilization: (Visits)	8,943	15,115
Cost Per Visit	$114.77	$103.92

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

	Year One & Three
Commercial Fee-for-Service	72.2%
Other	5.10%
Medicare Fee-for-Service	14.4%
Medicaid Managed Care	5.3%
Private Pay	1.0%
Charity Care	2.0%

Expense and utilization assumptions are based on projections with input from Strong Memorial Hospital.

Capability And Feasibility

The total project cost of $338,307 will be satisfied through membership equity. BFA Attachment A is the personal net worth statement for the proposed member, which indicates sufficient equity to meet the equity requirement.

Working capital requirements, estimated at $261,799, appear reasonable based on two months' of third year expenses. BFA Attachment A is the proposed member's net worth statement indicating sufficient funds for the working capital requirements. BFA Attachment B is the pro-forma balance sheet of Cornerstone Urgent Care Center, LLC, which indicates a positive shareholders' equity position of $600,106 as of the first day of operation.

The submitted budget projects a net income of $17,980 and $194,344 during the first and third years of operation, respectively. Revenues are based on current reimbursement methodologies for ambulatory care services. The budget appears reasonable.

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

Recommendation
From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statement of proposed member
BFA Attachment B	Pro-forma Balance sheet
BHFP Attachment	Map

132345
Castle Hill Medical Center of New York, Inc.
(Bronx County)

To be distributed under separate cover

Public Health and Health Planning Council

Project # 132191-B
HPLD Partners, LLC d/b/a Liberty Dialysis - Hyde Park

County: **Dutchess**
Purpose: **Establishment and Construction**
Program: **Diagnostic and Treatment Center**
Acknowledged: **October 11, 2013**

Executive Summary

Description
HPLD Partners, LLC d/b/a Liberty Dialysis – Hyde Park, a limited liability company, requests approval for the establishment and construction of a freestanding, 12-station chronic renal dialysis center to primarily serve Dutchess County. The center will be located in approximately 7,200 square feet of leased space in an existing one story building located at 386 Violet Avenue, Hyde Park.

The proposed members of Liberty Dialysis - Hyde Park and their ownership percentages are as follows:

New York Dialysis Services	50.1%
Shawn Dhupar, M.D.	22.5%
Rachna Sahityani, M.D.	22.5%
Robert Santelli	4.9%

Dr. Dhupar and Dr. Sahityani are board certified in nephrology and Mr. Santelli is an investor and operator for several dialysis clinics. New York Dialysis Services, Inc., a New York Corporation licensed to operate freestanding diagnostic and treatment centers for dialysis services. New York Dialysis Services, Inc.'s sole member and owner is Fresenius Medical Holdings, Inc.

DOH Recommendation
Contingent Approval

Need Summary
The need in Dutchess County continues to grow each year. In 2011 there was an unmet need of 19 stations. The addition of these 12 net new stations will help make services available to patients in need in the area. The elderly population in this area is slightly higher than the state average. Elderly populations are a focus group for needing dialysis 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
Project costs of $1,650,000 will be met with $165,000 of member's equity and a $1,485,000 loan from Fresenius Medical Care.

Budget	Revenues:	$3,260,351
	Expenses:	2,678,493
	Net Income:	$581,858

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this 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 an executed transfer and affiliation agreement with a local acute care hospital, acceptable to the Department. [HSP]
3. Submission of a proposed Medical Director Agreement, acceptable to the Department. The "Medical Director Agreement" must not delegate more authority to the contractor then is provided for in regulation. (Specifically, it must show that the established operator retains direct independent authority to appoint and discharge the Medical Directors as required by regulation.) [HSP]
4. Submission of an executed Administrative Services Agreement (ASA), acceptable to the Department. [HSP, BFA, CSL]
5. Submission of an executed building lease that is acceptable to the Department of Health. [BFA, CSL]
6. Submission of an executed working capital loan that is acceptable to the Department of Health. [BFA]
7. Submission of an executed loan for project cost acceptable to the Department of Health. [BFA]
8. Submission of a copy of an executed Operating Agreement, acceptable to the Department. [CSL]
9. Submission a copy of an executed Article of Organization, acceptable to the Department. [CSL]
10. Submission of a copy of executed proposed anti-kickback and self-referral statement, acceptable to the Department. [CSL]
11. Submission an amended Certificate of Incorporation of New York Dialysis Services, Inc.,acceptable to the Department. [CSL]
12. 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 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, 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

April 10, 2014

Need Analysis

Project Description

Liberty Dialysis seeks approval to open a new 12-station chronic dialysis facility to be located at 386 Violet Avenue, Hyde Park, NY 12601 in Dutchess County.

Analysis

The primary service area for the new facility will be Dutchess County, which had a population estimate of 297,322 for 2012. The percentage of the population aged 65 and over was 14.5%. The non-white population percentage was 26.2 %. These are the two population groups that are most in need of end stage renal dialysis service. Comparisons between Dutchess County and New York State are listed below.

	Dutchess County	State Average
Ages 65 and Over:	14.5%	14.1%
Non-white:	26.2%	42.4%

Source: U.S. Census 2012

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 44 free standing chronic dialysis stations operating in Dutchess County and there are no stations in pipeline at this time.
- Based upon DOH methodology, the 44 existing free standing stations in Dutchess County could treat a total of 198 patients annually.

Projected Need - Dutchess County

	2011		2016	
			Projected***	
	Total Patients Treated	Total Residents Treated	Total Patients Treated	Total Residents Treated
	235	280	273	316
Free Standing Stations Needed	53	63	61	71
Existing Stations	44	44	44	44
Total Stations (Including Pipeline)	44	44	44	44
Net new stations from this project	12	12	12	12
Unmet Need With Approval	-3	7	5	15

****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

The facility currently accommodates a population in need of access to dialysis stations in the service area. The 44 stations in Dutchess County currently serve a population of 297,322. Currently there are not enough stations to treat the 280 residents that need treatment. Therefore, approval of these 12 additional stations is recommended.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

HPLD Partners, LLC d/b/a Liberty Dialysis – Hyde Park, seeks approval to establish and construct a 12 station dialysis clinic in Hyde Park.

Proposed Operator	HPLD Partners, LLC
Doing Business As	Liberty Dialysis – Hyde Park
Site Address	386 Violet Avenue Hyde Park, NY
Stations	12
Approved Services	Chronic Renal Dialysis Home Hemodialysis and Peritoneal Dialysis with Training & Support Services
Shifts/Hours/Schedule	7 am to 4 pm, Monday through Saturday
Staffing (1st Year / 3rd Year)	6.5 FTEs / 14.0 FTEs
Medical Director(s)	Shawn Dhupar, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by provided by St. Francis Hospital 2.1 miles/5 minutes
On-call service	Answering service will be used to access medical staff during off-hours.

Character and Competence

The members of HPLD Partners, LLC are as follows:

Individual Members **49.9%**
- Shawn Dhupar, MD (22.5%)
- Rachna Sahityani, MD (22.5%)
- Robert Santelli (4.9%)

New York Dialysis Services, Inc. (NYDS) **50.1%**
- Simon Castellanos, Director
- Ronald J. Kuerbitz, Executive VP
- Joseph J. Ruma, VP
- Mark Fawcett, VP
- Paul Colantonio, Asst. Treasurer
- Doug Kott, Secretary
- Jessica Stewart, Asst. Secretary

NYDS is an already established Article 28 provider which operates over 30 dialysis centers in New York State and is a subsidiary of Fresenius Medical Care Holdings, Inc. (FMCH).

The Managers of HPLD Partners, LLC will be:

Judith Moran, RN
Michael Sloma
Shawn Dhupar, MD (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.

Manager Michael Sloma disclosed a relationship with Apollo Healthcare d/b/a Niagara Renal Center. In a Stipulation and Order dated July 31, 2006, Niagara Healthcare was fined $2,000 for construction of an ESRD without receiving final approval of a Certificate of Need application.

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.

Misses Moran and Stewart, and Mssers. Castellanos, Colantanio, Fawcett, Kott, Kuerbitz, Ruma and Sloma each disclosed affiliation with Fresenius Medical Care Holdings, Inc. (FMCH) or one of its various operating subsidiaries. FMCH operates or manages kidney dialysis clinics throughout the United States and the applicant company is a direct or indirect subsidiary of FMCH. FMCH disclosed five lawsuits and investigations. One involves possible improper laboratory tests. A second involves a subsidiary supply company. The third is investigating the relationship between retail pharmacies and outpatient dialysis facilities and the reimbursement of medications provided to ESRD patients. The fourth involves labeling and warnings for dialysate concentrate products. The fifth involves allegations that certain conduct in certain countries may violate the U.S. Foreign Corrupt Practice Act or other anti-bribery laws. Each disclosure involves multiple parties with overlapping authority. At this time, there are no findings.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Lease Agreement

The applicant will lease approximately 7,200 square feet on the first floor of an existing building located at 386 Violet Avenue, Hyde Park, under the terms of the proposed lease agreement summarized below:

Landlord:	Taconic Realty Associates, LLC
Lessee:	HPLD Partners, LLC
Term:	Ten years with the option to renew for three successive five year terms.
Rental:	$118,321.50/year ($16.43/sq. ft.) with an 8.5% increase every three years plus tenant's proportionate share of common area maintenance costs which is $10,613 in the first year with an approximate 3% increase every year.
Provisions:	The lessee will be responsible for taxes, utilities, maintenance and insurance.

The applicant has indicated 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.

Administrative Services Agreement

HPLD Partners, Inc. will enter into an Administrative Services Agreement with Fresenius Management Services, Inc. The contractor will provide non-professional business and administrative services to the dialysis center relating to the operation of the facility.

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

Facility:	HPLD Partners, LLC d/b/a Liberty Dialysis – Hyde Park
Contractor:	Fresenius Management Services, Inc.
Term:	Ten years
Compensation:	Monthly service fee equal to $23.00 per dialysis treatment plus the contractor's direct expenses.
Duties of the Contractor:	Certain administrative and non-physician services to include selection and purchase of equipment and supplies; maintaining records of inventory; provide all full-time employees and part time personnel necessary to manage and operate the non-physician aspects of the business; billing and collection; accounting and financial services; provide standard policy manuals; make available the opportunity to participate in the FMS Ultracare Program and the patient safety organization conducted by Fresenius Medical Care PSO, LLC an affiliate of the contractor; negotiate, execute and maintain contracts and arrangements for and in the name of the facility; provide project development; provide quality and utilization controls, assist in the development and maintenance of a program for home dialysis and access to software systems.

Fresenius Management Services, Inc. is an affiliate of Fresenius Medical Care Holdings, Inc. and HPLD Partners LLC. Therefore, the administrative services agreement is a non-arm's length agreement.

Total Project Cost and Financing

Total project costs for renovations and equipment are estimated at $1,650,000, broken down as follows:

Renovation & Demolition	$900,000
Design Contingency	90,000
Construction Contingency	90,000
Fixed Equipment	90,000
Planning Consultant Fees	12,171
Architect/Engineering Fees	51,631
Movable Equipment	405,184
Application Fee	2,000
Processing Fee	9,014
Total Project Cost	$1,650,000

Project cost is based on a June 1, 2014 construction start date and a six month construction period. The applicant's financing plan appears as follows:

Member's equity	$165,000
Loan from Fresenius Medical Care (8 yrs., 8%)	$1,485,000

A letter of interest from Fresenius Medical Care has been submitted by the applicant

Operating Budget

The applicant has submitted an operating budget in 2014 dollars, for the first and third years of operation summarized below:

	Year One	Year Three
Revenues:	$1,656,023	$3,260,351
Expenses:		
Operating	1,268,325	2,293,980
Capital	419,744	384,513
Total Expenses:	$1,688,069	$2,678,493
Net Income/Loss:	$(32,046)	$581,858
Utilization: (treatments)	4,757	9,180
Cost per treatment:	$354.86	$291.77

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

	Year One & Three
Commercial	10%
Medicare	87%
Medicaid	3%

Expense and utilization assumptions are based on the historical experience of the physician's private practices.

Capability and Feasibility

Total project costs of $1,650,000 will be met through a loan from Fresenius Medical Care for $1,485,000 at stated terms, with the remaining $165,000 from proposed member's equity. BFA Attachments A and B are the net worth statement of the proposed members and financial summary of New York Dialysis Services, Inc., respectively, which indicates the availability of sufficient funds.

Working capital needs are estimated at $446,416 based on two months of third year expenses. The applicant will finance $223,208 of working capital at an interest rate of 8% from Fresenius Medical Care, which a letter of interest has been provided. The remaining $223,208 will be provided as equity by the proposed members. BFA Attachment C is the pro-forma balance sheet of Liberty Dialysis – Hyde Park, which indicates positive member's equity of $388,208.

The submitted budget indicates a net loss of $32,046 during the first year of operations and a net income of $581,858 during the third year of operations. Revenues are based on current reimbursement methodologies for dialysis services. The budget appears reasonable.

BFA Attachment B, financial summary of New York Dialysis Services, Inc., shows that the facility has maintained positive working capital and experienced a net loss in shareholder's equity positions, and generated an annual gain from operations of $5,908,929 and $10,942,240 as of the December 31, 2013 internal financials and 2012 internal financials, respectively. The reason for the negative shareholder's equity is due to the accumulated deficit from operations, which was incurred during its expansion phase and has been reduced by approximately $10,464,080 over the last two years. Net intangible assets has been mislabeled on the internal financial statements and represents the Due to Related Party transaction.

BFA Attachment D, financial summary of Fresenius Medical Care Holdings, Inc., shows that the entity has maintained positive working capital, net equity and net income from operations of $1,017,406,000 and $1,474,322,000 as of the September 30, 2013 internal financials And 2012 certified financials, respectively.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth Statement
BFA Attachment B	Financial Summary, New York Dialysis Services, Inc.
BFA Attachment C	Pro-forma Balance Sheet
BFA Attachment D	Financial Summary, Fresenius
BHFP Attachment	Map

Public Health and Health Planning Council

Project # 141001-B
Genesis Services LLC d/b/a Genesis Renal Care

County: **Queens**
Purpose: **Establishment and Construction**
Program: **Diagnostic & Treatment Center**
Acknowledged: **January 7, 2014**

Executive Summary

Description

Genesis Services LLC, d/b/a Genesis Renal Care, is seeking approval to establish and construct a freestanding 24 station chronic renal dialysis center in Queens County. The facility will be located at 74-07 88th Street, Glendale, New York.

The ownership of Genesis Services LLC is as follows:

Mr. Abraham Sieger	50%
Mr. Naftali Brachfeld	50%

Mr. Namesh Patel, M.D. has been hired as the medical director of the facility.

DOH Recommendation

Contingent Approval

Need Summary

Queens County currently has a population of 2,272,771 with 3,609 residents needing dialysis treatment. Currently there are 598 total stations approved to be operational in Queens County, but these can only treat 2,691 patients, according to the Department of Health's methodology. Thus the addition of the 24 net new stations to Queens County would help treat patients in the area currently in need of dialysis services.

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 Mount Sinai Hospital of Queens.

Financial Summary

The total project cost for this application is $3,706,657, which will be met via cash from the members in the amount of $370,666; a loan of $2,708,609 at a rate of 4.85% for a term of 25 years, and a capital lease in the amount of $627,382 at a rate of 5.50% for a term of 7 years.

Budget:	Revenues:	$5,288,560
	Expenses:	4,809,620
	Gain/ (Loss)	$ 478,940

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

Recommendations

Health Systems Agency
There will be no HSA recommendation for this 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 an executed transfer and affiliation agreement with a local acute care hospital, acceptable to the Department. [HSP]
3. Submission of an executed working capital loan, acceptable to the Department. [BFA]
4. Submission of an executed capital financing loan, acceptable to the Department. [BFA]
5. Submission of an executed equipment lease, acceptable to the Department. [BFA]
6. Submission an executed Operating Agreement, acceptable to the Department. [CSL]
7. Submission of evidence of site control, acceptable to the Department. [CSL]
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 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 December 13, 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 may be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date
April 10, 2014

Need Analysis

Background

Genesis Services LLC d/b/a Genesis Renal Care is seeking approval to establish and construct a 24 station chronic dialysis facility to be located at 74-07 88th Street, Glendale in Queens County NY 11385.

Analysis

The primary service area for Genesis Renal Care is Queens County, which had a population estimate of 2,272,771 in 2012. The percentage of the population aged 65 and over was 13.2%. The non-white population percentage was 72.89%. These are the two population groups that are most in need of end stage renal dialysis service. Comparisons between Queens County and New York State are listed below.

	Queens County	State Average
Ages 65 and Over	13.2%	14.1%
Non-white	72.8%	42.4%

Source: U.S. Census 2013

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 556 free standing chronic dialysis stations operating in Queens County and 42 in pipeline for a total of 598. This project will add 24 Stations to the system for a total of 622 chronic dialysis stations. The total stations (622) will be able to treat 2,799 patients.

Projected Need

	2012		2017	
	Total Patients Treated	Total Residents Treated	***Projected Total Patients Treated	***Projected Residents Treated
Total	3350	3609	3884	4184
Free Standing Stations Needed	744	802	863	930
Existing Stations	556	556	556	556
Pipeline Stations	42	42	42	42
w/Approval of This CON	622	622	622	622
Unmet Need With Approval	122	180	241	308

***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

The facility currently accommodates a population in need of access to dialysis stations in the service area. The 556 stations in Queens County currently serve a population of 2,272,771 residents. The addition of these 24 net new chronic stations will help additional residents have access to the needed services.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

Genesis Services LLC, d/b/a Genesis Renal Care, seeks approval to establish and construct a freestanding 24-station chronic renal dialysis center.

Proposed Operator	Genesis Services, LLC
Doing Business As	Genesis Renal Care
Site Address	74-07 88th Street, Glendale (Queens County)
Stations	24
Hours of Operation	Monday, Wednesday and Friday from 5:00 am to 6:00 pm and expanding to Tuesday, Thursday and Saturday from 5:00 am to 6:00 pm when patient volume warrants.
Staffing (1st Year / 3rd Year)	21.25 FTEs / 24.25 FTEs
Medical Director(s)	Nimesh A. Patel, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Mt. Sinai Hospital of Queens 6.86 mi / 16 minutes
On-Call Service	Access to a physician during hours the facility is closed via a medical answering service.

Character and Competence

The members of Genesis Services, LLC are:

Name	**Percentage**
Abraham Sieger	50%
Naftali Brachfeld	50%

Messrs. Sieger and Brachfeld are both licensed nursing home administrators with considerable experience in the operation of Article 28 facilities, including a dialysis center and residential health care facility. The proposed medical director, Dr. Patel, is a New York State licensed physician who is board-certified in internal medicine with a sub-certification in 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

Lease Rental Agreement

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

Premises	8,100 square feet located at 74-07 88th Street, Glendale, New York, 11385
Lessor:	1926 Realty, LLC
Lessee:	Genesis Services LLC
Term:	25 Years
Rental:	$218,700 annually ($27.00 per square ft.) with an increase of 2% annually.
Provisions:	The lessee shall be responsible for real property taxes and utilities.

The applicant has indicated via an affidavit that the lease arrangement will be a non-arm's length lease arrangement. The applicant submitted two real estate letters attesting to the reasonableness of the per square foot rental.

Total Project Cost and Financing

Total project cost which includes renovation, movable equipment, and CON fees is estimated at $3,706,657, further broken down as follows:

Renovation	$2,062,320
Design Contingency	206,232
Construction Contingency	206,232
Architect/Engineering Fees	175,297
Other	62,135
Moveable Equipment	652,477
Financing Costs	66,720
Interim Interest Expense	252,979
Application Fee	2,000
CON Fees	20,264
Total Project Cost	$3,706,657

Operating Budget

The applicant has submitted an operating budget for the first and third years of operation. The budget, summarized below, reflects first and third year revenues in 2014 dollars.

	Year One	Year Three
Revenues	$4,128,497	$5,288,560
Expenses:		
Operating	$3,357,397	$4,067,874
Capital	758,415	741,746
Total Expenses	$4,115,812	$4,809,620
Net Income	$ 12,685	$ 478,940
Utilization: (Treatments)	12,960	16,560
Cost Per Treatment	$317.57	$290.43

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

Medicaid Fee-for-Service	5%
Medicare Fee-for-Service	72%
Commercial Fee-for-Service	10%
Commercial Managed Care	13%

Expense and utilization assumptions are based on the historical experience of other dialysis facilities in the geographical area.

Capability and Feasibility

Total project cost in the amount of $3,706,657 will be provided via a capital lease in the amount of $627,382 at a rate of 5.50% for a term or seven years. A letter of interest has been submitted from M&T Bank. Additionally, $2,708,609 will be financed through a bank loan at a rate of 4.85% for a 25 year term. A letter of interest from M&T Bank has been submitted. The residual of $370,666 will be funded through members' equity contributions. BFA Attachment A is the net-worth statement of the members, which indicates sufficient equity to meet the equity contribution.

Working capital requirements are estimated at $801,604, which appears reasonable based on two months of third year expenses. The applicant will provide $400,802 equity from the proposed members' personal net worth statements to meet the working capital requirement BFA Attachment A is the personal net worth statement of the members of Genesis Services LLC, which reveals the availability of sufficient funds.

The issue of feasibility is centered on the applicant's ability to offset expenses with revenues and maintain a viable operating entity. The submitted budget indicates net income of $12,685 and $478,940 during the first and third years, respectively. Revenues are based on other dialysis services currently offered in the geographical area served. The budget appears reasonable.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statement
BFA Attachment B	Pro Forma Balance Sheet
BHFP Attachment	Map

Public Health and Health Planning Council

Project # 132135-E

Jewish Senior Life

County:	**Monroe**	***Program:***	**Residential Health Care Facility**
Purpose:	**Establishment**	***Acknowledged:***	**September 12, 2013**

Executive Summary

Description

Jewish Senior Life, a not-for-profit corporation, requests approval to be established as the active parent and co-operator of Jewish Home of Rochester and to be co-established for the purpose of forming an obligated group to finance debt through the Obligated Group. It is the intention of the applicant to become the co-operator and form the obligated group with the following organizations: Jewish Home of Rochester (RHCF); Jewish Home of Rochester Enriched Housing, Inc. (Adult Care Facility/Enriched Housing Program); Jewish Senior Life Community Services, Inc.; JSL Affordable Housing, Inc. and JSL Companion Care Services, Inc. BFA Attachment A is the organizational chart of Jewish Senior Life, Inc. JSL Affordable Housing, Inc., is a to-be-formed entity.

Separate applications and approvals are required for the non-Article 28 entities and thus are not part of the active parent review and recommendation.

As a result of forming and being part of the Obligated Group, each member will be jointly and severally liable for payment of all obligations under the Master Trust Indenture and will be required, among other things, to pledge their gross revenues to serve the Obligations. The membership in the Obligated Group will provide the following benefits: Each member will have access to capital necessary to preserve assets and support projects necessary to maintain quality of care and a competitive position; some members will gain access to capital on more favorable terms than they can achieve on their own and each member will be able to accept, utilize, transfer and share in the assets, revenues and incomes of the Members as needed or desirable to carry out the obligations under the MTI or similar instruments.

There are no costs associated with the subject application. The facilities will remain separate not-for-profit corporations, maintaining separate operating certificates. There will be no change in authorized services or number or type of bed complement of the facilities.

DOH Recommendation

Contingent Approval

Need Summary

Jewish Home of Rochester's utilization in 2010-2012 was 95.6%, 93.2%, and 94.4% respectively. Utilization at this facility does not meet the Department's 97% planning optimum, however, through a second CON submission, #132305, the facility is seeking approval to decertify 34 RHCF beds. If approved, this reduction would increase utilization to the Department's optimum occupancy rate.

There will be no change to services or capacity as a result of this application.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.

Financial Summary

There are no project costs or no budgets associated with this application.

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

Recommendations

Health Systems Agency

The Finger Lakes HSA recommends approval of this project.

Office of Health Systems Management

Approval contingent upon:

1. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
   a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
   b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
   c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; 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;
      - 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. Approval of the Article 7 Certificate of Need review for Jewish Senior Life to become the active parent of Jewish Home of Rochester Enriched Housing, Inc. d/b/a Wolk Manor; and for the adult care facility to become part of the obligated group. [LTC]
4. Approval of the Article 46 Certificate of Need review for Jewish Senior Life to become the active parent of Jewish Home of Rochester Senior Housing, Inc. d/b/a The Summit at Brighton, a continuing care retirement community (CCRC). [LTC]
5. Submission of an executed Certificate of Amendment of the Certificate of Incorporation of Jewish Senior Life, acceptable to the Department. [CSL]
6. Submission of the Certificate of Incorporation of Jewish Home of Rochester, and any amendments thereto, acceptable to the Department. [CSL]
7. Submission of the bylaws of Jewish Home of Rochester, and any amendments thereto, acceptable to the Department. [CSL]
8. Submission of the Certificate of Incorporation of Jewish Home of Rochester Enriched Housing, Inc., and any amendments thereto, acceptable to the Department. [CSL]
9. Submission of the bylaws of Jewish Home of Rochester Enriched Housing, Inc., and any amendments thereto, acceptable to the Department. [CSL]
10. Submission of the Certificate of Incorporation of Jewish Home of Rochester Senior Housing, Inc., and any amendments thereto, acceptable to the Department. [CSL]
11. Submission of the bylaws of Jewish Home of Rochester Senior Housing, Inc., and any amendments thereto, acceptable to the Department. [CSL]

12. Submission of the Certificate of Incorporation of Jewish Senior Life Community Services, Inc., and any amendments thereto, acceptable to the Department. [CSL]
13. Submission of the bylaws of Jewish Senior Life Community Services, Inc., and any amendments thereto, acceptable to the Department. [CSL]
14. Submission of the Certificate of Incorporation of JSL Companion Care Services, Inc., and any amendments thereto, acceptable to the Department. [CSL]
15. Submission of the bylaws of JSL Companion Care Services, Inc., and any amendments thereto, acceptable to the Department. [CSL]
16. Submission of the Certificate of Incorporation of JSL Affordable Housing, Inc., and any amendments thereto, acceptable to the Department. [CSL]
17. Submission of the bylaws of JSL Affordable Housing, Inc., and any amendments thereto, 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]

Council Action Date
April 10, 2014

Need Analysis

Project Description
Jewish Senior Life seeks approval to be established as the active parent and co-operator of Jewish Home of Rochester, a 362-bed Article 28 residential health care facility, located at 2021 Winton Road South, Rochester, 14618, in Monroe County. In addition, Jewish Senior Life seeks approval to form an obligated group with the nursing home, an adult care facility, and three additional entities within the Jewish Senior Life corporate structure.

The proposed obligated group will seek financing for a “Master Campus Plan” project, which involves:
- Renovating Jewish Home of Rochester to expand the transitional/sub-acute care program from 68 to 110 beds;
- Moving 168 residential health care beds to home-like “green-houses” located adjacent to the Jewish Home; and
- Adding 34 assisted living program beds via the conversion of decertified nursing home beds.

Analysis
There is currently a surplus of 1,150 beds in Monroe County as indicated in Table 1 below. The overall occupancy for Monroe County is 98.1% for 2012 as indicated in Table 2.

Table 1: RHCF Need – Monroe County

2016 Projected Need	4,167
Current Beds	5,370
Beds Under Construction	-53
Total Resources	5,317
Unmet Need	-1,150

Table 2: Jewish Home of Rochester/Monroe County Occupancy

Facility/County/Region	2010	2011	2012
Jewish Home of Rochester	95.6%	93.2%	94.4%
Monroe County	92.5%	90.3%	98.1%

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, or of the Health Systems Agency area Medicaid admissions percentage, 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 or the Health Systems Agency percentage, whichever is applicable.

Jewish Home of Rochester’s Medicaid admissions of 5.0% in 2011 and 6.6% in 2012 did not exceed Monroe County 75% rates of 13.3% in both 2011 and 2012. Jewish Home of Rochester 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 community resource that provides needed services to the area's population.

Recommendation
From a need perspective, contingent approval is recommended.

Program Analysis

Program Description
Facility Information

	Existing	Proposed
Facility Name	Jewish Home of Rochester	Same
Address	2021 Winton Road S Rochester, NY.14618	Same
RHCF Capacity	362	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	Not for profit	Not for profit
Class of Operator	Voluntary	Voluntary
Operator	Jewish Home of Rochester	Jewish Senior Life Board of Directors: Daniel I. Katz Mark Kolko John J. Ark Michael H. Cooper Sharon E. Underberg, Esq. Ted Axelrod Stuart Boyar Richard S. Brovitz Howard Crane Lisa B. Elliot, Ph.D. Zachary R. Freedman, M.D. Laurence C. Glazer Julian Goldstein Michael D. Haymes Charles B. Kaplan Ellen Rosen Konar Howard D. Kravetz Sherman F. Levey, Esq Steven Levinson Linda E. Lowenstein Dan S. Morgenstern Betty G. Oppenheimer Rachel N. Rosen Susan Rothenberg Randy S. Schuster Maurice E. Varon, M.D. Jeremy J. Wolk

Character and Competence – Background

Facilities Reviewed

Nursing Homes

Jewish Home of Rochester	03/2004 to present

Adult Care Facility

Glenwell Assisted Living	01/2011 to present
Wolk Manor Enriched Living Center	03/2004 to present
Westwood Commons Adult Home	03/2004 to 12/2010
Woodcrest Commons	03/2004 to 12/2010

Individual Background Review

Daniel Katz is a licensed nursing home administrator in the state of Connecticut and is considered to be in good standing. He is employed as the President and CEO of Jewish Senior Life. Mr. Katz discloses that he is the president of the following health care facilities:

Jewish Home of Rochester	07/2004 to present
Wolk ManorEnriched Living Center	07/2004 to present

Michael Kolko was a manager at the Jilnance Corporation, an electrical equipment distributor for over 49 years. Mr. Kolko is now retired. Mr. Kolko discloses that he is the chairman of the following health care facilities:

Jewish Home of Rochester	05/2010 to present
Wolk ManorEnriched Living Center	05/2010 to present

Hon. John Ark is a licensed attorney in New York State and is considered to be in good standing. He is currently a Supreme Court Justice for the State of New York, 7th Judicial District. Hon. John Ark discloses that he is the vice chair of the following health care facilities:

Jewish Home of Rochester	12/2012 to present
Wolk ManorEnriched Living Center	12/2012 to present

Michael Cooper is a financial advisor licensed by the Securities and Exchange Commission as well as the New York State Department of Financial Services and is considered to be in good standing. He has been employed by UBS Financial Services, Inc. in Rochester, New York since December 2011. He was previously employed by Morgan Stanley Financial Services. Mr. Cooper discloses that he is the treasurer of the following health care facilities:

Jewish Home of Rochester	12/2012 to present
Wolk Manor Enriched Living Center	12/2012 to present

Sharon Underberg is a licensed attorney in New York State and is considered to be in good standing. She is employed as Assistant General Counsel at the Eastman Kodak Company, a manufacturing and service company located in Rochester, New York. Ms. Underberg discloses that she is the secretary of the following health care facilities:

Jewish Home of Rochester	05/2010 to present
Wolk ManorEnriched Living Center	05/2010 to present

Ted Axelrod has been a business administrator and strategist for TIME Innovations, LLC a developer of patient communication boards located in Pittsford, New York since September 2011. He was previously employed as the President of Rye Creek Frame/Rye Creek Design, a commercial picture framing company. Mr. Axelrod discloses that he was a director for the following health care facility:

Jewish Home of Rochester	05/2010 to 12/2012

Stuart Boyar is the President/CEO of the Cooley Group Inc., a printing distributor company located in Rochester, New York. Mr. Boyer discloses that he was a director, treasurer, and a chairman for the following health care facilities:

Jewish Home of Rochester	05/2007 to 05/2011
Wolk Manor Enriched Living Center	05/2008 to 03/2012

Richard Brovitz is a licensed attorney in New York State and is considered to be in good standing. He is employed as an attorney at Woods Oviatt and Fix Spindelman law firms. Mr. Boyer discloses that he was a director for the following health care facility:

Jewish Home of Rochester	06/2011 to 12/2012

Howard Crane is a licensed attorney in New York State and is considered to be in good standing. He is a partner at Relin, Goldstein and Crane, LLP law firm in Rochester, New York. Mr. Crane discloses that he was a director for the following health care facility:

Jewish Home of Rochester	05/2010 to 12/2012

Lisa Elliot is a senior research scientist for the Rochester Institute of Technology and has been employed there for the past ten years. Ms. Elliot discloses that she is a board member and chairman of the board respectively for the following health care facilities:

Westwood Commons Adult Home	04/2003 to 12/2010
Woodcrest Commons	04/2003 to 12/2010
Glenwell Assisted Living	01/2011 to present

Zachary Freedman, M.D. is a New York State licensed physician and is considered to be in good standing. He is currently employed with Rochester General Hospital. Dr. Freedman discloses that he was a director for the following health care facility:

Jewish Home of Rochester	05/2008 to 12/2012

Laurence Glazer is the Chief Executive Officer of Buckingham Properties, a real estate development company and has been employed there for the past ten years. Mr. Glazer discloses that he was a director, treasurer, and a chairman for the following health care facility:

Jewish Home of Rochester	06/2002 to 12/2012

Julian Goldstein is the President of Navitar, Inc., and optical manufacturer and has been employed there for the last 10 years. Mr. Goldstein discloses that he was a director for the following health care facility:

Jewish Home of Rochester	01/2012 to 12/2012

Michael Haymes is a licensed real estate broker in New York State and is considered to be in good standing. He is the owner and broker of Remax Realty Group, a brokerage firm located in Pittsford, New York. Mr. Haymes discloses no ownership interest or board membership in health care facilities.

Charles Kaplan has been retired for the past ten years and does not disclose any employment history. Mr. Kaplan discloses that he was a director for the following health care facilities:

Jewish Home of Rochester	09/2006 to 12/2012
Wolk Manor Enriched Living Center	05/2008 to 05/2011

Ellen Konar has been the Director of the University News Services at the Rochester Institute of Technology since November 2012. Previously, she was the Vice President of Marketing, Communications, and Membership at Rochester Business Alliance, a non-profit, chamber of commerce. Ms. Konar discloses no ownership interest or board membership in health care facilities.

Howard Kravetz is a licensed real estate broker in New York State and is considered to be in good standing. He has been employed as a real estate broker at Remax, First Commercial, a real estate brokerage firm located in Pittsford, New York since March 2012. Previously, he was employed with Park Avenue Commercial, a real estate brokerage firm. Mr. Kravetz discloses that he was a director for the following health care facility:

Jewish Home of Rochester	12/2006 to 12/2012

Sherman Levey is a licensed attorney in New York State and is considered to be in good standing. He is self-employed at Boylan Code, LLP. Mr. Levey discloses that he was a board member of the following health care facility:

Jewish Home of Rochester	05/2002 to 12/2012

Steven Levinson was a unit director for Eastman Kodak photography located in Rochester, New York. He retired in 2006. Mr. Levinson discloses no ownership interest or board membership in health care facilities.

Linda Lowenstein is an inactive registered nurse and has been retired for the past ten years. Ms. Lowenstein discloses no ownership interest or board membership in health care facilities.

Dan Morgenstern is the President of Clover Lanes, a bowling center located in Rochester, New York. Mr. Morgenstern discloses that he was a director for the following health care facility:

Jewish Home of Rochester	05/2008 to 12/2012

Bettie Oppenheimer was the associate vice president of planning and special projects at the University of Rochester Medical Center. She retired in April 2010. Ms. Oppenheimer discloses that she was a board member of the following health care facility:

Jewish Home of Rochester	05/2006 to 12/2012

Rachel Rosen is a New York State licensed real estate agent and is considered to be in good standing. She is the President of the Norry Management Corp., a commercial real estate development and property management company located in Rochester, New York. Ms. Rosen discloses that she was a director for the following health care facility:

Jewish Home of Rochester	05/2008 to 12/2012

Susan Rothenberg was a New York State licensed physical therapist and was considered to be in good standing. She was employed in her own private practice for a number of years before retiring in January 2013. Ms. Rothenberg discloses that she was a director for the following health care facility:

Jewish Home of Rochester	05/2007 to 12/2012

Randy Schuster is a financial advisor licensed by the Financial Industry Regulatory Authority and is considered to be in good standing. He is employed by Centra Financial Group, a financial services company located in Rochester, New York. Mr. Schuster discloses that he was a director for the following health care facility:

Jewish Home of Rochester	05/2011 to 12/2012

Maurice Varon, M.D. is a New York State licensed physician and is considered to be in good standing. He is a cardiologist and managing partner at University Cardiovascular Associates LLC, a cardiology practice located in Rochester, New York. Dr. Varon discloses no ownership interest or board membership in health care facilities.

Jeremy Wolk is a licensed attorney in New York State and is considered to be in good standing. He has been a member of counsel at Nixon Peabody LLP, a law firm located in Rochester, New York since July 2007. Previously, he was employed as senior vice president and deputy general counsel of iVillage, Inc., a media business company located in New York, New York. Mr. Wolk discloses that he was a board member of the following health care facility:

Jewish Home of Rochester	05/2010 to 12/2012

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the applicants.

A review of operations for the Jewish Home of Rochester for the period identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of the adult care facilities, Wolk Manor Enriched Living Center, Westwood Commons Adult Home, Woodcrest Commons, and Glenwell Assisted Living for the period identified above 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, contingent 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 Jewish Senior Life from 2011 through 2012. As shown, the entity had an average negative working capital position and an average positive net asset position from 2011 through 2012. Also, the facility achieved an average operating income of $72,443 from 2011 through 2012. The reason for the average negative working capital position and the operating losses in 2012 were due to significant expenses in 2011 and 2012 related to the exploration and research associated with the Master Campus Plan and the establishment of Marian's House. As those projects developed, the actual construction and other related costs were moved to the appropriate corporation and are no longer reflected as part of Jewish Senior Life.

BFA Attachment C is the financial summary of Jewish Home of Rochester (RHCF). As shown, the facility has maintained an average positive working capital position and an average positive net asset position from 2011 through 2012. Also, the entity incurred average operating losses of $1,684,849 from 2011 through 2012. The applicant has indicated that the reasons for the losses are due primarily to high operating costs in the areas of administrative expenses, employee retirement expenses and contracted services. A significant cost reduction plan was implemented that reduced staffing levels, and the applicant reviewed each department's budget for savings. Positions were held open longer, pension benefits were reduced, contracts for products and services were rebid. Also, the facility implemented a cost containment project that significantly reduced operating expenses through freezing of the pension plan, which reduced annual expenses by over $320,000; reduction of approximately 17.5 FTE's without disruption of patient care; and reduced expenses in the areas of marketing, finance, human resources, therapies, cafeteria and laundry, as well as a reduction in the cost of contracted services.

Attachment D is the financial summary of Jewish Home of Rochester Senior Housing, Inc. d/b/a The Summit at Brighton and Related Party (Summit), an Article 46 community care retirement community. As shown, the facility has maintained an average negative working capital position and an average negative net asset position from 2011 through 2012. Also, the facility experienced average operating losses of $1,833,295 from 2011 through 2012.

The applicant has indicated that the reason for the average negative working capital position, average negative net asset position and the average operating losses were the result of significant occupancy challenges. While the life care model offers seniors a way to preserve their capital in good economic times, the higher costs associated with that protection causes potential residents to choose lower costing living options during challenging economic times.

Between 2008 through 2011, it was difficult to convince the senior population to sell their homes and move onto their campus. As a small life care community with only 90 beds, any reduction in occupancy has a direct impact on the bottom line. In 2011 and early 2012, Summit also saw an increase in the average number of deaths and with the number of residents moving through the continuum of care. With 12 discharges in the last half of 2011 and early 2012, the occupancy for the facility was lowered even further. Summit's cash/working capital position is impacted with each move out as a refund of the resident's entrance fee must be made within one year or when a similar style apartment is sold; whichever occurs first. Without new sales, the refunds of the entrance fees reduced the working capital available.

The entity implemented an occupancy improvement plan, which was implemented with over $1.3 million provided by the Jewish Home Foundation. Those monies were used to update the common areas of Summit, refurbish and update eight apartments, provide alternative dining venues and improve the outside apartments of the building. In addition, in early 2013, Summit received approval from New York State to begin to offer a Type C (market rate rental), which would not include a life care component, allowing them to compete with other senior housing units in the area. The applicant has indicated that the financial operation and results of Jewish Home of Rochester Enriched Housing, Inc. are reported in the consolidated statements with Summit. There are no individual audited financial statements for Jewish Home of Rochester Enriched Housing, Inc. Jewish Home of Rochester Senior Housing, Inc. is a type of licensed adult day care facility.

BFA Attachment E is the financial summary of Jewish Senior Life Community Services, Inc. As shown, the facility has maintained a negative working capital position and a positive net asset position from 2012. The reason for the negative working capital position is the result of the fact that Marians House, a day time retreat house for seniors with memory loss and their families, was in its developmental stages between 2010 and 2012. This program became operational in early 2013. Also, the entity incurred an average operating income of $979,840 in 2012. The applicant has indicated that the financial operation and results of JSL Companion Care Services, Inc. are reported in the consolidated statements with Jewish Senior Life Community Services, Inc. There are no individual audit financial statements for JSL Companion Care Services, Inc.

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 of Jewish Senior Life, Inc.
BFA Attachment B	Financial Summary- Jewish Senior Life
BFA Attachment C	Financial Summary- Jewish Home of Rochester
BFA Attachment D	Financial Summary- Jewish Home of Rochester Senior Housing, Inc.
BFA Attachment E	Financial Summary- Jewish Senior Life Community Services, Inc.

Public Health and Health Planning Council

Project # 132226 E
ORNC, LLC d/b/a Chestnut Park Rehabilitation and Nursing Center

County: **Otsego County**
Purpose: **Establishment**
Program: **Residential Health Care Facility**
Acknowledged: **October 24, 2013**

Executive Summary

Description

ORNC, LLC d/b/a Chestnut Park Rehabilitation and Nursing Center (the Center) is seeking approval to be established as the new operator of Oneonta Nursing and Rehabilitation Center, an existing 80-bed proprietary residential health care facility (RHCF) located at 330 Chestnut Street, Oneonta, NY (Oneonta County).

ORNC, LLC d/b/a Chestnut Park Rehabilitation and Nursing Center (the Center) is the current receiver of Oneonta Nursing and Rehabilitation Center. On June 10, 2011, ORNC, Inc., d/b/a Oneonta Nursing and Rehabilitation Center entered into an Operations Transfer Agreement with Chestnut Park Rehabilitation and Nursing Center, LLC to sell and acquire the operating interests of the 80-bed facility. The purchase price for the operations of Oneonta is $10. On July 12, 2012, Chestnut Park Rehabilitation and Nursing Center, LLC, assigned all its rights and interest in the Operational Transfer Agreement to ORNC, LLC, d/b/a Chestnut Park Rehabilitation and Nursing Center.

Ownership of the operations and real property before and after the requested change is as follows:

Current Owner		Current Receiver/Proposed Operator/Owner	
ORNH, Inc d/b/a Oneonta Nursing and Rehabilitation Center		ORNC, LLC d/b/a Chestnut Park Rehabilitation and Nursing Center	
	Interest		Interest
Estate of Anthony Salerno	40.00%	Efraim Steif	39.90%
Harry Satin	40.00%	Uri Koenig	60.00%
Jeffrey Sunshine	10.00%	David Camerota	0.10%
Lowell Feldman	10.00%		

Also, a separate, but related real estate company, 330 Chestnut Street, LLC, will acquire the facility's property. Ownership of the real estate before and after the requested change is as follows:

Current Owner		Proposed Owner	
Cortland-Clinton, Inc.		330 Chestnut Street, LLC	
	Interest		Interest
Abbey Kapelovitz	14.7541%	Efraim Steif	40.00%
Estate of Ann Judith Lowe	14.7541%	Uri Koenig	60.00%
Eleanor Dutch	11.4753%		
Susan Krieger	14.7541%		
Jeffrey Berger	14.7541%		
James Berger	9.8361%		
Lisa Berger	9.8361%		
Robert Berger	9.8361%		

There are seven companion applications in which the proposed members are seeking to convert from being the receiver to being established as the new operator:

- CON 132228 CRNC, LLC d/b/a Cortland Park Rehabilitation and Nursing Center
- CON 132227 RRNC, LLC d/b/a Colonial Park Rehabilitation and Nursing Center
- CON 132229 HRNC, LLC d/b/a Highland Park Rehabilitation and Nursing Center
- CON 132231 JBRNC, LLC d/b/a Hudson Park Rehabilitation and Nursing Center
- CON 132260 RSRNC, LLC d/b/a Riverside Center for Rehabilitation and Nursing
- CON 132261 CSRNC, LLC d/b/a Capstone Center for Rehabilitation and Nursing, and
- CON 132334 NCRNC, LLC d/b/a Northeast Center for Rehabilitation and Brain Injury.

DOH Recommendation

Contingent Approval

Need Summary

Chestnut Park Rehabilitation and Nursing Center's utilization was 96.1% in 2010, 94.7% in 2011, and 95.2% in 2012. While these numbers fall below the Department's 97% optimum for the planning area, current utilization for this facility is 97.5%.

The change in ownership will not result in any change in beds or services.

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 sprinkler mandates.

Financial Summary

ORNC, LLC d/b/a Chestnut Park Rehabilitation and Nursing Center will acquire the operating interest in the RHCF for $10, and 330 Chestnut Street; LLC will acquire the RHCF Real Property for $1,602,221. Funding will be as follows: $268,888 equity contributions, with the remaining $1,333,333 balance to be financed over 25 years at a 6.5% interest rate through Century Health Capital, Inc.

There are no project costs associated with this proposal.

Year 1 Budget	Revenues	$5,670,427
	Expenses	5,179,217
	Gain/(Loss)	$491,210

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
    a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
    b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
    c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
    d. Submit an annual report for two years to the DOH, which demonstrates substantial progress with the implementation of the plan. The plan should include but not be limited to:
        - Information on activities relating to a-c above; and
        - Documentation pertaining to the number of referrals and 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 building lease, acceptable to the Department. [BFA]
4. Submission of a commitment for a permanent mortgage for the project to be provided from a recognized lending institution at a prevailing rate of interest, determined to be acceptable by the Department of Health. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
5. Submission of an executed working capital loan, acceptable to the Department. [BFA]
6. Submission of a photocopy of an executed Certificate of Amendment of the Articles of Organization of ORNC, LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of an executed amended operating agreement of ORNC, LLC, acceptable to the Department. [CSL]
8. Submission of a photocopy of an executed Certificate of Dissolution or Certificate of Amendment of the Certificate of Incorporation of ORNH, Inc., 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

April 10, 2014

Need Analysis

Background

ORNC, LLC d/b/a Chestnut Park Rehabilitation and Nursing Center, seeks approval to become the established operator of Oneonta Nursing and Rehabilitation Center, an 80-bed Article 28 residential health care facility, located at 330 Chestnut Street, Oneonta, 13820, in Otsego County. ORNC, LLC d/b/a Chestnut Park Rehabilitation and Nursing Center is the current receiver of Oneonta Nursing and Rehabilitation Center.

Analysis

There is currently a need for 125 beds in Otsego County as indicated in Table 1 below. However, the overall occupancy for Otsego County is 97.2% for 2011 as indicated in Table 2.

Table 1: RHCF Need – Otsego County

2016 Projected Need	509
Current Beds	384
Beds Under Construction	0
Total Resources	384
Unmet Need	125

Chestnut Park Rehabilitation and Nursing Center's utilization was 96.1% in 2010, 94.7% in 2011, and 95.2% in 2012. This facility is currently in receivership, and while previous utilization percentages fell below the Department's 97% optimum for the planning area, current utilization is 97.5%.

Table 2: Chestnut Park Rehabilitation and Nursing Center/Otsego County Occupancy

Facility/County/Region	2010	2011	2012
Chestnut Park Rehabilitation and Nursing Center	96.1%	94.7%	95.2%
Otsego County	97.6%	97.1%	97.0%

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions or 75% of the Health Systems Agency area, 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 or Health Systems Agency percentage, whichever is applicable.

Chestnut Park Rehabilitation and Nursing Center's Medicaid admissions for 2010 and 2011 was 18.55% and 15.52%, respectively. This faculty did not exceed the Otsego County 75% rate of 20.77% in 2011, but did exceed the 2010 rate of 17.51%.

Conclusion

Approval of this application will result in maintaining a necessary community resource.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Program Description

	Existing	Proposed
Facility Name	Chestnut Park Rehabilitation and Nursing Center (formerly Oneonta Nursing and Rehab)	Same
Address	330 Chestnut Street Oneonta, NY 13820	Same
RHCF Capacity	80	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Limited Liability Company	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	ORNC, Inc. <u>Receivership</u> ORNC, LLC Members: Efraim Steif Uri Koenig David Camerota	ORNC, LLC d/b/a Chestnut Park Rehabilitation and Nursing Center Members: Uri Koenig 60.00% Efraim Steif 39.90% David Camerota 0.10%

Character and Competence - Background

<u>Facilities Reviewed</u>

<u>Nursing Homes</u>

Beechtree Care Center	09/2013 to present
Bridgewater Center for Rehabilitation & Nursing, LLC	02/2005 to present
Central Park Rehabilitation and Nursing Center	11/2008 to present
Capstone Center for Rehabilitation and Nursing	03/2012 to present
Chestnut Park Center for Rehabilitation and Nursing	06/2011 to present
Cortland Park Center for Rehabilitation and Nursing	06/2011 to present
Colonial Park Center for Rehabilitation and Nursing	06/2011 to present
Folts Home	10/2013 to present
Highland Park Center for Rehabilitation and Nursing	06/2011 to present
Hudson Park Rehabilitation and Nursing	06/2011 to present
Northeast Center for Special Care	11/2013 to present
Pine Valley Center for Rehabilitation and Nursing	12/2004 to present
Riverside Center for Rehabilitation and Nursing	03/2012 to present
Vestal Park Center for Rehabilitation and Nursing	06/2011 to present
Westchester Center for Rehabilitation and Nursing	11/2003 to 12/2006

<u>Adult Care Facilities</u>

Riverside Manor Adult Care (closed)	09/2009 to 07/2010

<u>Individual Background Review</u>

Uri Koenig is a CPA in good standing and owner of JK Koenig & Co., an accounting firm located in Spring Valley, NY. Mr. Koenig discloses the following health facility interests:

Bridgewater Center for Rehabilitation & Nursing	08/2006 to present
Pine Valley Center for Rehabilitation and Nursing	01/2008 to present
Central Park Rehabilitation and Nursing Center	03/2012 to present

Receiverships:

Capstone Center for Rehabilitation and Nursing	03/2012 to present
Chestnut Park Rehabilitation and Nursing Center	06/2011 to present
Cortland Park Rehabilitation and Nursing Center	06/2011 to present
Colonial Park Rehabilitation and Nursing Center	06/2011 to present
Highland Park Rehabilitation and Nursing Center	06/2011 to present
Hudson Park Rehabilitation and Nursing Center	06/2011 to present
Riverside Center for Rehabilitation and Nursing	03/2012 to present
Vestal Park Rehabilitation and Nursing Center	06/2011 to present
Beechtree Care Center	09/2013 to present
Folts Home	10/2013 to present
Northeast Center for Special Care	11/2013 to present

Efraim Steif is a licensed nursing home administrator in good standing in the States of New York and New Jersey. Mr. Steif is the president of FRS Healthcare Consultants, Inc., and formerly served as administrator at Forest View Center for Rehabilitation and Nursing in Forest Hills from 2000 to 2005. Mr. Steif discloses the following health care facilities interests:

Bridgewater Center for Rehabilitation & Nursing, LLC	02/2005 to present
Pine Valley Center for Rehabilitation and Nursing	12/2004 to present
Central Park Rehabilitation and Nursing Center	11/2008 to present
Riverside Manor Adult Care (closed)	09/2009 to 07/2010

Receiverships:

Beechtree Care Center	09/2013 to present
Capstone Center for Rehabilitation and Nursing	03/2012 to present
Chestnut Park Center for Rehabilitation and Nursing	06/2011 to present
Cortland Park Center for Rehabilitation and Nursing	06/2011 to present
Colonial Park Center for Rehabilitation and Nursing	06/2011 to present
Folts Home	10/2013 to present
Highland Park Center for Rehabilitation and Nursing	06/2011 to present
Hudson Park Center for Rehabilitation and Nursing	06/2011 to present
Northeast Center for Special Care	11/2013 to present
Riverside Center for Rehabilitation and Nursing	03/2012 to present
Vestal Park Center for Rehabilitation and Nursing	06/2011 to present
Westchester Center for Rehabilitation and Nursing	01/2003 to 12/2006

David Camerota is a licensed nursing home administrator in good standing. He is currently employed as chief operating officer with Upstate Services Group, LLC, which provides administrative and operational support to its affiliated skilled nursing facilities throughout New York. Mr. Camerota has served nearly continuously as administrator for the past eleven years at several upstate New York skilled nursing facilities. Mr. Camerota has disclosed the following nursing home ownership interests:

Pine Valley Center for Rehabilitation and Nursing	06/2011 to present
Central Park Rehabilitation and Nursing Center	02/2012 to present

Receiverships:

Highland Park Rehabilitation and Nursing Center	06/2011 to present
Hudson Park Rehabilitation and Nursing Center	06/2011 to present
Vestal Park Rehabilitation and Nursing Center	06/2011 to present
Chestnut Park Rehabilitation and Nursing Center	06/2011 to present
Cortland Park Rehabilitation and Nursing Center	06/2011 to present
Colonial Park Rehabilitation and Nursing Center	06/2011 to present
Riverside Center for Rehabilitation and Nursing	03/2012 to present
Capstone Center for Rehabilitation and Nursing	03/2012 to present
Beechtree Care Center	09/2013 to present
Folts Home	10/2013 to present
Northeast Center for Special Care	11/2013 to present

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants.

A review of Bridgewater Center for Rehabilitation & Nursing for the period identified above reveals the following:

- The facility was fined $4,000 pursuant to a Stipulation and Order NH-13-016 issued May 29, 2013 for surveillance findings on July 6, 2011. Deficiencies were found under 10 NYCRR 415.26(f)(1) Written Plans for Emergency/Disasters, and 415.26(f)(3) Emergency Procedure/Drills.

A review of Central Park Rehabilitation and Nursing Center for the period identified above reveals the following:

- The facility was fined $2,000 pursuant to a Stipulation and Order NH-10-064 issued December 6, 2010 for surveillance findings on May 26, 2009. Deficiencies were found under 10 NYCRR 415.19(a) Quality of Care: Infection Control.

A review of operations for Central Park Rehabilitation and Nursing Center and Bridgewater Center for Rehabilitation and Nursing, LLC for the periods identified above, results in a conclusion of consistent high level of care since there were no repeat enforcements.

A review of operations for Capstone Center for Rehabilitation and Nursing, Chestnut Park Rehabilitation and Nursing Center, Colonial Park Rehabilitation and Nursing Center, Cortland Park Rehabilitation and Nursing Center, Highland Park Rehabilitation and Nursing Center, Hudson Park Rehabilitation and Nursing Center, Pine Valley Center for Rehabilitation and Nursing, Riverside Center for Rehabilitation and Nursing, Vestal Park Rehabilitation and Nursing Center, and Westchester Center for Rehabilitation and Nursing, and Riverside Manor Adult Care 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. No administrative services or consulting agreements are proposed in this application.

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

Operations Transfer Agreement

The applicant has submitted an executed operations transfer agreement, the terms of which are summarized below:

Date:	June 10, 2011
Transferor:	ORNH, Inc d/b/a Oneonta Nursing and Rehabilitation Center
Transferee:	Chestnut Park Rehabilitation and Nursing Center, LLC
Purchase Price:	$10 Payable at closing

Assets Transferred:	All rights, title and interest in the assets including trade name “”, leasehold improvements, equipment and furniture, supplies and inventory, prepaid expenses, all documents and records, assignable licenses and permits including Medicare and Medicaid provider numbers, phone numbers, fax numbers and all logos, names, trade names, trademarks and service marks, assignable software, resident trust funds, deposits and prepayments, cash and cash equivalents, Medicare and Medicaid provider agreements and Medical records custody agreement.
Assumed Liabilities:	Obligations of Transferor under or which may arise in connection with the Provider Agreement and the Assets, assumed by Transferee pursuant to the terms hereof and the Assignment of Provider Agreement.

Assignment and Assumption Agreement

The applicant has submitted an executed assignment and assumption agreement, the terms of which are summarized below:

Date:	July 12, 2012
Assignor:	Chestnut Park Rehabilitation and Nursing Center, LLC
Assignee:	ORNC, LLC d/b/a Chestnut Park Rehabilitation and Nursing Center
Assignment and Assumption:	All rights and interest with respect to the operations transfer agreement.

Purchase/Sale Agreement for the Real Property

The applicant has submitted an executed agreement to purchase the RHCF realty, the terms of which are summarized below:

Date:	February 28, 2012
Seller Realty:	Cortland-Clinton, Inc.,
Purchaser Realty:	330 Chestnut Street, LLC
Asset Transferred Realty:	All rights, title and interest in piece and parcel of land, building/s, improvements, fixtures, easements and appurtenances known by the address
Excluded Assets:	Cash & cash equivalent, insurance policies, and various records and documents.
Purchase Price:	$ 1,602,221
Payment of Purchase Price:	$ 268,888 escrow deposit at agreement signing $1,333,333 due at closing.

The purchase price of operations and real estate is proposed to be satisfied as follows:

Equity - ORNC, LLC Members	$10
Equity - 330 Chestnut Street, LLC Members	$268,888
Loan - 330 Chestnut Street (25-year terms, 6.5%,)	$1,333,333
Total	$1,602,231

BFA Attachments A and B are the proposed members’ net worth summaries for ORNC d/b/a Chestnut Park Rehabilitation and Nursing Center, and 330 Chestnut Street, LLC, which reveal sufficient resources to meet the equity requirements. Century Health Capital, Inc. has provided a letter of interest.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility.

The members of the reality entity; 330 Chestnut Street, LLC, are as follows:

Proposed Members	Percentage Ownership
Efraim Steif	40.00%
Uri Koenig	60.00%

Lease Agreement and Medicaid Capital Reimbursement

The applicant has submitted a draft lease agreement, the terms of which are summarized as follows:

Date:	February 28,2012
Premises:	An 80-bed RHCF located at 330 Chestnut Street, Oneonta NY
Lessor:	330 Chestnut Street, LLC
Lessee:	ORNC, LLC d/b/a Chestnut Park Rehabilitation and Nursing Center (the Center)
Term:	10 years with one 15 year renewal term
Rental:	$109,309 per year ($9,109.08 per month)
Provisions:	Triple Net Lease

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the Landlord and operating entity.

Currently, Medicaid capital reimbursement is based on the return of and return on equity methodology, which will not be altered upon the change in ownership. Based on 2014 Nursing Home Consolidated Capital (Schedule VI – Property), there is no remaining equity to be reimbursed under the return of and return on equity

Operating Budget

Following is a summary of the submitted operating budget, presented in 2014 dollars, for the first year subsequent to change in ownership:

	Per Diem	Total
Revenues:		
Medicaid	$160.69	$2,562,771
Medicare	433.04	1,012,024
Private Pay/Other	248.62	2,095,632
Total		$5,670,427
Expenses:		
Operating		$5,020,872
Capital		158,345
Total		$5,179,217
Net Income:		$491,210
Utilization (patient days):		26,715
Occupancy:		91.49%

The following is noted with respect to the submitted operating budget:

- Medicaid and Medicare revenues are based on actual 2013 rates.
- Private rate was adjusted to be lower at the level of the Medicare rate.
- Overall utilization is projected at 91.49%, while utilization by payor source is expected as follows:

Medicaid	59.70%
Medicare	8.75%
Private Pay/Other	31.55%

- Breakeven utilization is projected at 83.57%.

Capability and Feasibility

ORNC, LLC d/b/a Chestnut Park Rehabilitation and Nursing Center will acquire the operating interest in the RHCF for $10, and 330 Chestnut Street; LLC will acquire the RHCF real property for $1,602,221. Funding will be as follows: $268,888 equity contribution with the remaining $1,333,333 balance to be financed over 25 years at a 6.5% interest rate through Century Health Capital, Inc. There is a relationship via similar members between 330 Chestnut Street, LLC (the landlord) and ORNC, LLC d/b/a Chestnut Park Rehabilitation and Nursing Center (the nursing home operator). There are no project costs associated with this proposal.

Working capital requirements are estimated at $863,203, based on two months' of first year expenses, which will be satisfied from existing facility cash and accounts receivable totaling $330,886 and $338,764, and the remaining working capital requirement of $193,552 being funded 50% or $96,766 from members equity and 50% or $96,766 financed through a loan from Century Health Capital, Inc. for 5 years at 7.5% interest. BFA Attachment C, ORNC, LLC d/b/a Chestnut Park Rehabilitation and Nursing Center pro-forma balance sheet, indicates positive members' equity of $979,892 as of December 31, 2012 . The applicant members state they will contribute equity to fund any shortfall in working capital.

BFA Attachment D is the pro-forma balance sheet of 330 Chestnut Street, LLC, which indicates positive members' equity of $271,553 as of the first day of operations.

The submitted budget indicates that a net income of $491,210 would be generated in the first year after the change in ownership. The following is a comparison of the 2012 historical and projected revenue and expense:

Projected Income	$5,670,427
Projected Expense	5,179,217
Projected Net Income	$ 491,210
Annual 2012 Income	$5,958,845
Annual 2012 Expense	5,320,370
Annual 2012 Net Income (Loss)	$638,475
Incremental Net Income (Loss)	($147,265)

It is estimated that the incremental net revenue for all payors will decrease approximately $147,265 as the results of the following: Medicaid revenues are expected to decrease by $8.10 as the result of a decline in the average daily rate, going from 168.79 per patient day in 2012, to $160.69 per patient day in 2014; over the same period, Medicare revenues are expected to decrease by approximately $133,651 and private pay revenues are expected to increase in total by approximately $106,413. Utilization is expected to decline from 95.23% in 2012 to 91.49%, the current occupancy rate. Expenses are expected to decrease approximately $141,153, which represents employee benefits, purchased services, depreciation, and rent expenses. The budget appears reasonable.

Staff notes that with the expected 2014 implementation of managed care for nursing home residents, Medicaid reimbursement is expected to change from a state-wide price with cost-based capital component payment methodology to a negotiated reimbursement methodology. Facility payments will be the result of negotiations between the managed long term care plans and the facility. At this point in time, it cannot be determined what financial impact this change in reimbursement methodology will have on this project.

BFA Attachment A presents a summary net worth statement of the proposed members of ORNC, LLC d/b/a Chestnut Park Rehabilitation and Nursing Center. All three of the proposed members have ownership interest in the following RHCF facilities; Bridgewater Center for Rehabilitation & Nursing, LLC, Pine Valley Center for Rehabilitation and Nursing, and Central Park Rehabilitation and Nursing Center. Their financial summaries are presented as BFA Attachments F through H.

Through CON 122147, which was contingently approved in December 2012, the applicants' status will change from receiver to owner of Vestal Park Rehabilitation and Nursing Center, and a replacement facility will be constructed. Therefore there are no financial statements for the new entity. The proposed members are also receivers in the following two RHCFs: Beechtree Care Center and Folts Center for Rehabilitation and Nursing.

As shown on BFA Attachment E, ORNC, LLC d/b/a Chestnut Park Rehabilitation and Nursing Center for the year 2012, the facility's first full year of operation under the receiver, the RHCF generated an average net income of $638,475, had an average positive net asset position, and had an average positive working capital position.

As shown on BFA Attachment F, Bridgewater Center for Rehabilitation and Nursing, LLC for the years 2010 through 2012, the RHCF generated an average operating surplus of $288,457, had an average positive net asset position of $461,913, and had an average positive working capital position of $222,964.

As shown on BFA Attachment G, Pine Valley Center, LLC d/b/a Pine Valley Center for Rehabilitation and Nursing for the years 2010 through 2012, the RHCF generated an average operating surplus of $434,863, had an average positive net asset position of $2,600,993, and had an average positive working capital position of $4,631,666.

As shown on BFA Attachment H, CPRN, LLC d/b/a Central Park Rehabilitation and Nursing Center for the years 2010 through 2012, the RHCF generated an average operating surplus of $287,300, the net asset position turned positive in 2011, and as of 2012 it was a positive $15,200. During this time period the RHCF had an average positive working capital position of $2,239,042.

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, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth of ORNC, LLC d/b/a Chestnut Park Rehabilitation and Nursing Center Proposed Members Operations
BFA Attachment B	Net Worth of 330 Chestnut Street, LLC Proposed Members Real Estate
BFA Attachment C	Pro Forma Balance Sheet, ORNC, LLC d/b/a Chestnut Park Rehabilitation and Nursing Center (the Center)
BFA Attachment D	Pro Forma Balance Sheet, 330Chestnut Street, LLC
BFA Attachment E	Financial Summary, ORNC, LLC d/b/a Chestnut Park Rehabilitation and Nursing Center (the Center)
BFA Attachment F	Financial Summary, Bridgewater center for Rehabilitation and Nursing, LLC
BFA Attachment G	Financial Summary, Pine Valley Center, LLC d/b/a Pine Valley Center for Rehabilitation and Nursing
BFA Attachment H	Financial Summary, CPRN, LLC d/b/a Central Park Rehabilitation and Nursing Center

Public Health and Health Planning Council

Project # 132227 E
RRNC, LLC d/b/a Colonial Park Rehabilitation and Nursing Center

County: Oneida County
Purpose: Establishment
Program: Residential Health Care Facility
Acknowledged: October 24, 2013

Executive Summary

Description

RRNC, LLC d/b/a Colonial Park Rehabilitation and Nursing Center (the Center) is seeking approval to be established as the new operator of Rome Nursing Home (Rome), an existing 80-bed proprietary residential health care facility (RHCF) located at 950 Floyd Avenue, Rome, NY (Oneida County).

RRNC, LLC d/b/a Colonial Park Rehabilitation and Nursing Center (the Center) is the current receiver of Rome Nursing Home. On June 10, 2011, RPNH, Inc d/b/a Rome Nursing Home entered into an Operations Transfer Agreement with Colonial Park Rehabilitation and Nursing Center, LLC to sell and acquire the operating interests of the 80-bed facility. The purchase price for the operations of Rome is $10. On July 12, 2012, Colonial Park Rehabilitation and Nursing Center, LLC assigned all its rights and interest in the Operational Transfer Agreement to RRNC, LLC d/b/a Colonial Park Rehabilitation and Nursing Center.

Ownership of the operations before and after the requested change is as follows:

Current Owner RPNH, Inc. d/b/a Rome Nursing Home	Interest	Current Receiver/Proposed Operation/Owner RRNC, LLC, d/b/a Colonial park Rehabilitation and Nursing Center	Interest
Estate of Anthony Salerno	40.00%	Efraim Steif	39.90%
Harry Satin	40.00%	Uri Koenig	60.00%
Lowell Feldman	10.00%	David Camerota	0.10%
Jeffrey Sunshine	10.00%		

A separate, but related real estate company, 950 Floyd Avenue, LLC, will acquire the facility's property. Ownership of the real estate before and after the requested change is as follows:

Current Owner Cortland-Clinton, Inc.	Interest	Proposed Owner 950 Floyd Avenue, LLC	Interest
Abbey Kapelovitz	14.7541%	Efraim Steif	40.00%
Estate of Ann Judith Lowe	14.7541%	Uri Koenig	60.00%
Eleanor Dutch	11.4753%		
Susan Krieger	14.7541%		
Jeffrey Berger	14.7541%		
James Berger	9.8361%		
Lisa Berger	9.8361%		
Robert Berger	9.8361%		

There are seven companion applications in which the proposed members are seeking to convert from being the receiver to being established as the new operator:

- CON 132228 CRNC, LLC d/b/a Cortland Park Rehabilitation and Nursing Center
- CON 132226 ORNC, LLC d/b/a Chestnut Park Rehabilitation and Nursing Center
- CON 132229 HRNC, LLC d/b/a Highland Park Rehabilitation and Nursing Center
- CON 132231 JBRNC, LLC d/b/a Hudson Park Rehabilitation and Nursing Center
- CON 132260 RSRNC, LLC d/b/a Riverside Center for Rehabilitation and Nursing
- CON 132261 CSRNC, LLC d/b/a Capstone Center for Rehabilitation and Nursing.
- CON 132334 NCRNC, LLC d/b/a Northeast Center for Rehabilitation and Brain Injury

DOH Recommendation

Contingent Approval

Need Summary

Colonial Park Rehabilitation and Nursing Center's utilization was 90.5% in 2010, 88.4% in 2011, and 93.7% in 2012. The facility has been in receivership since 2011 and the operator plans to increase utilization by offering a more comprehensive and coordinated medical, nursing, and ancillary service program. These programs will concentrate on ensuring a more home-like atmosphere for the existing residents while attracting new residents to the facility.

The change in ownership will not result in any change in beds or services.

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 sprinkler mandates.

Financial Summary

RRNC, LLC d/b/a Colonial Park Rehabilitation and Nursing Center will acquire the operating interest in the RHCF for $10 and 950 Floyd Avenue; LLC will acquire the RHCF real property for $1,602,221. Funding will be as follows: $268,888 equity contribution with the remaining $1,333,333 balanced being financed over 25 years at a 6.5% interest rate through Century Health Capital, Inc.

On July 12, 2012 through an assignment and assumption of an Operational Transfer Agreement; RRNC, LLC d/b/a Colonial Park Rehabilitation and Nursing Center acquired the operating interest of RPNH, Inc. d/b/a Rome Nursing Home, an existing 80 bed proprietary residential health care facility. There are no project costs associated with this proposal.

Year 1 Budget:	Revenues	$5,949,589
	Expenses	5,409,831
	Gain/(Loss)	$539,758

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Health Systems Management

<u>Approval contingent upon</u>:

1. Submission of an executed building lease, acceptable to the Department. [BFA]
2. Submission of a commitment for a permanent mortgage for the project to be provided from a recognized lending institution at a prevailing rate of interest, determined to be acceptable by the Department of Health. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
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:
      1. Information on activities relating to a-c above;
      2. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
      3. Other factors as determined by the applicant to be pertinent.

   The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
4. Submission of a photocopy of an executed Certificate of Amendment of the Articles of Organization of RRNC, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of an executed amended operating agreement of RRNC, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of an executed Certificate of Dissolution or Certificate of Amendment of the Certificate of Incorporation of RPNH, Inc., acceptable to the Department. [CSL]

<u>Approval conditional upon</u>:

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

April 10, 2014

Need Analysis

Project Description

RRNC, LLC d/b/a Colonial Park Rehabilitation and Nursing Center seeks approval to become the established operator of Rome Nursing Home, an 80-bed Article 28 residential health care facility located at 950 Floyd Avenue, Rome, 13440, in Oneida County. RRNC, LLC d/b/a Colonial Park Rehabilitation and Nursing Center is the current receiver of Rome Nursing Home.

Analysis

There is currently a surplus of 330 beds in Oneida County as indicated in Table 1 below. The overall occupancy for Oneida County is 93.9% for 2012 as indicated in Table 2.

Table 1: RHCF Need – Oneida County

2016 Projected Need	2,276
Current Beds	2,606
Beds Under Construction	0
Total Resources	2,606
Unmet Need	-330

Table 2: Colonial Park Rehabilitation and Nursing Center/Oneida County Occupancy

Facility/County	2010	2011	2012
Colonial Park Rehabilitation and Nursing Center	90.5%	88.4%	93.7%
Oneida County	94.3%	95.5%	93.9%

Colonial Park Rehabilitation and Nursing Center's utilization was 90.5% in 2010, 88.4% in 2011, and 93.7% in 2012. The primary reason for the low occupancy levels was the fact that the facility was in severe disrepair and essentially was not marketable. This facility has been in receivership since June 19, 2011. The receiver made the needed repairs, as evidenced by the increase in utilization in 2012.

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, or of the Health Systems Agency area Medicaid admissions percentage, 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 or the Health Systems Agency percentage, whichever is applicable.

Colonial Park Rehabilitation and Nursing Center's Medicaid admissions for 2011 and 2012 was 40.4% and 62.8%, respectively, which exceeds the Oneida County 75% rate in 2011 and 2012 of 18.3% and 19.8%, respectively.

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

Program Description

	Existing	Proposed
Facility Name	Colonial Park Rehabilitation and Nursing Center	Same
Address	950 Floyd Avenue Rome, NY 13440	Same
RHCF Capacity	80	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Limited Liability Company	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	RPNH, Inc. Receivership RRNC, LLC Members: Efraim Steif Uri Koenig David Camerota	RRNC, LLC d/b/a Colonial Park Rehabilitation and Nursing Center Members: Uri Koenig 60.00% Efraim Steif 39.90% David Camerota 0.10%

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Beechtree Care Center	09/2013 to present
Bridgewater Center for Rehabilitation & Nursing, LLC	02/2005 to present
Central Park Rehabilitation and Nursing Center	11/2008 to present
Capstone Center for Rehabilitation and Nursing	03/2012 to present
Chestnut Park Center for Rehabilitation and Nursing	06/2011 to present
Cortland Park Center for Rehabilitation and Nursing	06/2011 to present
Colonial Park Center for Rehabilitation and Nursing	06/2011 to present
Folts Home	10/2013 to present
Highland Park Center for Rehabilitation and Nursing	06/2011 to present
Hudson Park Rehabilitation and Nursing	06/2011 to present
Northeast Center for Special Care	11/2013 to present
Pine Valley Center for Rehabilitation and Nursing	12/2004 to present
Riverside Center for Rehabilitation and Nursing	03/2012 to present
Vestal Park Center for Rehabilitation and Nursing	06/2011 to present
Westchester Center for Rehabilitation and Nursing	11/2003 to 12/2006

Adult Care Facilities

Riverside Manor Adult Care (closed)	09/2009 to 07/2010

Individual Background Review

Uri Koenig is a CPA in good standing and owner of JK Koenig & Co., an accounting firm located in Spring Valley, NY. Mr. Koenig discloses the following health facility interests:

Bridgewater Center for Rehabilitation & Nursing	08/2006 to present
Pine Valley Center for Rehabilitation and Nursing	01/2008 to present
Central Park Rehabilitation and Nursing Center	03/2012 to present

Receiverships:

Capstone Center for Rehabilitation and Nursing	03/2012 to present
Chestnut Park Rehabilitation and Nursing Center	06/2011 to present
Cortland Park Rehabilitation and Nursing Center	06/2011 to present
Colonial Park Rehabilitation and Nursing Center	06/2011 to present
Highland Park Rehabilitation and Nursing Center	06/2011 to present
Hudson Park Rehabilitation and Nursing Center	06/2011 to present
Riverside Center for Rehabilitation and Nursing	03/2012 to present
Vestal Park Rehabilitation and Nursing Center	06/2011 to present
Beechtree Care Center	09/2013 to present
Folts Home	10/2013 to present
Northeast Center for Special Care	11/2013 to present

Efraim Steif is a licensed nursing home administrator in good standing in the States of New York and New Jersey. Mr. Steif is the president of FRS Healthcare Consultants, Inc., and formerly served as administrator at Forest View Center for Rehabilitation and Nursing in Forest Hills from 2000 to 2005. Mr. Steif discloses the following health care facilities interests:

Bridgewater Center for Rehabilitation & Nursing, LLC	02/2005 to present
Pine Valley Center for Rehabilitation and Nursing	12/2004 to present
Central Park Rehabilitation and Nursing Center	11/2008 to present
Riverside Manor Adult Care (closed)	09/2009 to 07/2010

Receiverships:

Beechtree Care Center	09/2013 to present
Capstone Center for Rehabilitation and Nursing	03/2012 to present
Chestnut Park Center for Rehabilitation and Nursing	06/2011 to present
Cortland Park Center for Rehabilitation and Nursing	06/2011 to present
Colonial Park Center for Rehabilitation and Nursing	06/2011 to present
Folts Home	10/2013 to present
Highland Park Center for Rehabilitation and Nursing	06/2011 to present
Hudson Park Center for Rehabilitation and Nursing	06/2011 to present
Northeast Center for Special Care	11/2013 to present
Riverside Center for Rehabilitation and Nursing	03/2012 to present
Vestal Park Center for Rehabilitation and Nursing	06/2011 to present
Westchester Center for Rehabilitation and Nursing	01/2003 to 12/2006

David Camerota is a licensed nursing home administrator in good standing. He is currently employed as chief operating officer with Upstate Services Group, LLC, which provides administrative and operational support to its affiliated skilled nursing facilities throughout New York. Mr. Camerota has served nearly continuously as administrator for the past eleven years at several upstate New York skilled nursing facilities. Mr. Camerota has disclosed the following nursing home ownership interests:

Pine Valley Center for Rehabilitation and Nursing	06/2011 to present
Central Park Rehabilitation and Nursing Center	02/2012 to present

Receiverships:

Highland Park Rehabilitation and Nursing Center	06/2011 to present
Hudson Park Rehabilitation and Nursing Center	06/2011 to present
Vestal Park Rehabilitation and Nursing Center	06/2011 to present
Chestnut Park Rehabilitation and Nursing Center	06/2011 to present
Cortland Park Rehabilitation and Nursing Center	06/2011 to present
Colonial Park Rehabilitation and Nursing Center	06/2011 to present
Riverside Center for Rehabilitation and Nursing	03/2012 to present
Capstone Center for Rehabilitation and Nursing	03/2012 to present
Beechtree Care Center	09/2013 to present
Folts Home	10/2013 to present
Northeast Center for Special Care	11/2013 to present

Character and Competence - Analysis
No negative information has been received concerning the character and competence of the above applicants.

A review of Bridgewater Center for Rehabilitation & Nursing for the period identified above reveals the following:

- The facility was fined $4,000 pursuant to a Stipulation and Order NH-13-016 issued May 29, 2013 for surveillance findings on July 6, 2011. Deficiencies were found under 10 NYCRR 415.26(f)(1) Written Plans for Emergency/Disasters, and 415.26(f)(3) Emergency Procedure/Drills.

A review of Central Park Rehabilitation and Nursing Center and Bridgewater Center for Rehabilitation and Nursing, LLC for the periods identified above reveals the following:

- The facility was fined $2,000 pursuant to a Stipulation and Order NH-10-064 issued December 6, 2010 for surveillance findings on May 26, 2009. Deficiencies were found under 10 NYCRR 415.19(a) Quality of Care: Infection Control.

A review of operations for Central Park Rehabilitation and Nursing Center and for the period identified above, results in a conclusion of a consistent high level of care since there were no repeat enforcements.

A review of operations for Capstone Center for Rehabilitation and Nursing, Chestnut Park Rehabilitation and Nursing Center, Colonial Park Rehabilitation and Nursing Center, Cortland Park Rehabilitation and Nursing Center, Highland Park Rehabilitation and Nursing Center, Hudson Park Rehabilitation and Nursing Center, Pine Valley Center for Rehabilitation and Nursing, Riverside Center for Rehabilitation and Nursing, Vestal Park Rehabilitation and Nursing Center, and Westchester Center for Rehabilitation and Nursing, and Riverside Manor Adult Care for the periods identified above results in a conclusion of a substantially consistent high level of care since there were no enforcements.

Project Review
No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.

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

Operations Transfer Agreement
The applicant has submitted an executed operations transfer agreement, the terms of which are summarized below:

Date:	June 10, 2011
Transferor:	RPNH, Inc
Transferee:	Colonial Park Rehabilitation and Nursing Center, LLC
Purchase Price:	$10 Payable at closing

Assets Transferred:	All rights, title and interest in the assets including trade name "Rome Nursing Home", leasehold improvements, equipment and furniture, supplies and inventory, prepaid expenses, all documents and records, assignable licenses and permits including Medicare and Medicaid provider numbers, phone numbers, fax numbers and all logos, names, trade names, trademarks and service marks, assignable software, resident trust funds, deposits and prepayments, cash and cash equivalents, Medicare and Medicaid provider agreements and Medical records custody agreement.
Assumed Liabilities:	Obligations of Transferor under or which may arise in connection with the Provider Agreement and the Assets, assumed by Transferee pursuant to the terms hereof and the Assignment of Provider Agreement

Assignment and Assumption Agreement

The applicant has submitted an executed assignment and assumption agreement, the terms of which are summarized below:

Date:	July 12, 2012
Assignor::	Colonial Park Rehabilitation and Nursing Center, LLC
Assignee::	RRNC, LLC d/b/a Colonial Park Rehabilitation and Nursing Center
Assignment and Assumption:	All rights and interest with respect to the operations transfer agreement.

Purchase/Sale Agreement for the Real Property

The change in ownership of the real estate will be effectuated in accordance with an asset purchase agreement, the terms of which are summarized below:

Date:	February 28, 2012
Seller:	Cortland-Clinton, Inc
Purchaser:	950 Floyd Avenue, LLC
Purchased Assets:	Seller's right, title and interest in that certain plot, piece and parcel of land and building, fixtures, equipment, improvements and depreciable assets occupied by or used by the facility and located at 950 Floyd Avenue, Rome, NY, the land lying in the bed of any street or highway in front of or adjoining the land to the center line thereof, any unpaid award for any taking by condemnation or any damage to the land or the improvements by reason of a change in grade of any street or highway, all easements, licenses, rights and appurtenances relating to any of the foregoing, any intangible property of seller, the warranties, the permits and all books, files and records relating to the nursing home facility, excluding seller's organizational documents and tax records.
Excluded Assets:	Seller's rights arising under this agreement or under any other agreement between purchaser and seller, all cash, cash equivalents or short term investments as of the closing date, all casualty, general liability and other insurance policies which cover seller, the nursing home facility or the operations thereof, corporate organizational documents, minute books, tax records and seals of seller and any and all books and records not related to any purchased assets.
Liabilities Assumed :	N/A
Purchase Price:	$1,602,221
Payment of Purchase Price:	$268,888 Escrow deposit at agreement signing $1,333,333 due at closing

The purchase price of operations and real estate is proposed to be satisfied as follows:

Equity - RRNC, LLC Members	$10
Equity -, 950 Floyd Avenue, LLC Members	$268,888
Loan – 950 Floyd Avenue (25-year terms, 6.5%,)	$1,333,333
Total	$1,602,231

BFA Attachments A and B are the proposed members' net worth summaries for RRNC d/b/a Colonial Park Rehabilitation and Nursing Center and 193 Clinton Avenue, LLC which reveals sufficient resources to meet the equity requirements. Century Health Capital, Inc. has provided a letter of interest.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility.

The members of the reality entity; 950 Floyd Avenue, LLC, are as follows:

Proposed Members	Percentage Ownership
Efraim Steif	40.00%
Uri Koenig	60.00%

Lease Agreement and Medicaid Capital Reimbursement

The applicant has submitted a draft lease agreement, the terms of which are summarized as follows:

Date:	February 28th, 2012
Premises:	An 80 bed Proprietary RHCF located at 950 Floyd Avenue, Rome, NY (Oneida County).
Lessor:	950 Floyd Avenue, LLC
Lessee:	RRNC d/b/a Colonial Park Rehabilitation and Nursing Center (the Center)
Term:	10 years with one 15 year renewal term
Rental:	$109,309 per year ($9,109.08 per month)
Provisions:	Triple Net Lease

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and operating entity.

Currently, Medicaid capital reimbursement is based on the return of and return on equity methodology, which will not be altered upon the change in ownership. Based on 2014 Nursing Home Consolidated Capital (Schedule VI – Property) there is no remaining equity to be reimbursed under the return of and return on equity.

Operating Budget

Following is a summary of the submitted operating budget, presented in 2014 dollars, for the first year subsequent to change in ownership:

	Per Diem	Total
Revenues:		
Medicaid	$199.65	$4,512,580
Medicare	357.89	452,378
Private Pay/Other	280.92	984,632
Total		$5,949,589

Expenses:	
Operating	$5,250,749
Capital	159,081
Total	$5,409,831
Net Income	$539,758
Utilization: (patient days)	27,372
Occupancy	93.74%

The following is noted with respect to the submitted operating budget:

- Medicaid and Medicare revenues are based on actual 2013 rates
- Private rate was adjusted lower to be at the level of the Medicare rate
- Overall utilization is projected at 93.74%, while utilization by payor source is expected as follows:

Medicaid	82.58%
Medicare	4.62%
Private Pay/Other	12.80%

- Breakeven utilization is projected at 85.23%

Capability and Feasibility

On July 12, 2012 though an assignment and assumption of an Operational Transfer Agreement RRNC, LLC d/b/a Colonial Park Rehabilitation and Nursing Center acquired the operating interest of RPNH, Inc d/b/a Rome Nursing Home, an existing 80--bed proprietary residential health care facility.

RRNC, LLC d/b/a Colonial Park Rehabilitation and Nursing Center will acquire the operating interest in the RHCF for $10 and 950 Floyd Avenue; LLC will acquire the RHCF real property for $1,602,221. Funding will be as follows: $268,888 equity contribution with the remaining $1,333,333 balanced being financed over 25 years at a 6.5% interest rate through Century Health Capital, Inc. There is relationship via similar members between 950 Floyd Avenue, LLC (the landlord) and RRNC, LLC d/b/a Colonial Park Rehabilitation and Nursing Center (the nursing home operator). There are no project costs associated with this proposal.

Working capital requirements are estimated at $901,639 based on two months' of first year expenses, which will by satisfied from existing facility cash and accounts receivable totaling $197,001and $1,326,442. BFA Attachment C, RRNC, LLC d/b/a Colonial Park Rehabilitation and Nursing Center pro forma balance sheet indicates positive members' equity of $100,469 as of December 31, 2012. The applicant members state they will contribute equity to fund any shortfall in working capital.

BFA Attachment D is the pro forma balance sheet for 950 Floyd Avenue, LLC, which indicates positive equity of $269,193 as of 12/31/2013.

The submitted budget indicates that a net income of $539,758 would be generated in the first year after the change in ownership. The following is a comparison of the 2012 historical and projected revenue and expense:

Projected Income	$5,949,589
Projected Expense	5,409,831
Projected Net Income	$539,758
Annual 2012 Income	$5,426,428
Annual 2012 Expense	5,607,908
Annual 2012 Net Income (Loss)	($181,480)
Incremental Net Income (Loss)	$721,238

It is estimated that incremental revenues will increase by $721,238 with utilization decreasing by 66 patient days. The anticipated changes are as follows: increase of 889 Medicaid patient days, increasing revenues by $666,858 and increasing the daily rate from $177.11 to $199.65 and bringing utilization to 82.58%, decrease of 1,306 Medicare patient days plus an increase in the daily rate, going from $241.84 per day to $357.89 per day which decreases revenues by $169,146, increase of 350 private pay patient days along with decreasing the daily rate to $280.92 per day which reduces revenues by $294,416, while the balance of the increase is comprised of the assessment revenue. Expenses are expected to decline by $198,077 primarily from the reduction in Depreciation and Rent, purchased services, Medical and surgical supplies, salaries and wages and employee benefits. The budget appears reasonable.

Staff Notes that with the expected 2014 implementation of managed care for nursing home residents, Medicaid reimbursement is expected to change from a state-wide price with cost-based capital component payment methodology to a negotiated reimbursement methodology. Facility payments will be the result of negotiations between the managed long term care plans and the facility. At this point in time it can not be determined what financial impact this change in reimbursement methodology will have on this project.

BFA Attachment A presents a summary net worth statement for the proposed members of RRNC, LLC d/b/a Colonial Park Rehabilitation and Nursing Center. The proposed members have ownership interest in three RHCF facilities located in New York State; their financial summaries are presented as BFA Attachments F through H and include the following: Bridgewater Center for Rehabilitation and Nursing, LLC; Pine Valley Center, LLC d/b/a Pine Valley Center for Rehabilitation and Nursing; CPRN, LLC d/b/a Central Park Rehabilitation and Nursing Center.

Through CON 122147, which was contingently approved in December 2012, the applicants' status will change from receiver to owner of Vestal Park Rehabilitation and Nursing Center, and a replacement facility will be constructed. Therefore there are no financial statements for the new entity. The proposed members are also receivers in the following two RHCFs: Beechtree Care Center and Folts Center for Rehabilitation and Nursing.

As shown on BFA Attachment E, RRNC, LLC d/b/a Colonial Park Rehabilitation and Nursing Center for the year 2012, the facility's first full year of operation under the receiver, the RHCF generated an average net loss of $81,507, had an average positive net asset position, and had an average negative working capital position. The reason for the negative working capital position is attributable to a lack of liquid assets and to the fact that the prior operator apparently allowed accounts payable and accrued payroll to lag beyond the standard terms; the balances in those categories make up the shortfall. The reason for the loss is the reimbursement rate was too low to cover costs and there were cost overruns in the operations of the facility by the prior operator. In 2013, Colonial Park experienced an increase in reimbursement rates, which translated into increased revenue of approximately $140,000.

The facility has also been successful in lowering costs, including reducing Therapy costs by approximately $110,000 and reducing general and administrative costs by approximately $230,000. As a result of these improvements, the facility is projecting to achieve a net income for fiscal year 2013.

As shown on BFA Attachment F, Bridgewater Center for Rehabilitation and Nursing, LLC for the years 2010 through 2012, the RHCF generated an average operating surplus of $288,457, had an average positive net asset position of $461,913, and had an average positive working capital position of $222,964.

As shown on BFA Attachment G, Pine Valley Center, LLC d/b/a Pine Valley Center for Rehabilitation and Nursing for the years 2010 through 2012, the RHCF generated an average operating surplus of $434,863, had an average positive net asset position of $2,600,993, and had an average positive working capital position of $4,631,666.

As shown on BFA Attachment H, CPRN, LLC d/b/a Central Park Rehabilitation and Nursing Center for the years 2010 through 2012, the RHCF generated an average operating surplus of $287,300, the net asset position turned positive in 2011, and as of 2012 it was a positive $15,200. During this time period the RHCF had an average positive working capital position of $2,239,042.

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 contingent approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth of RRNC, LLC Proposed Members
BFA Attachment B	Net Worth of 950 Floyd Avenue, LLC Proposed Members
BFA Attachment C	Pro Forma Balance Sheet, RRNC, LLC d/b/a Colonial Park Rehabilitation and Nursing Center
BFA Attachment D	Pro Forma Balance Sheet, 950 Floyd Avenue, LLC
BFA Attachment E	Financial Summary, RRNC, LLC d/b/a Colonial Park Rehabilitation and Nursing Center
BFA Attachment F	Financial Summary, Bridgewater Center for Rehabilitation and Nursing, LLC
BFA Attachment G	Financial Summary, Pine Valley Center, LLC d/b/a Pine Valley Center for Rehabilitation and Nursing
BFA Attachment H	Financial Summary, CPRN, LLC d/b/a Central Park Rehabilitation and Nursing Center

Public Health and Health Planning Council

Project # 132228 E
CRNC, LLC d/b/a Cortland Park Rehabilitation and Nursing Center

County: **Cortland County**
Purpose: **Establishment**
Program: **Residential Health Care Facility**
Acknowledged: **October 24, 2013**

Executive Summary

Description

CRNC, LLC d/b/a Cortland Park Rehabilitation and Nursing Center, a limited liability company, is requesting approval to be established as the new operator of CCNH, Inc., d/b/a Cortland Care Center, an existing 120-bed proprietary residential health care facility (RHCF) located at 193 Clinton Avenue, Cortland, New York (Cortland County).

CRNC, LLC d/b/a Cortland Park Rehabilitation and Nursing Center is the current receiver of Cortland Care Center. On June 10, 2011, Cortland Park Rehabilitation and Nursing Center, LLC entered into an Operational Transfer Agreement with CCNH, Inc., d/b/a Cortland Care Center to acquire for $10 its operating interest in the 120-bed RHCF. On July 12, 2012, Cortland Park Rehabilitation and Nursing Center, LLC assigned all its rights and interest in the Operational Transfer Agreement to CRNC, LLC d/b/a Cortland Park Rehabilitation and Nursing Center.

Ownership of the operations and real property before and after the requested change is as follows:

Current Operator		Proposed Operator	
CCNH, Inc., d/b/a Cortland Care Center		CRNC, LLC d/b/a Cortland Park Rehabilitation and Nursing Center	
	Interest		Interest
Estate of Anthony Salerno	50%	Uri Koenig	60.0%
Harry Satin	40%	Efraim Steif	39.9%
Jeffrey Sunshine	10%	David Camerota	0.1%

Current Realty Owner		Proposed Realty Owner	
Cortland-Clinton, Inc.		193 Clinton Avenue, LLC	
	Interest		Interest
Abbey Kapelovitz	14.7541%	Uri Koenig	60.0%
Susan Krieger	14.7541%	Efraim Steif	40.0%
Jeffrey Berger	14.7541%		
James Berger	9.8361%		
Lisa Berger	9.8361%		
Robert Berger	9.8361%		
Eleanor Dutch	11.4753%		
Estate of Ann Judith Lowe	14.7541%		

There are seven companion applications in which the proposed members are seeking to convert from being the receiver to being established as the new operator:

- CON 132226 - ORNC, LLC d/b/a Chestnut Park Rehabilitation and Nursing Center;
- CON 132227 - RRNC, LLC d/b/a Colonial Park Rehabilitation and Nursing Center;
- CON 132229 - HRNC, LLC d/b/a Highland Park Rehabilitation and Nursing Center;
- CON 132231 - JBRNC, LLC d/b/a Hudson Park Rehabilitation and Nursing Center;
- CON 132334 - NCRNC, LLC d/b/a Northeast Center for Rehabilitation and Brain Injury;
- CON 132260 - RSRNC, LLC d/b/a Riverside Center for Rehabilitation and Nursing; and
- CON 132261 - CSRNC, LLC d/b/a Capstone Center for Rehabilitation and Nursing.

DOH Recommendation

Contingent Approval

Need Summary

Cortland Park Rehabilitation and Nursing Center's utilization was 95.0% in 2009, 97.4% in 2010, and 94.8% in 2011.

The change in ownership will not result in any change in beds or services.

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 sprinkler mandates.

Financial Summary

CRNC, LLC d/b/a Cortland Park Rehabilitation and Nursing Center will acquire the operating interest in the RHCF for $10, and 193 Clinton Avenue LLC will acquire the RHCF real property for $2,403,324. Funding will be as follows: $403,334 equity contributions, with the remaining $2,000,000 balance being financed over 25 years at a 6.5% interest rate through Century Health Capital, Inc.

<u>Budget</u>

Revenues:	$9,274,404
Expenses:	<u>$8,012,396</u>
Gain/ (Loss)	$1 262,008

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Health Systems Management

<u>Approval contingent upon</u>:

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:
   a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
   b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
   c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
   d. Submit an annual report for two years to the DOH, which demonstrates substantial progress with the implementation of the plan. The plan should include but not be limited to:
      - Information on activities relating to a-c above;
      - 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 building lease, acceptable to the Department. [BFA]
4. Submission of a commitment for a permanent mortgage for the project to be provided from a recognized lending institution at a prevailing rate of interest that is determined to be acceptable by the Department of Health. Included with the submitted permanent mortgage commitment, must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
5. Submission of a photocopy of an executed Certificate of Amendment of the Articles of Organization of CRNC, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of an executed amended operating agreement of CRNC, LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of the executed Certificate of Assumed Name of CRNC, LLC, acceptable to the Department. [CSL]
8. Submission of a photocopy of the executed lease agreement between 193 Clinton Avenue, LLC and CRNC, LLC, acceptable to the Department. [CSL]
9. Submission of a photocopy of an executed Certificate of Dissolution or Certificate of Amendment of the Certificate of Incorporation of CCNH, Inc., acceptable to the Department. [CSL]

<u>Approval conditional upon</u>:

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

April 10, 2014

Need Analysis

Background
CRNC, LLC, d/b/a Cortland Park Rehabilitation and Nursing Center, seeks approval to become the established operator of Cortland Care Center, a 120-bed Article 28 residential health care facility, located at 193 Clinton Avenue, Cortland, 13045, in Cortland County. CRNC, LLC, d/b/a Cortland Park Rehabilitaion and Nursing Center is the current receiver of Cortland Care Center.

Analysis
There is currently a surplus of 62 beds in Cortland County as indicated in Table 1 below. The overall occupancy for Cortland County is 93.0% for 2011 as indicated in Table 2.

Table 1: RHCF Need – Cortland County

2016 Projected Need	338
Current Beds	400
Beds Under Construction	0
Total Resources	400
Unmet Need	-62

Table 2: Cortland Park Rehabilitation and Nursing Center/Cortland County Occupancy

Facility/County/Region	2010	2011	2012
Cortland Park Rehabilitation and Nursing Center	97.4%	94.8%	92.0%
Cortland County	64.3%	93.0%	91.2%

Cortland Park Rehabilitation and Nursing Center is currently in receivership. According to the Department's Nursing Home Profile, based on weekly bed census, the facility was at 93.3% as of October 30, 2013, and by November 27th had improved to 95.8%, slightly below the Department's 97% optimum for the planning area.

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 or 75% of the Health Systems Agency area, 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 or Health Systems Agency percentage, whichever is applicable.

Cortland Park Rehabilitation and Nursing Center's Medicaid admissions for 2010 and 2011 were 12.00% and 31.51%, respectively, which exceeds the Cortland County 75% rates in 2010 and 2011 of 9.30% and 23.71%, respectively.

Conclusion
Approval of this application will result in maintaining a community healthcare resource that provides needed services to the Medicaid population.

Recommendation
From a need perspective, contingent approval is recommended.

Programmatic Analysis

Program Description

	Existing	Proposed
Facility Name	Cortland Park Rehabilitation and Nursing Center	Same
Address	193 Clinton Avenue Cortland, NY 13045	Same
RHCF Capacity	120	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Limited Liability Company	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	CCNH, Inc. <u>Receivership</u> CRNC, LLC Members: Efraim Steif Uri Koenig David Camerota	CRNC, LLC, d/b/a Cortland Park Rehabilitation and Nursing Center Members: Uri Koenig 60.00% Efraim Steif 39.90% David Camerota 0.10%

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Beechtree Care Center	09/2013 to present
Bridgewater Center for Rehabilitation & Nursing, LLC	02/2005 to present
Central Park Rehabilitation and Nursing Center	11/2008 to present
Capstone Center for Rehabilitation and Nursing	03/2012 to present
Chestnut Park Center for Rehabilitation and Nursing	06/2011 to present
Cortland Park Center for Rehabilitation and Nursing	06/2011 to present
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Highland Park Center for Rehabilitation and Nursing	06/2011 to present
Hudson Park Rehabilitation and Nursing	06/2011 to present
Northeast Center for Special Care	11/2013 to present
Pine Valley Center for Rehabilitation and Nursing	12/2004 to present
Riverside Center for Rehabilitation and Nursing	03/2012 to present
Vestal Park Center for Rehabilitation and Nursing	06/2011 to present
Westchester Center for Rehabilitation and Nursing	11/2003 to 12/2006

Adult Care Facilities

Riverside Manor Adult Care (closed)	09/2009 to 07/2010

Individual Background Review

Uri Koenig is a CPA in good standing and owner of JK Koenig & Co., an accounting firm located in Spring Valley, NY. Mr. Koenig discloses the following health facility interests:

Bridgewater Center for Rehabilitation & Nursing	08/2006 to present
Pine Valley Center for Rehabilitation and Nursing	01/2008 to present
Central Park Rehabilitation and Nursing Center	03/2012 to present

Receiverships:

Capstone Center for Rehabilitation and Nursing	03/2012 to present
Chestnut Park Rehabilitation and Nursing Center	06/2011 to present
Cortland Park Rehabilitation and Nursing Center	06/2011 to present

Colonial Park Rehabilitation and Nursing Center	06/2011 to present
Highland Park Rehabilitation and Nursing Center	06/2011 to present
Hudson Park Rehabilitation and Nursing Center	06/2011 to present
Riverside Center for Rehabilitation and Nursing	03/2012 to present
Vestal Park Rehabilitation and Nursing Center	06/2011 to present
Beechtree Care Center	09/2013 to present
Folts Home	10/2013 to present
Northeast Center for Special Care	11/2013 to present

Efraim Steif is a licensed nursing home administrator in good standing in the States of New York and New Jersey. Mr. Steif is the president of FRS Healthcare Consultants, Inc., and formerly served as administrator at Forest View Center for Rehabilitation and Nursing in Forest Hills from 2000 to 2005. Mr. Steif discloses the following health care facilities interests:

Bridgewater Center for Rehabilitation & Nursing, LLC	02/2005 to present
Pine Valley Center for Rehabilitation and Nursing	12/2004 to present
Central Park Rehabilitation and Nursing Center	11/2008 to present
Riverside Manor Adult Care (closed)	09/2009 to 07/2010

<u>Receiverships:</u>

Beechtree Care Center	09/2013 to present
Capstone Center for Rehabilitation and Nursing	03/2012 to present
Chestnut Park Center for Rehabilitation and Nursing	06/2011 to present
Cortland Park Center for Rehabilitation and Nursing	06/2011 to present
Colonial Park Center for Rehabilitation and Nursing	06/2011 to present
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Riverside Center for Rehabilitation and Nursing	03/2012 to present
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David Camerota is a licensed nursing home administrator in good standing. He is currently employed as chief operating officer with Upstate Services Group, LLC, which provides administrative and operational support to its affiliated skilled nursing facilities throughout New York. Mr. Camerota has served nearly continuously as administrator for the past eleven years at several upstate New York skilled nursing facilities. Mr. Camerota has disclosed the following nursing home ownership interests.

Pine Valley Center for Rehabilitation and Nursing	06/2011 to present
Central Park Rehabilitation and Nursing Center	02/2012 to present

<u>Receiverships:</u>

Highland Park Rehabilitation and Nursing Center	06/2011 to present
Hudson Park Rehabilitation and Nursing Center	06/2011 to present
Vestal Park Rehabilitation and Nursing Center	06/2011 to present
Chestnut Park Rehabilitation and Nursing Center	06/2011 to present
Cortland Park Rehabilitation and Nursing Center	06/2011 to present
Colonial Park Rehabilitation and Nursing Center	06/2011 to present
Riverside Center for Rehabilitation and Nursing	03/2012 to present
Capstone Center for Rehabilitation and Nursing	03/2012 to present
Beechtree Care Center	09/2013 to present
Folts Home	10/2013 to present
Northeast Center for Special Care	11/2013 to present

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants.

A review of Bridgewater Center for Rehabilitation & Nursing for the period identified reveals the following:

- The facility was fined $4,000 pursuant to a Stipulation and Order NH-13-016 issued May 29, 2013 for surveillance findings on July 6, 2011. Deficiencies were found under 10 NYCRR 415.26(f)(1) Written Plans for Emergency/Disasters, and 415.26(f)(3) Emergency Procedure/Drills.

A review of Central Park Rehabilitation & Nursing Center for the period identified reveals the following :

- The facility was fined $2,000 pursuant to a Stipulation and Order NH-10-064 issued December 6, 2010 for surveillance findings on May 26, 2009. Deficiencies were found under 10 NYCRR 415.19(a) Quality of Care: Infection Control.

A review of operations for Central Park Rehabilitation and Nursing Center and Bridgewater Center for Rehabilitation and Nursing, LLC for the periods identified above, results in a conclusion of consistent high level of care since there were no repeat enforcements.

A review of operations for Capstone Center for Rehabilitation and Nursing, Chestnut Park Rehabilitation and Nursing Center, Colonial Park Rehabilitation and Nursing Center, Cortland Park Rehabilitation and Nursing Center, Highland Park Rehabilitation and Nursing Center, Hudson Park Rehabilitation and Nursing Center, Pine Valley Center for Rehabilitation and Nursing, Riverside Center for Rehabilitation and Nursing, Vestal Park Rehabilitation and Nursing Center, and Westchester Center for Rehabilitation and Nursing, and Riverside Manor Adult Care 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. No administrative services or consulting agreements are proposed in this application.

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

Operations Transfer Agreement

The applicant has submitted an executed operations transfer agreement, the terms of which are summarized below:

Date:	June 10, 2011
Transferor:	CCNH, Inc., d/b/a Cortland Care Center
Transferee:	Cortland Park Rehabilitation and Nursing Center, LLC
Purchaser Price:	$10 at closing
Assets Transferred:	All rights, title and interest in the assets including: trade name “Cortland Care Center”; leasehold improvements, equipment and furniture; supplies and inventory; prepaid expenses; documents and records; assignable licenses and permits including Medicare and Medicaid provider numbers; phone numbers, trade names, trademarks; assignable software; resident trust funds; deposits and prepayments; cash and cash equivalents; Medicare and Medicaid provider agreements; medical records custody agreement.

Assumed Liabilities:	Obligations of Transferor under or which may arise in connection with the Provider Agreements and the Assets, assumed by Transferee pursuant to the terms hereof and the Assignment of Provider Agreement.

Assignment and Assumption Agreement

The applicant has submitted an executed assignment and assumption agreement, the terms of which are summarized below:

Date:	July 12, 2012
Assignor:	Cortland Park Rehabilitation and Nursing Center, LLC
Assignee:	CRNC, LLC d/b/a Cortland Park Rehabilitation and Nursing Center.
Assignment and Assumption:	All rights and interest with respect to the operations transfer agreement.

Purchase/Sale Agreement for the Real Property

The applicant has submitted an executed agreement to purchase the RHCF realty, the terms of which are summarized below:

Date:	February 28, 2012
Seller Realty:	Cortland-Clinton, Inc.,
Purchaser Realty:	193 Clinton Avenue, LLC
Asset Transferred Realty:	All rights, title and interest in piece and parcel of land, building/s, improvements, fixtures, easements and appurtenances known by the address 193 Clinton Avenue, Cortland, New York 13045.
Excluded Assets:	Cash & cash equivalent, insurance policies, and various records and documents.
Purchase Price:	$2,403,324
Payment of Purchase Price:	$ 403,324 escrow deposit at agreement signing $2,000,000 due at closing.

The purchase price of operations and real estate is proposed to be satisfied as follows:

Equity - CRNC, LLC Members	$10
Equity -193 Clinton Avenue, LLC Members	$403,324
Loan -193 Clinton Avenue (25-year terms, 6.5%)	$2,000,000
Total	$2,403,334

BFA Attachments A and B are the proposed members' net worth summaries for CRNC d/b/a Cortland Park Rehabilitation and Nursing Center, and 193 Clinton Avenue, LLC, which reveals sufficient resources to meet the equity requirements. Century Health Capital, Inc. has provided a letter of interest.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility.

Lease Agreement and Medicaid Capital Reimbursement

The applicant has submitted a draft lease agreement, the terms of which are summarized below:

Date:	February 28, 2012
Premises:	A 120-bed RHCF located at 193 Clinton Avenue, Cortland New York 13045
Owner/Landlord:	193 Clinton Avenue, LLC
Lessee:	CRNC, LLC d/b/a Cortland Park Rehabilitation and Nursing Center
Term:	10 years with one 15 year renewal term

Rent:	$163,963 per year ($13,663.58 per month)
Provisions:	Triple net lease

The lease arrangement between the landlord, 193 Clinton Avenue, LLC, and the operator, CRNC, LLC d/b/a Cortland Park Rehabilitation and Nursing Center, is a non-arm's length agreement.

Currently, Medicaid capital reimbursement is based on the return of and return on equity methodology, which will not be altered upon the change in ownership. Based on 2014 Nursing Home Consolidated Capital (Schedule VI – Property), there is 24 years of useful life left, with a remaining net equity of $2,011,978 that will be reimbursed under the return of and return on equity.

Operating Budget

The applicant has provided an operating budget, in 2014 dollars, for the first year subsequent to the change in ownership. The budget is summarized below:

	Per Diem	Total
Revenues:		
Medicaid	$147.93	$4,363,639
Medicare	444.04	2,115,851
Private Pay	330.85	2,526,435
Assessment Revenue	7.23	268,479
Total Revenues:		$9,274,404
Expenses:		
Operating		$7,802,380
Capital		210,016
Total Expenses:		$8,012,396
Net Income:		$1,262,008
Utilization (resident days)		41,899
Occupancy		95.66%

The following is noted with respect to the submitted operating budget:

- Medicaid and Medicare revenues are based on actual 2013 rates.
- Private rates are based on actual 2013 rates.
- Overall utilization is projected at 95.66%. Utilization for the five years from 2008 through 2012 averaged 95.67%. The facility reports utilization at 94.2% as of January 8, 2014.
- Utilization by payor source is anticipated as follows:

Medicaid Fee-for-Service	70.40%
Medicare Fee-for-Service	11.37%
Private/Other	18.23%

- Breakeven point is expected to occur at 83% of projected utilization

Capability and Feasibility

CRNC, LLC d/b/a Cortland Park Rehabilitation and Nursing Center will acquire the operating interest in the RHCF for $10, and 193 Clinton Avenue, LLC will acquire the RHCF real property for $2,403,324. Funding will be as follows: $403,334 equity contributions, which has been paid into escrow, with the $2,000,000 remaining balance being financed through Century Health Capital, Inc. at the above stated terms. There is a relationship via similar members between 193 Clinton Avenue, LLC (the landlord) and CRNC, LLC d/b/a Cortland Park Rehabilitation and Nursing Center (the nursing home operator). There are no project costs associated with this proposal.

Working capital is estimated at $1,335,399 and is based on two months of the first year expenses, which will be met from existing cash and accounts receivable balances totaling $673,829 and $1,562,986, which is presented on BFA Attachment C, the CRNC, LLC d/b/a Cortland Park Rehabilitation and Nursing Center pro-forma balance sheet. The applicant members state they will contribute equity to fund any shortfall in working capital. BFA Attachment C indicates positive members' equity of $100,469 as of December 31, 2012.

BFA Attachment D is the pro-forma balance sheet for 193 Clinton Avenue, LLC, which indicates positive members' equity of $403,335 as of 12/31/2013.

The submitted budget indicates $1,262,008 in net income would be generated in the first year after the change in ownership. The following is a comparison of the 2012 historical and projected revenue and expense:

Projected Income	$ 9,274,404
Projected Expense	8.012,396
Projected Net Income	$1,262,008
Annual 2012 Income	$8,815,681
Annual 2012 Expense	8,041,437
Annual 2012 Net Income (Loss)	$774,244
Incremental Net Income (Loss)	$487,764

It is estimated incremental net revenue for all payors will increase approximately $458,723, as the results of the following changes in rates: Medicaid revenues are expected to decrease by $535,263 as the results of a decline in the average daily rate, going from $166.08 per patient day in 2012 to $147.93 per patient day in 2014; Medicare revenues are expected to increase $567,626 as the results of an increase in the average daily rate, going from $324.92 to $444.04 per patient day; the private pay rate is expected to increase by $157,881 or $20.68 per patient day; while the balance of the increase is comprised of the assessment revenue. Expenses are expected to decrease approximately $29,041, which represents a change in purchase services. The budget appears reasonable.

Staff notes that with the expected 2014 implementation of managed care for nursing home residents, Medicaid reimbursement is expected to change from a state-wide price, with cost-based capital component payment methodology to a negotiated reimbursement methodology. Facility payments will be the result of negotiations between the managed long term care plans and the facility. At this point in time, it cannot be determined what financial impact this change in reimbursement methodology will have on this project.

BFA Attachment A presents a net worth summary statement for the proposed members of CRNC, LLC d/b/a Cortland Park Rehabilitation and Nursing Center. The proposed members have ownership interest in three RHCF facilities located in New York State; their financial summaries are presented as BFA Attachments F through H and include the following: Bridgewater Center for Rehabilitation and Nursing, LLC; Pine Valley Center, LLC d/b/a Pine Valley Center for Rehabilitation and Nursing, and CPRN, LLC d/b/a Central Park Rehabilitation and Nursing Center.

Through CON 122147, which was contingently approved in December 2012, the applicants' status will change from receiver to owner of Vestal Park Rehabilitation and Nursing Center, and a replacement facility will be constructed. Therefore there are no financial statements for the new entity. The proposed members are also receivers in the following two RHCFs: Beechtree Care Center and Folts Center for Rehabilitation and Nursing.

As shown on BFA Attachment E, the financial summary for CRNC, LLC d/b/a Cortland Park Rehabilitation and Nursing Center for the year 2012, the facility's first full year of operation under the receiver the RHCF generated an average operating surplus of $774,244, had an average positive net asset position of $896,100, and as of December 31, 2012, it had a positive working capital position of $867,069.

As shown on BFA Attachment F, the financial summary for Bridgewater Center for Rehabilitation and Nursing, LLC for the years 2010 through 2012, the RHCF generated an average operating surplus of $288,457, had an average positive net asset position of $461,913, and had an average positive working capital position of $222,964.

As shown on BFA Attachment G, the financial summary for Pine Valley Center, LLC d/b/a Pine Valley Center for Rehabilitation and Nursing for the years 2010 through 2012, the RHCF generated an average operating surplus of $434,863, had an average positive net asset position of $2,600,993, and had an average positive working capital position of $4,631,666.

As shown on BFA Attachment H, the financial summary for CPRN, LLC d/b/a Central Park Rehabilitation and Nursing Center for the years 2010 through 2012, the RHCF generated an average operating surplus of $287,300, the net asset position turned positive in 2011, and as of 2012, it was a positive $15,200. During this time period, the RHCF had an average positive working capital position of $2,239,042.

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	Net Worth of CRNC, LLC Proposed Members
BFA Attachment B	Net Worth of 193 Clinton Avenue, LLC Proposed Members
BFA Attachment C	Pro-forma Balance Sheet, CRNC, LLC d/b/a Cortland Park Rehabilitation and Nursing Center
BFA Attachment D	Pro-forma Balance Sheet 193 Clinton Avenue, LLC
BFA Attachment E	Financial Summary, CRNC, LLC d/b/a Cortland Park Rehabilitation and Nursing Center
BFA Attachment F	Financial Summary, Bridgewater Center for Rehabilitation and Nursing, LLC
BFA Attachment G	Financial Summary, Pine Valley Center, LLC d/b/a Pine Valley Center for Rehabilitation and Nursing
BFA Attachment H	Financial Summary, CPRN, LLC d/b/a Central Park Rehabilitation and Nursing Center

Public Health and Health Planning Council

Project # 132229 E

HRNC, LLC d/b/a Highland Park Rehabilitation and Nursing Center

County: **Allegany County**
Purpose: **Establishment**
Program: **Residential Health Care Facility**
Acknowledged: **October 23, 2013**

Executive Summary

Description

HRNC, LLC d/b/a Highland Park Rehabilitation and Nursing Center (the Center), is seeking approval to be established as the new operator of Highland Healthcare Center, an existing 80-bed proprietary residential health care facility (RHCF) located at 160 Seneca Street, Wellsville, NY (Allegany County), and an adult day health care program with a capacity of 21 slots located at 100 Chamberlain Street, Wellsville, NY (Allegany County).

HRNC, LLC d/b/a Highland Park Rehabilitation and Nursing Center (the Center) is the current receiver of Highland Healthcare Center. On June 10, 2011, WHNH, Inc. d/b/a Highland Healthcare Center entered into an Operations Transfer Agreement with Highland Park Rehabilitation and Nursing Center, LLC to sell and acquire the operating interests of the 80-bed facility. The purchase price for the operations of Highland is $10. On July 12, 2012, Highland Park Rehabilitation and Nursing Center, LLC, assigned all its rights and interest in the Operational Transfer Agreement to HRNC, LLC d/b/a Highland Park Rehabilitation and Nursing Center

Ownership of the operations before and after the requested change is as follows:

Current Owner		Current receiver/Proposed Operator/owner	
WHNH, Inc. d/b/a Highland Healthcare Center		HRNC, LLC d/b/a Highland Park Rehabilitation and Nursing Center	
	Interest		Interest
Estate of Anthony Salerno	40.00%	Efraim Steif	39.90%
Harry Satin	40.00%	Uri Koenig	60.00%
Lowell Feldman	10.00%	David Camerota	0.10%
Jeffrey Sunshine	10.00%		

A separate but related real estate company, 160 Seneca Street, LLC, will acquire the facility's property.

Ownership of the real estate before and after the requested change is as follows:

Current Owner		Proposed Owner	
Cortland-Clinton, Inc		160 Seneca Street, LLC	
	Interest		Interest
Abbey Kapelovitz	14.7541%	Efraim Steif	40.00%
Estate of Ann Judith Lowe	14.7541%	Uri Koenig	60.00%
Eleanor Dutch	11.4753%		
Susan Krieger	14.7541%		
Jeffrey Berger	14.7541%		
James Berger	9.8361%		
Lisa Berger	9.8361%		
Robert Berger	9.8361%		

These are seven companion applications in which the proposed members are seeking to convert from being the receiver to being established as the new operator:

- CON 132228 CRNC, LLC d/b/a Cortland Park Rehabilitation and Nursing Center
- CON 132227 RRNC, LLC d/b/a Colonial Park Rehabilitation and Nursing Center
- CON 132226 ORNC, LLC d/b/a Chestnut Park Rehabilitation and Nursing Center
- CON 132231 JBRNC, LLC d/b/a Hudson Park Rehabilitation and Nursing Center
- CON 132260 RSRNC, LLC d/b/a Riverside Center for Rehabilitation and Nursing
- CON 132261 CSRNC, LLC d/b/a Capstone Center for Rehabilitation and Nursing, and
- CON 132334 NCRNC, LLC d/b/a Northeast Center for Rehabilitation and Brain Injury

DOH Recommendation

Contingent Approval

Need Summary

Highland Park Rehabilitation and Nursing Center's utilization was 96.9% in 2009, 93.3% in 2010, and 87.3% in 2011. While utilization has fallen below the Department's 97% optimum for the planning area in 2010 and 2011, the facility is currently making improvements towards reaching the Department's goal of 97%.

The change in ownership will not result in any change in beds or services.

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 sprinkler mandates.

Financial Summary

HRNC, LLC d/b/a Highland Park Rehabilitation and Nursing Center will acquire the operating interest in the RHCF for $10 and 160 Seneca Street, LLC, will acquire the RHCF real property for $1,602,221. Funding will be as follows: $268,888 equity contribution with the remaining $1,333,333 balanced being financed over 25 years at a 6.5% interest rate through Century Health Capital, Inc.

On July 12, 2012, through an assignment and assumption of an Operational Transfer Agreement, HRNC, LLC d/b/a Highland Park Rehabilitation and Nursing Center acquired the operating interest of WHNH, Inc. d/b/a Highland Healthcare Center, an existing 80-bed proprietary residential health care facility. There are no project costs associated with this proposal.

Year 1 Budget	Revenues	$5,759,803
TOTAL	Expenses	5,725,397
	Gain/(Loss)	$34,406

Year 1 Budget	Revenues	$5,155,161
RHCF	Expenses	5,541,521
	Gain/(Loss)	($386,360)

Year 1 Budget	Revenues	$604,642
ADHCP	Expenses	183,876
	Gain/(Loss)	$420,766

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

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:
   a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
   b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
   c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
   d. Submit an annual report for two years to the DOH, which demonstrates substantial progress with the implementation of the plan. The plan should include but not be limited to:
      - Information on activities relating to a-c above;
      - 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 building lease, acceptable to the Department. [BFA]
4. Submission of a commitment for a permanent mortgage for the project to be provided from a recognized lending institution, at a prevailing rate of interest, determined to be acceptable by the Department of Health. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
5. Submission of a photocopy of an executed Certificate of Amendment of the Articles of Organization of HRNC, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of an executed amended operating agreement of HRNC, LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of an executed Certificate of Dissolution or Certificate of Amendment of the Certificate of Incorporation of WHNH, Inc., 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

April 10, 2014

Need Analysis

Background

HRNC, LLC, d/b/a Highland Park Rehabilitation and Nursing Center, seeks approval to become the established operator of Highland Healthcare Center, an 80-bed Article 28 residential health care facility, located at 160 Seneca Street, Wellsville, 14895, in Allegany County. HRNC, LLC, d/b/a Highland Park Rehabilitation and Nursing Center is the current receiver of Highland Healthcare Center.

Analysis

There is currently a need for 25 beds in Allegany County as indicated in Table 1 below. The overall occupancy for Allegany County is 81.6% for 2011 as indicated in Table 2.

Table 1: RHCF Need – Allegany County

2016 Projected Need	386
Current Beds	361
Beds Under Construction	0
Total Resources	361
Unmet Need	25

Table 2: Highland Park Rehabilitation and Nursing Center/Allegany County Occupancy

Facility/County/Region	**2010**	**2011**	**2012**
Highland Park Rehabilitation and Nursing Center	93.3%	87.3%	96.4%
Allegany County	87.3%	81.6%	86.3%

Highland Park Rehabilitation and Nursing Center is currently in receivership. According to the Department's Nursing Home Profile*, based on weekly bed census, the facility was at 93.8% as of October 30, 2013, and by November 27th had jumped to 96.3%, indicating the facility is making strides toward reaching the Department's 97% optimum for the planning area.

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 or 75% of the Health Systems Agency area, 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 or Health Systems Agency percentage, whichever is applicable.

Highland Park Rehabilitation and Nursing Center's Medicaid admissions for 2010 and 2011 was 73.61% and 75.00%, respectively, which exceeds the Allegany County 75% rates in 2010 and 2011 of 30.90% and 33.25%, respectively.

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

Program Description

	Existing	Proposed
Facility Name	Highland Park Rehabilitation and Nursing Center	Same
Address	160 Seneca Street Wellsville, NY 14895	Same
RHCF Capacity	80	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Limited Liability Company	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	WHNH, Inc. <u>Receivership</u> HRNC, LLC Members: Efraim Steif Uri Koenig David Camerota	HRNC, LLC d/b/a Highland Park Rehabilitation and Nursing Center Members: Uri Koenig 60.00% Efraim Steif 39.90% David Camerota 0.10%

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Beechtree Care Center	09/2013 to present
Bridgewater Center for Rehabilitation & Nursing, LLC	02/2005 to present
Central Park Rehabilitation and Nursing Center	11/2008 to present
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Northeast Center for Special Care	11/2013 to present
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Riverside Center for Rehabilitation and Nursing	03/2012 to present
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Adult Care Facilities

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Uri Koenig is a CPA in good standing and owner of JK Koenig & Co., an accounting firm located in Spring Valley, NY. Mr. Koenig discloses the following health facility interests:

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Receiverships:

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Westchester Center for Rehabilitation and Nursing	01/2003 to 12/2006

David Camerota is a licensed nursing home administrator in good standing. He is currently employed as chief operating officer with Upstate Services Group, LLC, which provides administrative and operational support to its affiliated skilled nursing facilities throughout New York. Mr. Camerota has served nearly continuously as administrator for the past eleven years at several upstate New York skilled nursing facilities. Mr. Camerota has disclosed the following nursing home ownership interests.

Pine Valley Center for Rehabilitation and Nursing	06/2011 to present
Central Park Rehabilitation and Nursing Center	02/2012 to present

<u>Receiverships:</u>

Highland Park Rehabilitation and Nursing Center	06/2011 to present
Hudson Park Rehabilitation and Nursing Center	06/2011 to present
Vestal Park Rehabilitation and Nursing Center	06/2011 to present
Chestnut Park Rehabilitation and Nursing Center	06/2011 to present
Cortland Park Rehabilitation and Nursing Center	06/2011 to present
Colonial Park Rehabilitation and Nursing Center	06/2011 to present
Riverside Center for Rehabilitation and Nursing	03/2012 to present
Capstone Center for Rehabilitation and Nursing	03/2012 to present
Beechtree Care Center	09/2013 to present
Folts Home	10/2013 to present
Northeast Center for Special Care	11/2013 to present

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants.

A review of Bridgewater Center for Rehabilitation & Nursing for the period identified reveals the following:

- The facility was fined $4,000 pursuant to a Stipulation and Order NH-13-016 issued May 29, 2013 for surveillance findings on July 6, 2011. Deficiencies were found under 10 NYCRR 415.26(f)(1) Written Plans for Emergency/Disasters, and 415.26(f)(3) Emergency Procedure/Drills.

A review of Central Park Rehabilitation & Nursing Center for the period identified reveals the following:

- The facility was fined $2,000 pursuant to a Stipulation and Order NH-10-064 issued December 6, 2010 for surveillance findings on May 26, 2009. Deficiencies were found under 10 NYCRR 415.19(a) Quality of Care: Infection Control.

A review of operations for Central Park Rehabilitation and Nursing Center and Bridgewater Center for Rehabilitation and Nursing, LLC for the periods identified above, results in a conclusion of a consistent high level of care since there were no repeat enforcements.

A review of operations for Capstone Center for Rehabilitation and Nursing, Chestnut Park Rehabilitation and Nursing Center, Colonial Park Rehabilitation and Nursing Center, Cortland Park Rehabilitation and Nursing Center, Highland Park Rehabilitation and Nursing Center, Hudson Park Rehabilitation and Nursing Center, Pine Valley Center for Rehabilitation and Nursing, Riverside Center for Rehabilitation and Nursing, Vestal Park Rehabilitation and Nursing Center, and Westchester Center for Rehabilitation and Nursing, and Riverside Manor Adult Care for the periods identified above results in a conclusion of a substantially consistent high level of care since there were no enforcements.

Project Review

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.

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

Operations Transfer Agreement

The applicant has submitted an executed operations transfer agreement, the terms of which are summarized below:

Date:	June 10, 2011
Transferor:	WHNH, Inc d/b/a Highland Healthcare Center
Transferee:	Highland Park Rehabilitation and Nursing Center, LLC
Purchase Price:	$10 Payable at closing
Assets Transferred:	All rights, title and interest in the assets including trade name , leasehold improvements, equipment and furniture, supplies and inventory, prepaid expenses, all documents and records, assignable licenses and permits including Medicare and Medicaid provider numbers, phone numbers, fax numbers and all logos, names, trade names, trademarks and service marks, assignable software, resident trust funds, deposits and prepayments, cash and cash equivalents, Medicare and Medicaid provider agreements and Medical records custody agreement.
Assumed Liabilities:	Obligations of Transferor under or which may arise in connection with the Provider Agreement and the Assets, assumed by Transferee pursuant to the terms hereof and the Assignment of Provider Agreement.

Assignment and Assumption Agreement

The applicant has submitted an executed assignment and assumption agreement, the terms of which are summarized below:

Date:	July 12, 2012
Assignor::	Highland Park Rehabilitation and Nursing Center, LLC
Assignee:	HRNC, LLC d/b/a Highland Park Rehabilitation and Nursing Center
Assignment and Assumption:	All rights and interest with respect to the operations transfer agreement.

Asset Purchase Agreement

The change in ownership of the real estate will be effectuated in accordance with an asset purchase agreement, the terms of which are summarized below:

Date:	February 28, 2012
Seller:	Cortland-Clinton, Inc
Purchaser:	160 Seneca Street, LLC
Purchased Assets:	Seller's right, title and interest in that certain plot, piece and parcel of land and building, fixtures, equipment, improvements and depreciable assets occupied by or used by the facility and located at 950 Floyd Avenue, Rome, NY, the land lying in the bed of any street or highway in front of or adjoining the land to the center line thereof, any unpaid award for any taking by condemnation or any damage to the land or the improvements by reason of a change in grade of any street or highway, all easements, licenses, rights and appurtenances relating to any of the foregoing, any intangible property of seller, the warranties, the permits and all books, files and records relating to the nursing home facility, excluding seller's organizational documents and tax records.
Excluded Assets:	Seller's rights arising under this agreement or under any other agreement between purchaser and seller, all cash, cash equivalents or short term investments as of the closing date, all casualty, general liability and other insurance policies which cover seller, the nursing home facility or the operations thereof, corporate organizational documents, minute books, tax records and seals of seller and any and all books and records not related to any purchased assets.
Liabilities Assumed:	N/A
Purchase Price:	$1,602,221
Payment of Purchase Price:	$268,888 Escrow deposit at agreement signing $1,333,333 due at closing

The purchase price of operations and real estate is proposed to be satisfied as follows:

Equity - HRNC, LLC Members	$10
Equity - 160 Seneca Street, LLC Members	$268,888
Loan - 160 Seneca Street (25-year terms, 6.5%,)	$1,333,333
Total	$1,602,231

BFA Attachments A and B are the proposed members' net worth summaries for HRNC d/b/a Highland Park Rehabilitation and Nursing Center and 160 Seneca Street, LLC which reveals sufficient resources to meet the equity requirements. Century Health Capital, Inc. has provided a letter of interest.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility.

The members of the reality entity, 160 Seneca Street, LLC, are as follows:

Proposed Members	Percentage Ownership
Efraim Steif	40.00%
Uri Koenig	60.00%

Reimbursement Lease Agreement and Medicaid Capital

The applicant has submitted a draft lease agreement, the terms of which are summarized as follows:

Date:	February 28, 2012
Premises:	A 80 bed RHCF located at 160 Seneca Street, Wellsville, NY
Lessor:	160 Seneca Street, LLC
Lessee:	HRNC, LLC d/b/a Highland Park Rehabilitation and Nursing Center
Term:	10 years with one 15 year renewal term
Rental:	$109,309 per year ($9,109.08 per month)
Provisions:	Triple Net Lease

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the Landlord and operating entity.

Currently, Medicaid capital reimbursement is based on the return of and return on equity methodology, which will not be altered upon the change in ownership. Based on 2014 Nursing Home Consolidated Capital (Schedule VI – Property), there is no remaining equity to be reimbursed under the return of and return on equity.

Operating Budget

Following is a summary of the submitted RHCF operating budget, presented in 2014 dollars, for the first year subsequent to change in ownership:

	Per Diem	Total
Revenues:		
Medicaid	$143.82	$2,878,743
Medicare	405.54	608,721
Private Pay/Other	244.32	1,667,697
Total		$5,155,161
Expenses:		
Operating		$5,390,808
Capital		150,713
Total		$5,541,521
Net Income/Loss		($386,360)
Utilization: (patient days)		28.344
Occupancy		97.07%

The following is noted with respect to the submitted operating budget:

- Overall utilization is projected at 97.07%, while utilization by payor source is expected as follows:

Medicaid	70.62%
Medicare	5.30%
Private Pay/Other	24.08%

- Breakeven utilization is projected at 104.35% for RHCF specific operations with the inclusion of the ADHCP revenues the facility achieves break-even approximately 96.5% occupancy.

Following is a summary of the submitted ADHCP operating budget, presented in 2014 dollars, for the first year subsequent to change in ownership:

	Per Diem	Total
Revenues:		
Medicaid	$107.07	$604,642
Total		$604,642
Expenses:		
Operating		$183,876
Capital		0
Total		$183,876
Net Income		$420,766
Utilization: (Visits)		5,647
Occupancy		86.19%

The following is noted with respect to the submitted operating budget**:**

- Medicaid and Medicare revenues are based on actual 2013 rates
- Private rate was adjusted lower to be at the level of the Medicare rate.
- Overall utilization is projected at 86.19%, while utilization by payor source is expected as follows:
  Medicaid 100%
- Breakeven utilization for ADHCP Specific is projected at 59.98%**.**
- Note: The full capacity for the ADHCP is based on a 6 day per week 52 week program with a 21 slot capacity for a total of 6,552 visits.

Capability and Feasibility

On July 12, 2012, through an assignment and assumption of an Operational Transfer Agreement, HRNC, LLC d/b/a Highland Park Rehabilitation and Nursing Center acquired the operating interest of WHNH, Inc. d/b/a Highland Healthcare Center, an existing 80-bed proprietary residential health care facility.

HRNC, LLC d/b/a Highland Park Rehabilitation and Nursing Center will acquire the operating interest in the RHCF for $10, and 160 Seneca Street, LLC will acquire the RHCF real property for $1,602,221. Funding will be as follows: $268,888 equity contribution with the remaining $1,333,333 balanced being financed over 25 years at a 6.5% interest rate through Century Health Capital, Inc. There is a relationship via similar members between 160 Seneca Street, LLC (the landlord) and HRNC, LLC d/b/a Highland Park Rehabilitation and Nursing Center (the nursing home operator). There are no project costs associated with this proposal.

Working capital requirements for total operations are estimated at $954,233, based on two months' of first year expenses**,** which will by satisfied from existing facility cash and accounts receivable totaling $230,748 and $831,106, which is presented on BFA Attachment C. BFA Attachment C, HRNC, LLC d/b/a Highland Park Rehabilitation and Nursing Center pro-forma balance sheet, indicates negative members' equity of $108,216 as of December 31, 2012. The applicant members state they will contribute equity to fund any shortfall in working capital. BFA Attachment D is the pro forma balance sheet for 160 Seneca Street, LLC, which indicates positive equity of $270,573 as of 12/31/2013.

The submitted total budget indicates that a net income of $34,407 would be generated in the first year after the change in ownership. The following is a comparison of the 2012 historical and projected revenue and expense:

Total Projected Income	$5,759,803
Total Projected Expense	5,725,397
Total Projected Net Income	$34,406
Total Annual 2012 Income	$5,615,684

Total Annual 2012 Expense	5,823,222
Total Annual 2012 Net Income (Loss)	($207,538)
Total Incremental Net Income (Loss)	$241,944

The submitted RHCF only budget indicates that a net loss of $386,360 would be generated in the first year after the change in ownership. The following is a comparison of the 2012 historical and projected revenue and expense:

RHCF Only Projected Income	$5,155,161
RHCF Only Projected Expense	5,541,521
RHCF Only Projected Net Income/(Loss)	($386,360)
RHCF Only Annual 2012 Income	$5,048,291
RHCF Only 2012 Expense	5,706,586
RHCF Only 2012 Net Income (Loss)	($658,295)
RHCF Only Incremental Net Income (Loss)	$271,935

The submitted ADHCP Only budget indicates that a net income of $420,766 would be generated in the first year after the change in ownership. The following is a comparison of the 2012 historical and projected revenue and expense:

ADHCP Only Projected Income	$604,642
ADHCP Only Projected Expense	183,876
ADHCP Only Projected Net Income	$420,766
ADHCP Only Annual 2012 Income	$567,393
ADHCP Only Annual 2012 Expense	116,636
ADHCP Only Annual 2012 Net Income (Loss)	$450,757
ADHCP Only Incremental Net Income (Loss)	($29,991)

It is estimated that the incremental net revenue for all payors will increase approximately $241,944 as the results of the following: Medicaid revenues are expected to increase by $12,491 as the result of an increase in patient days from 2012 to 2014. The average daily rate has actually decreased going from $151.85 per patient day in 2012, to $143.81 per patient day in 2014, and over the same period, Medicare and private pay revenues are expected to decrease in total by approximately $219,641, with the average daily rate from Medicare going from $323.12 per patient day in 2012, to $405.54 per patient day in 2014. The decrease in the revenue is caused by a 980 patient day decrease in Medicare; the average daily rate from Private Pay going from $215.21 per patient day in 2012, to $212.53 per patient day in 2014. The other increase in revenues is categorized as All Other of $314,021 for year 1; it is comprised of assessment revenues and other revenue. Utilization is expected to increase from 96.39% in 2012, to the current occupancy rate to 97.07%. Expenses are expected to decrease approximately $140,473, which represents the almost complete elimination of professional fees. The budget appears reasonable.

Staff notes that with the expected 2014 implementation of managed care for nursing home residents, Medicaid reimbursement is expected to change from a state-wide price, with cost-based capital component payment methodology to a negotiated reimbursement methodology. Facility payments will be the result of negotiations between the managed long term care plans and the facility. At this point in time, it cannot be determined what financial impact this change in reimbursement methodology will have on this project.

BFA Attachment A presents a summary net worth statement of the proposed members of HRNC, LLC d/b/a Highland Park Rehabilitation and Nursing Center. The proposed members have ownership interest in three RHCF facilities; Bridgewater Center for Rehabilitation & Nursing, LLC, Central Park Rehabilitation and Nursing Center and Pine Valley Center for Rehabilitation and Nursing; their financial summaries are presented as BFA Attachments F through H.

Through CON 122147, which was contingently approved in December 2012, the applicants' status will change from receiver to owner of Vestal Park Rehabilitation and Nursing Center, and a replacement facility will be constructed. Therefore, there are no financial statements for the new entity. The proposed members are also receivers in the following two RHCFs: Beechtree Care Center and Folts Center for Rehabilitation and Nursing.

As shown on BFA Attachment E, HRNC, LLC d/b/a Highland Park Rehabilitation and Nursing Center for the year 2012, the RHCF generated an average net loss of $104,999, had an average negative net asset position and had an average positive working capital position. The reason for the 2012 loss is due to several operational difficulties over the last few years of operations due to the lack of a facility administrator, which has impacted the overall ability for the facility to generate adequate profits from operations.

In order to resolve this issue, the receiver has installed a new facility administrator. This has allowed the facility to lower expenses by eliminating some staff and lowering therapy costs. This in turn leads to the overall improvement of the facility's bottom line.

As shown on BFA Attachment F, Bridgewater Center for Rehabilitation and Nursing, LLC for the years 2010 through 2012, the RHCF generated an average operating surplus of $288,457, had an average positive net asset position of $461,913, and had an average positive working capital position of $222,964.

As shown on BFA Attachment G, Pine Valley Center, LLC d/b/a Pine Valley Center for Rehabilitation and Nursing for the years 2010 through 2012, the RHCF generated an average operating surplus of $434,863, had an average positive net asset position of $2,600,993, and had an average positive working capital position of $4,631,666.

As shown on BFA Attachment H, CPRN, LLC d/b/a Central Park Rehabilitation and Nursing Center, for the years 2010 through 2012, the RHCF generated an average operating surplus of $287,300, the net asset position turned positive in 2011, and as of 2012, it was a positive $15,200. During this time period, the RHCF had an average positive working capital position of $2,239,042.

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.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth of HRNC, LLC d/b/a Highland Park Rehabilitation and Nursing Center Proposed Members
BFA Attachment B	Net Worth of 160 Seneca Street, LLC Proposed Members
BFA Attachment C	Pro Forma Balance Sheet, HRNC, LLC d/b/a Highland Park Rehabilitation and Nursing Center
BFA Attachment D	Pro Forma Balance Sheet, 160 Seneca Street, LLC
BFA Attachment E	Financial Summary, HRNC, LLC d/b/a Highland Park Rehabilitation and Nursing Center
BFA Attachment F	Financial Summary, Bridgewater Center for Rehabilitation and Nursing, LLC
BFA Attachment G	Financial Summary, Pine Valley Center, LLC d/b/a Pine Valley Center for Rehabilitation and Nursing
BFA Attachment H	Financial Summary, CPRN, LLC d/b/a Central Park Rehabilitation and Nursing Center

Public Health and Health Planning Council

Project # 132231 E
JBRNC, LLC d/b/a Hudson Park Rehabilitation and Nursing Center

County: **Albany County**
Purpose: **Establishment**
Program: **Residential Health Care Facility**
Acknowledged: **October 24, 2013**

Executive Summary

Description

JBRNC, LLC d/b/a Hudson Park Rehabilitation and Nursing Center, a limited liability company, is requesting approval to be established as the new operator of AHNH, LLC d/b/a Julie Blair Nursing and Rehabilitation Center, an existing 200-bed proprietary residential health care facility (RHCF) located at 325 Northern Boulevard, Albany, New York (Albany County).

JBRNC, LLC d/b/a Hudson Park Rehabilitation and Nursing Center is the current receiver for the Julie Blair Nursing and Rehabilitation Center. On June 10, 2011, Hudson Park Rehabilitation and Nursing Center, LLC entered into an Operational Transfer Agreement with AHNH, LLC d/b/a Julie Blair Nursing and Rehabilitation Center to acquire for $10, their operating interest in the 200-bed RHCF. On July 12, 2012, Hudson Park Rehabilitation and Nursing Center, LLC assigned all its rights and interest in the Operational Transfer Agreement to JBRNC, LLC d/b/a Hudson Park Rehabilitation and Nursing Center.

Ownership of the operations before and after the requested change is as follows:

Current Operator		Proposed Operator	
AHNH, LLC., d/b/a Julie Blair Nursing and Rehabilitation Center		JBRNC, LLC d/b/a Hudson Park Rehabilitation and Nursing Center	
Stockholders		Membership	
Estate of Anthony Salerno	53.8%	Uri Koenig	60.0%
Harry Satin	21.7%	Efraim Steif	39.9%
Jeffrey Sunshine	11.5%	David Camerota	0.1%
Patrick Donnellan	8.2%		
Joel Morris	2.7%		
Mary Jane Blaney	2.1%		

There will be no change in the real property ownership.

There are seven companion applications in which the proposed members are seeking to convert from being the receiver to being established as the new operator:

- CON 132226_ORNC, LLC d/b/a Chestnut Park Rehabilitation and Nursing Center;
- CON 132227_RRNC, LLC d/b/a Colonial Park Rehabilitation and Nursing Center;
- CON 132229_HRNC, LLC d/b/a Highland Park Rehabilitation and Nursing Center;
- CON 132228_CRNC, LLC d/b/a Cortland Park Rehabilitation and Nursing Center;
- CON 132334_NCRNC, LLC d/b/a Northeast Center for Rehabilitation and Brain Injury;
- CON 132260_RSRNC, LLC d/b/a Riverside Center for Rehabilitation and Nursing; and
- CON 132261_CSRNC, LLC d/b/a Capstone Center for Rehabilitation and Nursing.

DOH Recommendation

Contingent Approval

Need Summary

Hudson Park Rehabilitation and Nursing Center's utilization was 93.3% in 2010, 87.3% in 2011, and 90.3% in 2012. The current receiver has improved the quality of care and resolved the physical plant/environment issues at the facility and intends to resume admissions, thereby increasing utilization to the Department's planning optimum.

The change in ownership will not result in any change in beds or services.

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 sprinkler mandates.

Financial Summary

On July 12, 2012, though an assignment and assumption of an Operational Transfer Agreement , JBRNC, LLC d/b/a Hudson Park Rehabilitation and Nursing Center acquired the operating interest of AHNH, LLC d/b/a Julie Blair Nursing and Rehabilitation Center, an existing 200-bed proprietary residential health care facility. There are no project costs associated with this proposal.

Budget:

Revenues:	$14,463,877
Expenses:	$13,953,781
Gain/ (Loss)	$ 510,096

Subject to the noted contingencies, the applicant has demonstrated the capability to proceed in a financially 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 working capital loan commitment, acceptable to the Department. [BFA]
2. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
3. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily 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;
        - Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
        - Other factors as determined by the applicant to be pertinent.

    The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
4. Submission of a photocopy of an executed Certificate of Amendment of the Articles of Organization of JBRNC, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of an executed amended operating agreement of JBRNC, LLC, acceptable to the Department. [CSL]
6. Submission of the executed CON Schedule 4B – Medicaid Affidavit, acceptable to the Department. [CSL]
7. Submission of a photocopy of an executed Certificate of Dissolution or Certificate of Amendment of the Articles of Organization of AHNH, 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

April 10, 2014

Need Analysis

Description

JBRNC, LLC d/b/a Hudson Park Rehabilitation and Nursing Center, seeks approval to become the established operator of Julie Blair Nursing and Rehabilitation Center, a 200-bed Article 28 residential health care facility located at 325 Northern Boulevard, Albany, 12204, in Albany County. JBRNC, LLC, d/b/a Hudson Park Rehabilitation and Nursing Center is the current receiver of Julie Blair Nursing and Rehabilitation Center.

Analysis

There is currently a surplus of 45 beds in Albany County as indicated in Table 1 below. The overall occupancy for Albany County was 95.0% for 2012 as indicated in Table 2.

Table 1: RHCF Need – Albany County

2016 Projected Need	1,844
Current Beds	1,889
Beds Under Construction	0
Total Resources	1,889
Unmet Need	-45

Table 2: Hudson Park Rehabilitation and Nursing Center/Albany County Occupancy

Facility/County/Region	2010	2011	2012
Hudson Park Rehabilitation and Nursing Center	93.3%	87.3%	90.3%
Albany County	96.8%	95.4%	95.0%

Hudson Park Rehabilitation and Nursing Center's utilization was 93.3% in 2010, 87.3% in 2011, and 90.3% in 2012. This facility is currently in receivership and according to the Department's Nursing Home Profile, the facility was at 82.5% as of January 1, 2014. The low utilization during the last few years was attributed to deep-rooted, substantial operational difficulties. The receiver opted to slow admissions and has kept the census low in order to focus on addressing physical plant/environmental issues at the facility and on improving the quality of care.

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, or of the Health Systems Agency area Medicaid admissions percentage, 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 or Health Systems Agency percentage, whichever is applicable.

Hudson Park Rehabilitation and Nursing Center's Medicaid admissions rates for 2011 and 2012 were 62.0% and 55.1%, respectively, which exceed the Albany County 75% rates in 2011 and 2012 of 11.4% and 10.7%, respectively.

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

Program Description

	Existing	Proposed
Facility Name	Hudson Park Rehabilitation and Nursing Center	Same
Address	325 Northern Boulevard Albany NY 12204	Same
RHCF Capacity	200	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Limited Liability Company	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	AHNH, Inc. <u>Receivership</u> JBRNC, LLC Members: Efraim Steif Uri Koenig David Camerota	JBRNC, LLC d/b/a Hudson Park Rehabilitation and Nursing Center Members: Uri Koenig 60.00% Efraim Steif 39.90% David Camerota 0.10%

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Beechtree Care Center	09/2013 to present
Bridgewater Center for Rehabilitation & Nursing, LLC	02/2005 to present
Central Park Rehabilitation and Nursing Center	11/2008 to present
Capstone Center for Rehabilitation and Nursing	03/2012 to present
Chestnut Park Center for Rehabilitation and Nursing	06/2011 to present
Cortland Park Center for Rehabilitation and Nursing	06/2011 to present
Colonial Park Center for Rehabilitation and Nursing	06/2011 to present
Folts Home	10/2013 to present
Highland Park Center for Rehabilitation and Nursing	06/2011 to present
Hudson Park Rehabilitation and Nursing	06/2011 to present
Northeast Center for Special Care	11/2013 to present
Pine Valley Center for Rehabilitation and Nursing	12/2004 to present
Riverside Center for Rehabilitation and Nursing	03/2012 to present
Vestal Park Center for Rehabilitation and Nursing	06/2011 to present
Westchester Center for Rehabilitation and Nursing	11/2003 to 12/2006

Adult Care Facilities

Riverside Manor Adult Care (closed)	09/2009 to 07/2010

Individual Background Review

Uri Koenig is a CPA in good standing and owner of JK Koenig & Co., an accounting firm located in Spring Valley, NY. Mr. Koenig discloses the following health facility interests:

Bridgewater Center for Rehabilitation & Nursing	08/2006 to present

Pine Valley Center for Rehabilitation and Nursing	01/2008 to present
Central Park Rehabilitation and Nursing Center	03/2012 to present

<u>Receiverships:</u>

Capstone Center for Rehabilitation and Nursing	03/2012 to present
Chestnut Park Rehabilitation and Nursing Center	06/2011 to present
Cortland Park Rehabilitation and Nursing Center	06/2011 to present
Colonial Park Rehabilitation and Nursing Center	06/2011 to present
Highland Park Rehabilitation and Nursing Center	06/2011 to present
Hudson Park Rehabilitation and Nursing Center	06/2011 to present
Riverside Center for Rehabilitation and Nursing	03/2012 to present
Vestal Park Rehabilitation and Nursing Center	06/2011 to present
Beechtree Care Center	09/2013 to present
Folts Home	10/2013 to present
Northeast Center for Special Care	11/2013 to present

Efraim Steif is a licensed nursing home administrator in good standing in the States of New York and New Jersey. Mr. Steif is the president of FRS Healthcare Consultants, Inc., and formerly served as administrator at Forest View Center for Rehabilitation and Nursing in Forest Hills from 2000 to 2005. Mr. Steif discloses the following health care facilities interests:

Bridgewater Center for Rehabilitation & Nursing, LLC	02/2005 to present
Pine Valley Center for Rehabilitation and Nursing	12/2004 to present
Central Park Rehabilitation and Nursing Center	11/2008 to present
Riverside Manor Adult Care (closed)	09/2009 to 07/2010

<u>Receiverships:</u>

Beechtree Care Center	09/2013 to present
Capstone Center for Rehabilitation and Nursing	03/2012 to present
Chestnut Park Center for Rehabilitation and Nursing	06/2011 to present
Cortland Park Center for Rehabilitation and Nursing	06/2011 to present
Colonial Park Center for Rehabilitation and Nursing	06/2011 to present
Folts Home	10/2013 to present
Highland Park Center for Rehabilitation and Nursing	06/2011 to present
Hudson Park Center for Rehabilitation and Nursing	06/2011 to present
Northeast Center for Special Care	11/2013 to present
Riverside Center for Rehabilitation and Nursing	03/2012 to present
Vestal Park Center for Rehabilitation and Nursing	06/2011 to present
Westchester Center for Rehabilitation and Nursing	01/2003 to 12/2006

David Camerota is a licensed nursing home administrator in good standing. He is currently employed as chief operating officer with Upstate Services Group, LLC, which provides administrative and operational support to its affiliated skilled nursing facilities throughout New York. Mr. Camerota has served nearly continuously as administrator for the past eleven years at several upstate New York skilled nursing facilities. Mr. Camerota has disclosed the following nursing home ownership interests:

Pine Valley Center for Rehabilitation and Nursing	06/2011 to present
Central Park Rehabilitation and Nursing Center	02/2012 to present

<u>Receiverships:</u>

Highland Park Rehabilitation and Nursing Center	06/2011 to present
Hudson Park Rehabilitation and Nursing Center	06/2011 to present
Vestal Park Rehabilitation and Nursing Center	06/2011 to present
Chestnut Park Rehabilitation and Nursing Center	06/2011 to present
Cortland Park Rehabilitation and Nursing Center	06/2011 to present
Colonial Park Rehabilitation and Nursing Center	06/2011 to present
Riverside Center for Rehabilitation and Nursing	03/2012 to present
Capstone Center for Rehabilitation and Nursing	03/2012 to present
Beechtree Care Center	09/2013 to present
Folts Home	10/2013 to present

Northeast Center for Special Care	11/2013 to present

Character and Competence - Analysis
No negative information has been received concerning the character and competence of the above applicants.

A review of Bridgewater Center for Rehabilitation & Nursing for the period identified reveals the following:
- The facility was fined $4,000 pursuant to a Stipulation and Order NH-13-016 issued May 29, 2013 for surveillance findings on July 6, 2011. Deficiencies were found under 10 NYCRR 415.26(f)(1) Written Plans for Emergency/Disasters, and 415.26(f)(3) Emergency Procedure/Drills.

A review of Central Park Rehabilitation & Nursing Center for the period identified reveals the following:
- The facility was fined $2,000 pursuant to a Stipulation and Order NH-10-064 issued December 6, 2010 for surveillance findings on May 26, 2009. Deficiencies were found under 10 NYCRR 415.19(a) Quality of Care: Infection Control.

A review of operations for Central Park Rehabilitation and Nursing Center and Bridgewater Center for Rehabilitation and Nursing, LLC for the periods identified above, results in a conclusion of a consistent high level of care since there were no repeat enforcements.

A review of operations for the, Capstone Center for Rehabilitation and Nursing, Chestnut Park Rehabilitation and Nursing Center, Colonial Park Rehabilitation and Nursing Center, Cortland Park Rehabilitation and Nursing Center, Highland Park Rehabilitation and Nursing Center, Hudson Park Rehabilitation and Nursing Center, Pine Valley Center for Rehabilitation and Nursing, Riverside Center for Rehabilitation and Nursing, Vestal Park Rehabilitation and Nursing Center, and Westchester Center for Rehabilitation and Nursing, and Riverside Manor Adult Care for the periods identified above results in a conclusion of a substantially consistent high level of care since there were no enforcements.

Project Review
No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.

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

Operations Transfer Agreement
The applicant has submitted an executed operations transfer agreement, the terms of which are summarized below:

Date:	June 10, 2011
Transferor:	AHNH, LLC., d/b/a Julie Blair Nursing and Rehabilitation Center
Transferee:	Hudson Park Rehabilitation and Nursing Center, LLC
Purchaser Price:	$10 at closing
Assets Transferred:	All rights, title and interest in the assets including: trade name “Julie Blair Nursing and Rehabilitation Center”; leasehold improvements, equipment and furniture; supplies and inventory; prepaid expenses; documents and records; assignable licenses

	and permits including Medicare and Medicaid provider numbers; phone numbers, trade names, trademarks; assignable software; resident trust funds; deposits and prepayments; cash and cash equivalents; Medicare and Medicaid provider agreements; medical records custody agreement
Assumed Liabilities:	Obligations of Transferor under or which may arise in connection with the Provider Agreements and the Assets, assumed by Transferee pursuant to the terms hereof and the Assignment of Provider Agreement.

Assignment and Assumption Agreement

The applicant has submitted an executed assignment and assumption agreement, the terms of which are summarized below:

Date:	July 12, 2012
Assignor::	Hudson Park Rehabilitation and Nursing Center, LLC
Assignee::	JBRNC, LLC d/b/a Hudson Park Rehabilitation and Nursing Center.
Assignment and Assumption:	All rights and interest with respect to the operations transfer agreement.

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 an executed lease agreement, the terms of which are summarized below:

Date:	June 10, 2011
Premises:	A 200 Bed RHCF located at 325 Northern Boulevard, Albany, New York 12204
Owner/Landlord:	NB Albany Holdings, Inc. f/k/a AHNH, Inc.
Lessee:	JBRNC, LLC d/b/a Hudson Park Rehabilitation and Nursing Center.
Term:	25 years
Rent:	$475,000 per year plus Lessor's debt service payment which equals $359,625 per year ($69,552.08 per month)
Provisions:	Triple net lease

The lease is an arm's length agreement.

Operating Budget

The applicant has provided an operating budget, in 2014 dollars, for the first year subsequent to the change in ownership. The budget is summarized below:

	Per Diem	Total
Revenues:		
Medicaid	$171.66	$9,174,896
Medicare	348.92	2,240,090
Private Pay	352.17	2,451,760
Assessment Revenue	9.89	597,131
Total Revenues:		14,463,877
Expenses:		
Operating		$13,041,802

Capital	911,979
Total Expenses:	13,953,781
Net Income:	$510,096
Utilization (resident days)	66,817
Occupancy	91.53%

The following is noted with respect to the submitted operating budget:

- Medicaid and Medicare revenues are based on actual 2013 rates.
- Private rate was adjusted lower to be at the level of the Medicare rate.
- Overall utilization is projected at 91.53%. Utilization for the five years from 2008 through 2012 averaged 93.91%, while current occupancy through June 2013 averaged 92.25%. As of February 14, 2014 utilization was at 93%.
- Utilization by payor source is anticipated as follows:

Medicaid Fee-for-Service	80.0%
Medicare Fee-for-Service	9.6%
Private/Other	10.4%

- Breakeven utilization is projected at 91%.

Capability and Feasibility

On July 12, 2012 though an assignment and assumption of an Operational Transfer Agreement, JBRNC, LLC d/b/a Hudson Park Rehabilitation and Nursing Center acquired the operating interest of AHNH, LLC d/b/a Julie Blair Nursing and Rehabilitation Center, an existing 200-bed proprietary residential health care facility. There are no project costs associated with this proposal.

Working capital is estimated at $2,325,630 and is based on two months of the first year expenses, which will be met from the facility's cash of $430,054 and accounts receivable of $1,773,669, as shown on BFA Attachment B, JBRNC, LLC d/b/a Hudson Park Rehabilitation and Nursing Center pro forma balance sheet. The remaining working capital of $121,907 will be provided as follows: $60,954 from members' liquid resources and $60,953 working capital loan from Century Health Capital, Inc. with a 5-year term at a 7.5% interest rate. Review of BFA Attachment A, the proposed members' net worth summary for JBRNC, LLC d/b/a Hudson Park Rehabilitation and Nursing Center, shows sufficient liquid resources to meet the equity requirement. BFA Attachment B is the pro-forma balance sheet for JBRNC, LLC d/b/a Hudson Park Rehabilitation and Nursing Center, which shows the entity will start off with a negative equity position of $715,107, which will be covered by a contribution from the members' personal resources.

The submitted budget indicates $510,096 in net income would be generated in the first year after the change in ownership. The following is a comparison of the 2012 historical and projected revenue and expense:

Projected Income	$ 14,463,877
Projected Expense	13.953,781
Projected Net Income	$510,096
Annual 2012 Income	$13,019,107
Annual 2012 Expense	13,837,679
Annual 2012 Net Income (Loss)	($818,572)
Incremental Net Income (Loss)	$1,328,668

It is estimated that incremental revenues will increase by $1,444,770 with utilization increasing by 749 patient days. The anticipated changes are as follows: decrease of 3,453 Medicaid patient days, reducing Medicaid revenues by $207,238 and bringing utilization to 80%; increase of 504 Medicare patient days plus an increase in the daily rate, going from $252.93 per day to $348.92 per day, which increases revenues by $743,774; increase of 3,698 private pay patient days along with decreasing the daily rate from $643.55 per day to $352.17 per day, which increases revenues by $311,103; while the balance of the increase is comprised of the assessment revenue. Expenses are expected to increase by a net $116,102. The budget appears reasonable

Staff notes that with the expected 2014 implementation of managed care for nursing home residents, Medicaid reimbursement is expected to change from a state-wide price with cost-based capital component payment methodology to a negotiated reimbursement methodology. Facility payments will be the result of negotiations between the managed long term care plans and the facility. At this point in time, it cannot be determined what financial impact this change in reimbursement methodology will have on this project.

BFA Attachment A presents a net worth summary statement for the proposed members of JBRNC, LLC d/b/a Hudson Park Rehabilitation and Nursing Center. The proposed members have ownership interest in three RHCF facilities located in New York State; their financial summaries are presented as BFA Attachments D through F and include the following: Bridgewater Center for Rehabilitation and Nursing, LLC; Pine Valley Center, LLC d/b/a Pine Valley Center for Rehabilitation and Nursing; CPRN, LLC d/b/a Central Park Rehabilitation and Nursing Center.

Through CON 122147, which was contingently approved in December 2012, the applicants' status will change from receiver to owner of Vestal Park Rehabilitation and Nursing Center, and a replacement facility will be constructed. Therefore, there are no financial statements for the new entity. The proposed members are also receivers in the following two RHCFs: Beechtree Care Center and Folts Center for Rehabilitation and Nursing.

As shown on BFA Attachment C, AHNH, LLC d/b/a Julie Blair Nursing and Rehabilitation Center for the years June 19, 2011 through 2012, the RHCF generated an average operating loss of $388,031, had an average negative net asset position of $366,775, and had an average positive working capital position of $1,277,698. Over years the RHCF has had operational difficulties. Therefore, the receiver has opted to slow admissions and has kept the census low in order to focus on cleaning up the facility and improve the quality of care. The receiver says he has accomplished that goal and intends to increase utilization during 2014, which should improve operating results. Average occupancy during this period was 91.95%.

As shown on BFA Attachment D, Bridgewater Center for Rehabilitation and Nursing, LLC for the years 2010 through 2012, the RHCF generated an average operating surplus of $288,457, had an average positive net asset position of $461,913, and had an average positive working capital position of $222,964. Average occupancy during this period was 91.59%.

As shown on BFA Attachment E, Pine Valley Center, LLC d/b/a Pine Valley Center for Rehabilitation and Nursing for the years 2010 through 2012, the RHCF generated an average operating surplus of $434,863, had an average positive net asset position of $2,600,993, and had an average positive working capital position of $4,631,666. Average occupancy during this period was 92.23%.

As shown on BFA Attachment F, CPRN, LLC d/b/a Central Park Rehabilitation and Nursing Center for the years 2010 through 2012, the RHCF generated an average operating surplus of $287,300, the net asset position turned positive in 2011, and as of 2012, it was a positive $15,200. During this time period, the RHCF had an average positive working capital position of $2,239,042. Average occupancy during this period was 96.87%.

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	Net Worth of Proposed Members
BFA Attachment B	Pro-forma Balance Sheet, JBRNC, LLC d/b/a Hudson Park Rehabilitation and Nursing Center
BFA Attachment C	Financial Summary, JBRNC, LLC d/b/a Hudson Park Rehabilitation and Nursing Center
BFA Attachment D	Financial Summary, Bridgewater Center for Rehabilitation and Nursing, LLC
BFA Attachment E	Financial Summary, Pine Valley Center, LLC d/b/a Pine Valley Center for Rehabilitation and Nursing
BFA Attachment F	Financial Summary, CPRN, LLC d/b/a Central Park Rehabilitation and Nursing Center

Public Health and Health Planning Council

Project # 132260 E
RSRNC, LLC d/b/a Riverside Center for Rehabilitation and Nursing

County: **Rensselaer County**
Purpose: **Establishment**
Program: **Residential Health Care Facility**
Acknowledged: **November 8, 2013**

Executive Summary

Description

RSRNC, LLC d/b/a Riverside Center for Rehabilitation and Nursing (the Center), is seeking approval to be established as the new operator of Riverside Center for Rehabilitation and Nursing (Formerly Resurrection Nursing Home), an existing 80-bed voluntary, not-for-profit residential health care facility (RHCF) located at 90 North Main Street, Castleton-On-Hudson, NY (Rensselaer County). Upon the change in ownership, the facility will transition from a voluntary, not-for-profit, to a proprietary facility.

There are four steps to effectuate the proposed change in ownership and they are as follows:

1. Resurrection Ministries of New York, Resurrection Senior Services, Resurrection Health Care Corporation, Resurrection Nursing Home, Inc. and Mount Loretto Nursing Home, Inc., entered into an Asset Purchase Agreement on August 1, 2011, with Mount Loretto Realty, LLC, for the sale and acquisition of Resurrection Nursing Home, Inc.

2. On March 12, 2012, Mount Loretto Nursing Home, Inc., with the approval of the Department of Health, entered into a receivership agreement with RSRNC, LLC d/b/a Riverside Center for Rehabilitation and Nursing for the assumption of the operation of the facility. Mount Loretto Realty, LLC will assign the rights to acquire the operations of the Center to RSRNC, LLC through an Assignment and Assumption of Rights agreement.

3. Mount Loretto Realty, LLC, the landlord of Resurrection Nursing Home has proposed to enter into an agreement for site control of the facility with 90 N Main Street, LLC

4. 90 N Main Street, LLC proposes to enter into an agreement with RSRNC, LLC d/b/a Riverside Center for Rehabilitation and Nursing to lease the facility for the next 10 years

Ownership of the operations before and after the requested change is as follows:

Current Owner		Current Receiver/Proposed Operator/Owner	
Resurrection Rest Nursing Home		RSRNC, LLC d/b/a Riverside Center for Rehabilitation and Nursing	
	Interest		Interest
Resurrection Rest Nursing Home	100%	Efraim Steif	39.90%
		Uri Koenig	60.00%
		David Camerota	0.10%

A separate but related real estate company will acquire the facility's property. Ownership of the real estate before and after the requested change is as follows:

Current Owner		Proposed Owner	
Resurrection Rest Nursing Home		90 N Main Street, LLC	
	Interest		Interest
Resurrection Rest Nursing Home	100%	Efraim Steif	40.00%
		Uri Koenig	60.00%

There are seven companion applications in which the proposed members are seeking to convert from being the receiver to being established as the new operator:

- CON 132226 ORNC, LLC d/b/a Chestnut Park Rehabilitation and Nursing Center
- CON 132228 CRNC, LLC d/b/a Cortland Park Rehabilitation and Nursing Center

- CON 132227 RRNC, LLC d/b/a Colonial Park Rehabilitation and Nursing Center
- CON 132229 HRNC, LLC d/b/a Highland Park Rehabilitation and Nursing Center
- CON 132231 JBRNC, LLC d/b/a Hudson Park Rehabilitation and Nursing Center
- CON 132261 CSRNC, LLC d/b/a Capstone Center for Rehabilitation and Nursing
- CON 132334 NCRNC, LLC d/b/a Northeast Center for Rehabilitation and Brain Injury

DOH Recommendation

Contingent Approval

Need Summary

There will be no change to beds or services as a result of this application. Riverside Center for Rehabilitation and Nursing's utilization was 94.0% in 2010, 93.1% in 2011, and 93.3% in 2012. The facility has been under receivership since March, 2012. Currently, this facility's utilization is 93.8% and it is anticipated that the new owners will be able to improve occupancy rates to the Department's standards.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The facility is in compliance with CMS 2013 sprinkler mandates.

Financial Summary

The facility assets and real estate have been sold in accordance with the Asset Purchase Agreement effective August 1, 2011. This CON is effectively changing the status of the current receiver/operator to owner/operator, and also changing the landlord of the facility. There are no project costs associated with this proposal.

Year 1 Budget	Revenues	$6,708,803
	Expenses	6,014,539
	Gain/(Loss)	$694,264

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

Recommendations

Health Systems Agency
There will be no HSA recommendation for this application.

Office of Health Systems Management
Approval contingent upon:
1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
   a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
   b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
   c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
   d. Submit an annual report for two years to the DOH, which demonstrates substantial progress with the implementation of the plan. The plan should include but not be limited to:
      - Information on activities relating to a-c above;
      - 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 commitment for a permanent mortgage for the project to be provided from a recognized lending institution at a prevailing rate of interest that is acceptable by the Department of Health. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
4. Submission of an executed assignment and assumption agreement for the operations, acceptable to the Department. [BFA]
5. Submission of an executed assignment and assumption agreement for the real estate, acceptable to the Department of Health. [BFA]
6. Submission of a photocopy of an executed Certificate of Amendment of the Application for Authority of RSRNC, LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of an executed amended operating agreement of RSRNC, LLC, acceptable to the Department. [CSL]
8. Submission of evidence of transfer of the operational assets of Resurrection Nursing Home, Inc. to the applicant, acceptable to the Department. [CSL]
9. Submission of a photocopy of an executed lease agreement between 90 N Main Street, LLC and the applicant, acceptable to the Department. [BFA, CSL]
10. Submission of a photocopy of an executed Certificate of Dissolution or Certificate of Amendment of the Certificate of Incorporation of Resurrection Nursing Home, Inc., 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
April 10, 2014

Need Analysis

Background

RSRNC, LLC seeks approval to become the established operator of Riverside Center for Rehabilitation and Nursing (formerly Resurrection Nursing Home). Riverside Center for Rehabilitation and Nursing is an existing 80-bed Article 28 residential health care facility, located at 90 North Main Street, Castleton-On-Hudson, 12033, in Rensselaer County. RSRNC, LLC is the current receiver of this facility.

Analysis

There is currently a surplus of 219 beds in Rensselaer County as indicated in Table 1 below. The overall occupancy for Rensselaer County is 93.8 for 2012 as indicated in Table 2.

Table 1: RHCF Need – Rensselaer County

2016 Projected Need	1,025
Current Beds	1,244
Beds Under Construction	0
Total Resources	1,244
Unmet Need	-219

Riverside Center for Rehabilitation and Nursing's utilization was 94.0% in 2010, 93.1% in 2011, and 93.3% in 2012. Since the change in operator early in 2012, utilization has remained at pre-receivership levels.

Table 2: Riverside Center for Rehabilitation and Nursing/Rensselaer County

Facility/County/Region	2010	2011	2012
Riverside Center for Rehabilitation and Nursing	94.0%	93.1%	93.3%
Rensselaer County	85.6%	95.0%	93.8%

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 or 75% of the Health Systems Agency area Medicaid admissions percentage, 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 or Health Systems Agency percentage, whichever is applicable.

Riverside Center for Rehabilitation and Nursing's Medicaid admissions of 30.53% in 2010 and 32.65% in 2011 far exceeded the Rensselaer County 75% rates of 12.60% in 2010 and 13.24% 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

Program Description

	Existing	Proposed
Facility Name	Riverside Center for Rehabilitation and Nursing	Same
Address	90 No Main Street Castleton-On-Hudson, NY 12033 Site PFI 0767	Same
RHCF Capacity	80	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Limited Liability Company	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	Mount Loretto Nursing Home, Inc. <u>Receivership</u> RSRNC, LLC Members: Uri Koenig Efraim Steif David Camerota	RSRNC, LLC d/b/a Riverside Center for Rehabilitation and Nursing Members: Uri Koenig 60.0% Efraim Steif 39.9% David Camerota 0.10%

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Beechtree Care Center	09/2013 to present
Bridgewater Center for Rehabilitation & Nursing, LLC	02/2005 to present
Central Park Rehabilitation and Nursing Center	11/2008 to present
Capstone Center for Rehabilitation and Nursing	03/2012 to present
Chestnut Park Center for Rehabilitation and Nursing	06/2011 to present
Cortland Park Center for Rehabilitation and Nursing	06/2011 to present
Colonial Park Center for Rehabilitation and Nursing	06/2011 to present
Folts Home	10/2013 to present
Highland Park Center for Rehabilitation and Nursing	06/2011 to present
Hudson Park Rehabilitation and Nursing	06/2011 to present
Northeast Center for Special Care	11/2013 to present
Pine Valley Center for Rehabilitation and Nursing	12/2004 to present
Riverside Center for Rehabilitation and Nursing	03/2012 to present
Vestal Park Center for Rehabilitation and Nursing	06/2011 to present
Westchester Center for Rehabilitation and Nursing	11/2003 to 12/2006

Adult Care Facilities

Riverside Manor Adult Care (closed)	09/2009 to 07/2010

Individual Background Review

Uri Koenig is a CPA in good standing and owner of JK Koenig & Co., an accounting firm located in Spring Valley, NY. Mr. Koenig discloses the following health facility interests:

Bridgewater Center for Rehabilitation & Nursing	08/2006 to present
Pine Valley Center for Rehabilitation and Nursing	01/2008 to present
Central Park Rehabilitation and Nursing Center	03/2012 to present

Receiverships:

Capstone Center for Rehabilitation and Nursing	03/2012 to present
Chestnut Park Rehabilitation and Nursing Center	06/2011 to present

Cortland Park Rehabilitation and Nursing Center	06/2011 to present
Colonial Park Rehabilitation and Nursing Center	06/2011 to present
Highland Park Rehabilitation and Nursing Center	06/2011 to present
Hudson Park Rehabilitation and Nursing Center	06/2011 to present
Riverside Center for Rehabilitation and Nursing	03/2012 to present
Vestal Park Rehabilitation and Nursing Center	06/2011 to present
Beechtree Care Center	09/2013 to present
Folts Home	10/2013 to present
Northeast Center for Special Care	11/2013 to present

Efraim Steif is a licensed nursing home administrator in good standing in the States of New York and New Jersey. Mr. Steif is the president of FRS Healthcare Consultants, Inc., and formerly served as administrator at Forest View Center for Rehabilitation and Nursing in Forest Hills from 2000 to 2005. Mr. Steif discloses the following health care facilities interests:

Bridgewater Center for Rehabilitation & Nursing, LLC	02/2005 to present
Pine Valley Center for Rehabilitation and Nursing	12/2004 to present
Central Park Rehabilitation and Nursing Center	11/2008 to present
Riverside Manor Adult Care (closed)	09/2009 to 07/2010

<u>Receiverships:</u>

Beechtree Care Center	09/2013 to present
Capstone Center for Rehabilitation and Nursing	03/2012 to present
Chestnut Park Center for Rehabilitation and Nursing	06/2011 to present
Cortland Park Center for Rehabilitation and Nursing	06/2011 to present
Colonial Park Center for Rehabilitation and Nursing	06/2011 to present
Folts Home	10/2013 to present
Highland Park Center for Rehabilitation and Nursing	06/2011 to present
Hudson Park Center for Rehabilitation and Nursing	06/2011 to present
Northeast Center for Special Care	11/2013 to present
Riverside Center for Rehabilitation and Nursing	03/2012 to present
Vestal Park Center for Rehabilitation and Nursing	06/2011 to present
Westchester Center for Rehabilitation and Nursing	01/2003 to 12/2006

David Camerota is a licensed nursing home administrator in good standing. He is currently employed as chief operating officer with Upstate Services Group, LLC, which provides administrative and operational support to its affiliated skilled nursing facilities throughout New York. Mr. Camerota has served nearly continuously as administrator for the past eleven years at several upstate New York skilled nursing facilities. Mr. Camerota has disclosed the following nursing home ownership interests:

Pine Valley Center for Rehabilitation and Nursing	06/2011 to present
Central Park Rehabilitation and Nursing Center	02/2012 to present

<u>Receiverships:</u>

Highland Park Rehabilitation and Nursing Center	06/2011 to present
Hudson Park Rehabilitation and Nursing Center	06/2011 to present
Vestal Park Rehabilitation and Nursing Center	06/2011 to present
Chestnut Park Rehabilitation and Nursing Center	06/2011 to present
Cortland Park Rehabilitation and Nursing Center	06/2011 to present
Colonial Park Rehabilitation and Nursing Center	06/2011 to present
Riverside Center for Rehabilitation and Nursing	03/2012 to present
Capstone Center for Rehabilitation and Nursing	03/2012 to present
Beechtree Care Center	09/2013 to present
Folts Home	10/2013 to present
Northeast Center for Special Care	11/2013 to present

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants.

A review of Bridgewater Center for Rehabilitation & Nursing for the period identified above reveals the following:

- The facility was fined $4,000 pursuant to a Stipulation and Order NH-13-016 issued May 29, 2013 for surveillance findings on July 6, 2011. Deficiencies were found under 10 NYCRR 415.26(f)(1) Written Plans for Emergency/Disasters, and 415.26(f)(3) Emergency Procedure/Drills.

A review of Central Park Rehabilitation and Nursing Center for the period identified above reveals the following:

- The facility was fined $2,000 pursuant to a Stipulation and Order NH-10-064 issued December 6, 2010 for surveillance findings on May 26, 2009. Deficiencies were found under 10 NYCRR 415.19(a) Quality of Care: Infection Control.

A review of operations for Central Park Rehabilitation and Nursing Center and Bridgewater Center for Rehabilitation and Nursing, LLC for the periods identified above, results in a conclusion of consistent high level of care since there were no repeat enforcements.

A review of operations for Capstone Center for Rehabilitation and Nursing, Chestnut Park Rehabilitation and Nursing Center, Colonial Park Rehabilitation and Nursing Center, Cortland Park Rehabilitation and Nursing Center, Highland Park Rehabilitation and Nursing Center, Hudson Park Rehabilitation and Nursing Center, Pine Valley Center for Rehabilitation and Nursing, Riverside Center for Rehabilitation and Nursing, Vestal Park Rehabilitation and Nursing Center, and Westchester Center for Rehabilitation and Nursing, and Riverside Manor Adult Care 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. No administrative services or consulting agreements are proposed in this application.

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 of the Operations and Real Estate will be effectuated in accordance with an asset purchase agreement, the terms of which are summarized below:

Date:	August 1, 2011
Seller:	Resurrection Ministries of New York, Resurrection Senior Services, Resurrection Health Care Corporation, Resurrection Nursing Home, Inc. (Resurrection Nursing Home) and Mount Loretto Nursing Home, Inc. (Mount Loretto)
Purchaser:	Mount Loretto Realty, LLC
Purchased Assets:	All of the Seller's rights, title and interest in and to all of the assets (other than the excluded assets) related to, used in, necessary or intended for, held in connection with or which otherwise arising in or from ownership or operation of, the facilities, including but not limited to (i) assumed Contracts, (ii) Books and Records, (iii) Licenses (to the

	extent transferrable to buyer), (iv) Tangible personal property (v) Intangible Personal Property, (vi) Inventory and (vii) the real Property
Excluded Assets:	Cash and cash equivalents(including as held in trust in connection with escrows required under any mortgage agreement pertaining to any facility), account receivable, deposits (other than resident funds held in trust and resident deposits), prepaid expenses and refundable deposits applicable to periods prior to the effective time and securities, all rights, title and interest in and to the names “Mount Loretto” and “Resurrection Nursing Home” and the other trademarks or tradenames, any contracts and agreements to which one or both of the Parent organizations are parties, including such contracts and agreements relating to or benefiting one or both of the facilities, All seller contracts that are not assumed contracts, computer software, programs and hardware or data processing equipment which is used by or in connection with the Parent organization and one or both of the facilities, including such items which are proprietary to a seller and/or such seller’s affiliates, except to the extent that such computer software, programs and hardware or data processing equipment is material to the business of the facilities, all of seller’s or affiliate proprietary manuals, marketing material, policy and procedure manuals, standard operating procedures and marketing brochures, data and studies or analyses except to extent used without the name Resurrection Health Care, Mount Loretto and Resurrection Nursing Home, portions of inventory and other assets disposed of, expended or canceled, by seller after execution date and prior to effective time in ordinary course of business, all claims, rights, interest and proceeds with respect to state or local tax refunds (including but not limited to property tax) resulting from periods prior to the effective time, all of sellers’ corporate record books and minute books, all unclaimed property of any third party including without limitation, property which is subject to applicable escheat laws, all claims, rights, interests and proceeds(due to a third party) with respect to amounts overpaid by a seller to any third party with respect to periods prior to the receivership date, including overpayment amounts determined by audits undertaken by a seller, and any refunds, adjustments, overpayments and cost report settlements of sellers for periods prior to the receivership date, All retroactive rate increases and/or lump sum payments, resulting from rate appeals, audits or otherwise, with respect to third party payments, from any source, for services rendered by a seller prior to the receivership date, all bank accounts of sellers, all rights, claims and choses in action of a seller and its affiliates with respect to periods prior to the effective time and any payments, awards or other proceeds resulting therefrom, All payments or equivalent cash credits relating to the facilities or the real property resulting from claims, insurance premium rate reductions or insurance or other dividends paid or accruing for periods prior to the effective time, all writings and other items that are protected from discovery by the attorney-client privilege, All donations and bequests to a seller or a facility specifically identified by name or as otherwise legally prohibited, all relics, religious art and other objects of religious significance, belonging to any of the sellers, the parent organizations or the Sisters of the Resurrection and all assets set forth on Schedule 2.5 (u).
Liabilities Assumed:	The assumed contracts, including without limitation those leases that are Assumed Contracts, to the extent that the obligations thereunder are required to be performed on or after the Receivership date, the payment or honoring of all accrued and unused paid time off, vacation and sick time accrued by Hired employees as of the date

	immediately prior to the Receivership date and as of the closing date, without limiting any claim by Buyer to indemnification under section 8.2 arising out of any breach of sellers and Parent organizations' representations and warranties under sections 3.11 (C), 3.12 (C) and 3.12 (g), the environmental conditions and the condition of the Real property, which Buyer agrees to accept in its "AS IS", "Where IS" condition pursuant to Section 2.11 herein.
Purchase Price:	$3,000,000 for Resurrection Nursing Home facility and operations and 1,000,000 for Mount Loretto Nursing Home facility and operations.
Payment of Purchase Price:	$2,700,000 Loan at 6.5% interest rate for 25 years, $300,000 Funded from Members equity for Resurrection and $900,000 Loan at 6.5% interest rate for 25 years and $100,000 funded from Members equity for Mount Loretto

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility.

Assignment and Assumption Agreement (Operations)

The applicant has submitted a draft assignment and assumption agreement, the terms of which are summarized below:

Date:	To be Determined
Assignor:	Mount Loretto Realty, LLC
Assignee:	RSRNC, LLC
Assignment and Assumption:	Assignor's rights under the Purchase agreement with respect to the assumed contracts, Licenses (to the extent transferable to Assignee), and Inventory and the Representation, Warranties and covenants and any and all other rights of Assignor under any of the Purchase Documents related thereto in connection with the Resurrection Nursing Premises, the SORNY Premises and The Resurrection Nursing Facility.

Assignment and Assumption Agreement (Real Estate)

The applicant has submitted a draft assignment and assumption agreement, the terms of which are summarized below:

Date:	To be Determined
Assignor:	Mount Loretto Realty, LLC
Assignee:	90 N Main Street, LLC
Assignment and Assumption:	Assignor's rights under the purchase agreement with respect to the Books and Records, Intangible Personal Property, tangible personal property, the real property and all of the of the assets (other than the Excluded Assets) related to, used in, necessary or intended for, held in connection with, or which otherwise arising in or from the ownership and operation of the Resurrection Nursing Facility, the representations, warranties and covenants and any and all other rights of assignor under any of the purchase documents related thereto in connection with the Resurrection Nursing Premises, The SORNY Premises and the Resurrection Nursing facility.

The members of the reality entity 90 N Main Street, LLC; are as follows:

Proposed Members	Percentage
Efraim Steif	40.00%
Uri Koenig	60.00%

Lease Agreement and Medicaid Capital Reimbursement

Facility occupancy will continue to be subject to a lease agreement, the terms of the draft lease agreement are summarized as follows:

Date:	To be Determined
Premises:	An 80-bed Proprietary RHCF located at 90 North Main Street, Castleton-On-Hudson, NY(Rensselaer County)
Lessor:	90 N Main Street, LLC
Lessee:	RSRNC, LLC
Term:	10 years with one 15 year renewal term of 10 years each
Rental:	$221,350 per year ($14,445.83 per month)
Provisions:	Triple Net Lease

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the Landlord and operating entity.

With the change from a voluntary to a proprietary facility, the reimbursement methodology is will change to interest and amortization. The facility however, does not have a mortgage, as the facility is leased from a related entity, which is charging the rent based on interest and amortization owed on the mortgage loan.

Operating Budget

Following is a summary of the submitted operating budget, presented in 2013 dollars, for the first year subsequent to change in ownership:

	Per Diem	Total
Revenues:		
Medicaid	$204.57	$4,147,875
Medicare	375.22	696,413
Private Pay	373.73	1,864,515
Total		$6,708,803
Expenses:		
Operating		$5,772,960
Capital		241,579
Total		$6,014,539
Net Income		$694,264
Utilization (patient days):		27,121
Occupancy:		92.88%

The following is noted with respect to the submitted operating budget:

- Medicaid and Medicare revenues are based on actual 2013 rates.
- Private rate was adjusted lower to be at the level of the Medicare rate.
- Overall utilization is projected at 92.88%, (consistent with 2012 cost report, while utilization by payor source is expected as follows:

Medicaid	74.76%
Medicare	6.84%
Private Pay	18.40%

- Breakeven utilization is projected at 83.27**%.**

Capability and Feasibility

Through an assignment and assumption agreement of an Asset Purchase agreement, RSRNC, LLC d/b/a Riverside Center for Rehabilitation and Nursing will acquire the operating Interest of Riverside Center for Rehabilitation and Nursing (formerly Resurrection Nursing Home), an existing 80-bed voluntary residential Health Care facility, which will be changed to a proprietary residential Health care facility upon approval of this application. Through an assignment and assumption agreement of an Asset Purchase Agreement, 90 N. Main Street, LLC, will acquire the Real Estate Interest of Riverside Center for Rehabilitation and Nursing Center (formerly Resurrection Nursing Home).

The acquisition of both the nursing home operations and real estate will be done through an asset purchase agreement for a total of $3,000,000. Funding will be as follows: $300,000 member equity of 90 N. Main Street, LL, and $2,700,000 remaining balance being financed through Century Health Capital, Inc. at the above stated terms.

Working capital requirements are estimated at $1,002,423, based on two months' of first year expenses, which will be satisfied from existing facility cash and accounts receivable totaling $202,874 and $1,179,091. BFA Attachment C, RSRNC, LLC d/b/a Riverside Center for Rehabilitation and Nursing pro-forma balance sheet, indicates positive members' equity of $440,729 as of December 31, 2012. The applicant members state they will contribute equity to fund any shortfall in working capital.

BFA Attachment D is the pro-forma balance sheet for 90 N. Main Street, LLC, which indicates positive members' equity of $300,000 as of 12/31/2013.

The submitted budget indicates that a net income of $694,264 would be maintained during the first year following change in ownership. The following is a comparison of the 2012 historical and projected revenue and expense:

Projected Income	$6,708,803
Projected Expense	6,014,539
Projected Net Income	$694,264
Annual 2012 Income	$5,101,714
Annual 2012 Expense	4,660,985
Annual 2012 Net Income (Loss)	$440,729
Incremental Net Income (Loss)	$253,535

It is estimated that incremental revenues will increase by $253,535 with utilization decreasing by 108 patient days. The anticipated changes are as follows: decrease of 178 Medicaid patient days, increasing revenues by $1,072,090 with the daily rate per patient days going from $150.38 per patient day to $204.57 per patient day and bringing utilization to 74.76%, and a decrease of 472 Medicare patient days, plus an increase in the daily rate, going from $226.02 per day to $375.14 per day, which increases revenues by $170,238. There was also an increase of 542 private pay patient days along with decreasing the daily rate from $345.09 per patient day to $328.26 per day, which increases revenues by $103,101, while the balance of the increase is comprised of the assessment revenue. Expenses are expected to increase by $1,353,555 primarily from the increase in FTE's of 15.30, which increased salary and wages by $474,750 and employee benefits by 134,995, with the remaining increase being comprised of higher professional fees, medical and surgical supplies, non-medical supplies, utilities, purchased services and other direct expenses. The budget appears reasonable.

Staff notes that with the expected 2014 implementation of managed care for nursing home residents, Medicaid reimbursement is expected to change from a state-wide price with cost-based capital component payment methodology to a negotiated reimbursement methodology. Facility payments will be the result of negotiations between the managed long term care plans and the facility. At this point in time, it cannot be determined what financial impact this change in reimbursement methodology will have on this project.

BFA Attachment A presents a summary net worth statement of the proposed members of RSRNC, LLC d/b/a Riverside Center for Rehabilitation and Nursing. The proposed members have ownership interest in three RHCF facilities located in New York State; their financial summaries are presented as BFA Attachments F through H and include Bridgewater Center for Rehabilitation & Nursing, LLC, Pine Valley Center for Rehabilitation and Nursing, and Central Park Rehabilitation and Nursing Center.

Through CON 122147, which was contingently approved in December 2012, the applicants' status will change from receiver to owner of Vestal Park Rehabilitation and Nursing Center, and a replacement facility will be constructed. Therefore there are no financial statements for the new entity. The proposed members are also receivers in the following two RHCFs: Beechtree Care Center and Folts Center for Rehabilitation and Nursing.

As shown on BFA Attachment E, RSRNC, LLC d/b/a Riverside Center for Rehabilitation and Nursing for the period March 19, 2012 through December 31, 2012, the RHCF generated an average net income of $440,729, had an average positive net asset position, and had an average positive working capital position.

As shown on BFA Attachment F, Bridgewater Center for Rehabilitation and Nursing, LLC for the years 2010 through 2012, the RHCF generated an average operating surplus of $288,457, had an average positive net asset position of $461,913, and had an average positive working capital position of $222,964.

As shown on BFA Attachment G, Pine Valley Center, LLC d/b/a Pine Valley Center for Rehabilitation and Nursing for the years 2010 through 2012, the RHCF generated an average operating surplus of $434,863, had an average positive net asset position of $2,600,993, and had an average positive working capital position of $4,631,666.

As shown on BFA Attachment H, CPRN, LLC d/b/a Central Park Rehabilitation and Nursing Center for the years 2010 through 2012, the RHCF generated an average operating surplus of $287,300, the net asset position turned positive in 2011, and as of 2012, it was a positive $15,200. During this time period, the RHCF had an average positive working capital position of $2,239,042.

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, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth of Proposed Members of RSRNC, LLC d/b/a Riverside Center for Rehabilitation and Nursing
BFA Attachment B	Net Worth of Proposed Members of 90 N Main Street, LLC
BFA Attachment C	Pro-forma Balance Sheet, RSRNC, LLC d/b/a Riverside Center for Rehabilitation and Nursing
BFA Attachment D	Pro-forma Balance Sheet, 90 N Main Street, LLC
BFA Attachment E	Financial Summary, RSRNC, LLC d/b/a Riverside Center for Rehabilitation and Nursing
BFA Attachment F	Financial Summary, Bridgewater Center for Rehabilitation and Nursing
BFA Attachment G	Financial Summary, Pine Valley Center, LLC d/b/a Pine Valley Center for Rehabilitation and Nursing
BFA Attachment H	Financial Summary, CPRN, LLC d/b/a Central Park Rehabilitation and Nursing Center

Public Health and Health Planning Council

Project # 132261 E
CSRNC, LLC d/b/a Capstone Center for Rehabilitation and Nursing

County: **Montgomery County**
Purpose: **Establishment**
Program: **Residential Health Care Facility**
Acknowledged: **November 8, 2013**

Executive Summary

Description

CSRNC, LLC d/b/a Capstone Center for Rehabilitation and Nursing (the Center), is seeking approval to be established as the new operator of Capstone Center for Rehabilitation and Nursing (formerly Mount Loretto Nursing Home), an existing 120-bed voluntary not-for-profit residential health care facility (RHCF) located at 302 Swart Hill Road, Amsterdam (Montgomery County). Upon the change in ownership, the facility will transition from a voluntary not-for-profit to a proprietary facility.

There are four steps to effectuate the proposed change in ownership and they are as follows:

1. Resurrection Ministries of New York, Resurrection Senior Services, Resurrection Health Care Corporation, Resurrection Nursing Home, Inc. and Mount Loretto Nursing Home, Inc. entered into an Asset Purchase agreement on August 1, 2011, with Mount Loretto Realty, LLC for the sale and acquisition of Mount Loretto Nursing Home.

2. On March 12, 2012, Mount Loretto Nursing Home, Inc., with the approval of the Department of Health, entered into a receivership agreement with CSRNC, LLC d/b/a Capstone Center for Rehabilitation and Nursing for the assumptions of the operation of the facility. Mount Loretto Realty, LLC will assign the rights to acquire the operations of the nursing home to CSRNC, LLC through an Assignment and Assumption of Rights agreement.

3. Mount Loretto Realty, LLC, the landlord of Mount Loretto Nursing Home, has proposed to enter into an agreement for site control of the facility with 302 Swart Hill Road, LLC.

4. 302 Swart Hill Road, LLC proposes to enter into an 10 year lease with CSRNC, LLC d/b/a Capstone Center for Rehabilitation and Nursing.

Ownership of the operations before and after the requested change is as follows:

Current Owner		Current Receiver/Proposed Operator/Owner	
Mount Loretto Nursing Home		CSRNC, LLC d/b/a Capstone Center for Rehabilitation and Nursing	
	Interest		Interest
Mount Loretto Nursing Home	100%	Efraim Steif	39.90%
		Uri Koenig	60.00%
		David Camerota	0.10%

Ownership of the real estate before and after the requested change is as follows:

Current Owner		Proposed Owner	
Mount Loretto Nursing Home		302 Swart Hill Road, LLC	
	Interest		Interest
Mount Loretto Nursing Home	100%	Efraim Steif	40.00%
		Uri Koenig	60.00%

In the following seven companion applications, the proposed members are seeking to convert from being the receiver to being established as the new operator:

- CON 132226 ORNC, LLC d/b/a Chestnut Park Rehabilitation and Nursing Center
- CON 132228 CRNC, LLC d/b/a Cortland Park Rehabilitation and Nursing Center
- CON 132227 RRNC, LLC d/b/a Colonial Park Rehabilitation and Nursing Center
- CON 132229 HRNC, LLC d/b/a Highland Park Rehabilitation and Nursing Center
- CON 132231 JBRNC, LLC d/b/a Hudson Park Rehabilitation and Nursing Center

- CON 132260 RSRNC, LLC d/b/a Riverside Center for Rehabilitation and Nursing
- CON 132334 NCRNC, LLC d/b/a Northeast Center for Rehabilitation and Brain Injury

DOH Recommendation
Contingent Approval

Need Summary
Capstone Center for Rehabilitation and Nursing's utilization was 78.2% in 2010, 55.0% in 2011, and 71.5% in 2012. The facility has been under receivership since March 12, 2012. As of January 8, 2014, the occupancy rate for this facility was 99.2%, which exceeds the Department's optimum planning rate of 97%. This can be attributed to the applicant's ability to reach out to local and regional hospital discharge planners to develop relationships and achieve positive patient outcomes, including successful returns to the community after a short-term rehabilitation stay and positive experiences for long-term residents.

There will be no change to beds or services as a result of this application.

Program Summary
No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.

The facility is in compliance with CMS 2013 sprinkler mandates.

Financial Summary
The facility assets and real estate have been sold in accordance with the Asset Purchase Agreement effective August 1, 2011. This CON is effectively changing the status of the current receiver/operator to owner/operator, and also changing the landlord of the facility. There are no project costs associated with this proposal.

Budget:	Revenues	$10,908,056
	Expenses	8,491,126
	Gain/(Loss)	$2,416,930

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application

Office of Health Systems Management

Approval contingent upon:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
   a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
   b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
   c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; 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;
      - 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 commitment for a permanent mortgage for the project to be provided from a recognized lending institution at a prevailing rate of interest that, determined to be acceptable by the Department of Health. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
4. Submission of an executed assignment and assumption agreement for the operations, acceptable to the Department. [BFA, CSL]
5. Submission of an executed assignment and assumption agreement for the real estate, acceptable to the Department. [BFA]
6. Submission of a photocopy of an executed Certificate of Amendment of the Application for Authority of CSRNC, LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of an executed amended operating agreement of CSRNC, LLC, acceptable to the Department. [CSL]
8. Submission of evidence of transfer of the operational assets of Mount Loretto Nursing Home, Inc. to the applicant, acceptable to the Department. [CSL]
9. Submission of a photocopy of an executed lease agreement between 302 Swart Hill Road, LLC and the applicant, acceptable to the Department. [BFA, CSL]
10. Submission of a photocopy of an executed Certificate of Dissolution or Certificate of Amendment of the Certificate of Incorporation of Mount Loretto Nursing Home, Inc., 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

April 10, 2014

Need Analysis

Background

CSRNC, LLC seeks approval to become the established operator of Capstone Center for Rehabilitation and Nursing (formerly Mount Loretto Nursing Home). Capstone Center for Rehabilitation and Nursing is an existing 120-bed Article 28 residential health care facility located at 302 Swart Hill Road, Amsterdam, 12010, in Montgomery County. CSRNC, LLC is the current receiver of this facility

Analysis

There is currently a surplus of 75 beds in Montgomery County as indicated in Table 1 below. The overall occupancy for the Montgomery County is 95.0% for 2012, as indicated in Table 2.

Table 1: RHCF Need – Montgomery County

2016 Projected Need	515
Current Beds	590
Beds Under Construction	0
Total Resources	590
Unmet Need	-75

Capstone Center for Rehabilitation and Nursing's utilization was 78.2% in 2010, 55.0% in 2011, and 71.5% in 2012. It is the applicant's understanding that the facility's occupancy was low due to several factors including, but not limited to: the corporate office having decided not to admit new patients due to the inability to recruit and retain competent employees; excessive use of a nursing temporary agency; and previous regulatory issues related to poor quality of care, resulting in a sub-par reputation.

Table 2: Capstone Center for Rehabilitation and Nursing/Montgomery County

Facility/County/Region	2010	2011	2012
Capstone Center for Rehabilitation and Nursing	78.2%	55.0%	71.5%
Montgomery County	93.9%	88.7%	95.0%

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, 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 or the Health Systems Agency percentage, whichever is applicable.

Capstone Center for Rehabilitation and Nursing's Medicaid admissions of 57.76% in 2010 and 52.54% in 2011 far exceeded the Montgomery County 75% rates of 31.40% in 2010 and 30.66% in 2011.

Conclusion

Approval of this application will result in the maintenance of a necessary resource that provides needed services to the community it serves.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Program Description

	Existing	Proposed
Facility Name	Capstone Center for Rehabilitation and Nursing	Same
Address	302 Swart Hill Road, Amsterdam NY 12010 Site PFI 0488	Same
RHCF Capacity	120	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Limited Liability Company	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	Mount Loretto Nursing Home, Inc. <u>Receivership</u> CSRNC, LLC Members: Uri Koenig Efraim Steif David Camerota	CSRNC, LLC d/b/a Capstone Center for Rehabilitation and Nursing Members: Uri Koenig 60.0% Efraim Steif 39.9% David Camerota 0.10%

Character and Competence - Background

<u>Facilities Reviewed</u>

<u>Nursing Homes</u>

Beechtree Care Center	09/2013 to present
Bridgewater Center for Rehabilitation & Nursing, LLC	02/2005 to present
Central Park Rehabilitation and Nursing Center	11/2008 to present
Capstone Center for Rehabilitation and Nursing	03/2012 to present
Chestnut Park Center for Rehabilitation and Nursing	06/2011 to present
Cortland Park Center for Rehabilitation and Nursing	06/2011 to present
Colonial Park Center for Rehabilitation and Nursing	06/2011 to present
Folts Home	10/2013 to present
Highland Park Center for Rehabilitation and Nursing	06/2011 to present
Hudson Park Rehabilitation and Nursing	06/2011 to present
Northeast Center for Special Care	11/2013 to present
Pine Valley Center for Rehabilitation and Nursing	12/2004 to present
Riverside Center for Rehabilitation and Nursing	03/2012 to present
Vestal Park Center for Rehabilitation and Nursing	06/2011 to present
Westchester Center for Rehabilitation and Nursing	11/2003 to 12/2006

<u>Adult Care Facilities</u>

Riverside Manor Adult Care (closed)	09/2009 to 07/2010

<u>Individual Background Review</u>

Uri Koenig is a CPA in good standing and owner of JK Koenig & Co., an accounting firm located in Spring Valley, NY. Mr. Koenig discloses the following health facility interests:

Bridgewater Center for Rehabilitation & Nursing	08/2006 to present
Pine Valley Center for Rehabilitation and Nursing	01/2008 to present
Central Park Rehabilitation and Nursing Center	03/2012 to present

Receiverships:

Capstone Center for Rehabilitation and Nursing	03/2012 to present
Chestnut Park Rehabilitation and Nursing Center	06/2011 to present
Cortland Park Rehabilitation and Nursing Center	06/2011 to present
Colonial Park Rehabilitation and Nursing Center	06/2011 to present
Highland Park Rehabilitation and Nursing Center	06/2011 to present
Hudson Park Rehabilitation and Nursing Center	06/2011 to present
Riverside Center for Rehabilitation and Nursing	03/2012 to present
Vestal Park Rehabilitation and Nursing Center	06/2011 to present
Beechtree Care Center	09/2013 to present
Folts Home	10/2013 to present
Northeast Center for Special Care	11/2013 to present

Efraim Steif is a licensed nursing home administrator in good standing in the States of New York and New Jersey. Mr. Steif is the president of FRS Healthcare Consultants, Inc., and formerly served as administrator at Forest View Center for Rehabilitation and Nursing in Forest Hills from 2000 to 2005. Mr. Steif discloses the following health care facilities interests:

Bridgewater Center for Rehabilitation & Nursing, LLC	02/2005 to present
Pine Valley Center for Rehabilitation and Nursing	12/2004 to present
Central Park Rehabilitation and Nursing Center	11/2008 to present
Riverside Manor Adult Care (closed)	09/2009 to 07/2010

Receiverships:

Beechtree Care Center	09/2013 to present
Capstone Center for Rehabilitation and Nursing	03/2012 to present
Chestnut Park Center for Rehabilitation and Nursing	06/2011 to present
Cortland Park Center for Rehabilitation and Nursing	06/2011 to present
Colonial Park Center for Rehabilitation and Nursing	06/2011 to present
Folts Home	10/2013 to present
Highland Park Center for Rehabilitation and Nursing	06/2011 to present
Hudson Park Center for Rehabilitation and Nursing	06/2011 to present
Northeast Center for Special Care	11/2013 to present
Riverside Center for Rehabilitation and Nursing	03/2012 to present
Vestal Park Center for Rehabilitation and Nursing	06/2011 to present
Westchester Center for Rehabilitation and Nursing	01/2003 to 12/2006

David Camerota is a licensed nursing home administrator in good standing. He is currently employed as chief operating officer with Upstate Services Group, LLC, which provides administrative and operational support to its affiliated skilled nursing facilities throughout New York. Mr. Camerota has served nearly continuously as administrator for the past eleven years at several upstate New York skilled nursing facilities. Mr. Camerota has disclosed the following nursing home ownership interests:

Pine Valley Center for Rehabilitation and Nursing	06/2011 to present
Central Park Rehabilitation and Nursing Center	02/2012 to present

Receiverships:

Highland Park Rehabilitation and Nursing Center	06/2011 to present
Hudson Park Rehabilitation and Nursing Center	06/2011 to present
Vestal Park Rehabilitation and Nursing Center	06/2011 to present
Chestnut Park Rehabilitation and Nursing Center	06/2011 to present
Cortland Park Rehabilitation and Nursing Center	06/2011 to present
Colonial Park Rehabilitation and Nursing Center	06/2011 to present
Riverside Center for Rehabilitation and Nursing	03/2012 to present
Capstone Center for Rehabilitation and Nursing	03/2012 to present
Beechtree Care Center	09/2013 to present
Folts Home	10/2013 to present
Northeast Center for Special Care	11/2013 to present

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants.

A review of Bridgewater Center for Rehabilitation & Nursing for the period identified above reveals the following:

- The facility was fined $4,000 pursuant to a Stipulation and Order NH-13-016 issued May 29, 2013 for surveillance findings on July 6, 2011. Deficiencies were found under 10 NYCRR 415.26(f)(1) Written Plans for Emergency/Disasters, and 415.26(f)(3) Emergency Procedure/Drills.

A review of Central Park Rehabilitation and Nursing Center for the period identified above reveals the following:

- The facility was fined $2,000 pursuant to a Stipulation and Order NH-10-064 issued December 6, 2010 for surveillance findings on May 26, 2009. Deficiencies were found under 10 NYCRR 415.19(a) Quality of Care: Infection Control.

A review of operations for Central Park Rehabilitation and Nursing Center and Bridgewater Center for Rehabilitation and Nursing, LLC for the periods identified above, results in a conclusion of consistent high level of care since there were no repeat enforcements.

A review of operations for Capstone Center for Rehabilitation and Nursing, Chestnut Park Rehabilitation and Nursing Center, Colonial Park Rehabilitation and Nursing Center, Cortland Park Rehabilitation and Nursing Center, Highland Park Rehabilitation and Nursing Center, Hudson Park Rehabilitation and Nursing Center, Pine Valley Center for Rehabilitation and Nursing, Riverside Center for Rehabilitation and Nursing, Vestal Park Rehabilitation and Nursing Center, and Westchester Center for Rehabilitation and Nursing, and Riverside Manor Adult Care 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. No administrative services or consulting agreements are proposed in this application.

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 of the Operations and Real Estate will be effectuated in accordance with an executed asset purchase agreement, the terms of which are summarized below:

Date:	August 1, 2011
Seller:	Resurrection Ministries of New York, Resurrection Senior Services, Resurrection Health Care Corporation, Resurrection Nursing Home, Inc. (Resurrection Nursing Home) and Mount Loretto Nursing Home, Inc. (Mount Loretto)
Purchaser:	Mount Loretto Realty, LLC

Purchased Assets:	All of the Seller’s rights, title and interest in and to all of the assets (other than the excluded assets) related to, used in, necessary or intended for, held in connection with or which otherwise arising in or from ownership or operation of, the facilities, including but not limited to (i) assumed Contracts, (ii) Books and Records, (iii) Licenses (to the extent transferrable to buyer), (iv) Tangible personal property (v) Intangible Personal Property, (vi) Inventory and (vii) the real Property
Excluded Assets:	Cash and cash equivalents(including as held in trust in connection with escrows required under any mortgage agreement pertaining to any facility), account receivable, deposits (other than resident funds held in trust and resident deposits), prepaid expenses and refundable deposits applicable to periods prior to the effective time and securities, all rights, title and interest in and to the names “Mount Loretto” and “Resurrection Nursing Home” and the other trademarks or trade names, any contracts and agreements to which one or both of the Parent organizations are parties, including such contracts and agreements relating to or benefiting one or both of the facilities, All seller contracts that are not assumed contracts, computer software, programs and hardware or data processing equipment which is used by or in connection with the Parent organization and one or both of the facilities, including such items which are proprietary to a seller and/or such seller’s affiliates, except to the extent that such computer software, programs and hardware or data processing equipment is material to the business of the facilities, all of seller’s or affiliate proprietary manuals, marketing material, policy and procedure manuals, standard operating procedures and marketing brochures, data and studies or analyses except to extent used without the name resurrection health care, mount loretto and resurrection Nursing Home, portions of inventory and other assets disposed of, expended or canceled, by seller after execution date and prior to effective time in ordinary course of business, all claims, rights, interest and proceeds with respect to state or local tax refunds (including but not limited to property tax) resulting from periods prior to the effective time, all of sellers’ corporate record books and minute books, all unclaimed property of any third party including without limitation, property which is subject to applicable escheat laws, all claims, rights, interests and proceeds(due to a third party) with respect to amounts overpaid by a seller to any third party with respect to periods prior to the receivership date, including overpayment amounts determined by audits undertaken by a seller, and any refunds, adjustments, overpayments and cost report settlements of sellers for periods prior to the receivership date, All retroactive rate increases and/or lump sum payments, resulting from rate appeals, audits or otherwise, with respect to third party payments, from any source, for services rendered by a seller prior to the receivership date, all bank accounts of sellers, all rights, claims and chooses in action of a seller and its affiliates with respect to periods prior to the effective time and any payments, awards or other proceeds resulting there from, All payments or equivalent cash credits relating to the facilities or the real property resulting from claims, insurance premium rate reductions or insurance or other dividends paid or accruing for periods prior to the effective time, all writings and other items that are protected from discovery by the attorney-client privilege, All donations and bequests to a seller or a facility specifically identified by name or as otherwise legally prohibited, all relics, religious art and other objects of religious significance, belonging to any of the sellers, the parent organizations or the Sisters of the Resurrection and all assets set forth on Schedule 2.5 (u).

Liabilities Assumed :	The assumed contracts, including without limitation those leases that are Assumed Contracts, to the extent that the obligations there under are required to be performed on or after the Receivership date, the payment or honoring of all accrued and unused paid time off, vacation and sick time accrued by Hired employees as of the date immediately prior to the Receivership date and as of the closing date, without limiting any claim by Buyer to indemnification under section 8.2 arising out of any breach of sellers and Parent organizations' representations and warranties under sections 3.11 (C), 3.12 (C) and 3.12 (g), the environmental conditions and the condition of the Real property, which Buyer agrees to accept in its "AS IS", "Where IS" condition pursuant to Section 2.11 herein.
Purchase Price:	$3,000,000 for Resurrection Nursing Home facility and operations and 1,000,000 for Mount Loretto Nursing Home facility and operations.
Payment of Purchase Price:	2,700,000 Loan at 6.5% interest rate for 25 years 300,000 Funded from Members equity for Resurrection and $900,000 Loan at 6.5% interest rate for 25 years and $100,000 funded from Members equity for Mount Loretto

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility.

Assignment and Assumption Agreement (Operations)

The applicant has submitted a draft assignment and assumption agreement, the terms of which are summarized below:

Date:	To be Determined
Assignor:	Mount Loretto Realty, LLC
Assignee:	CSRNC, LLC
Assignment and Assumption	Assignor's rights under the purchase agreement with respect to the assumed contracts, Licenses (to the extent transferable to assignee), and inventory, and the representations, warranties and covenants and any and all other rights of assignor under any of the purchase documents related thereto in connection with Mount Loretto Premises and the Mount Loretto facility

Assignment and Assumption Agreement (Real Estate)

The applicant has submitted a draft assignment and assumption agreement the terms of which are summarized below:

Date:	To be Determined
Assignor:	Mount Loretto Realty, LLC
Assignee:	302 Swart Hill Road, LLC
Assignment and Assumption	Assignor's rights under the purchase agreement with respect to the Books and Records, Intangible Personal Property, tangible personal property, the real property and all of the of the assets (other than the Excluded Assets) related to, used in, necessary or intended for, held in connection with, or which otherwise arising in or from the ownership and operation of the Mount Loretto Facility, the representations, warranties and covenants and any and all other rights of assignor under any of the purchase documents related thereto in connection with the Mount Loretto Premises and the Mount Loretto facility.

The members of the reality entity 302 Swart Hill Road, LLC; are as follows:

Proposed Members	Percentage Ownership
Efraim Steif	40.00%
Uri Koenig	60.00%

Presented as BFA Attachment A is the proposed members' net worth summaries.

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 and Medicaid Capital Reimbursement

Facility occupancy will continue to be subject to a draft lease agreement, the terms of which are summarized as follows:

Date:	To be determined
Premises:	A 120-bed Proprietary RHCF located at 302 Swart Hill Road, Amsterdam, NY
Lessor:	302 Swart Hill Road, LLC
Lessee:	CSRNC, LLC
Term:	10 years with one 15 year renewal term
Rental:	$73,783 per year ($6,148.58 per month)
Provisions:	Triple Net Lease

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the Landlord and operating entity**.**

With the change from a voluntary to a proprietary facility, the reimbursement methodology will change to interest and amortization. The facility however, does not have a mortgage, as the facility is leased from a related entity, which is charging the rent based on interest and amortization owed on the mortgage loan.

Operating Budget

Following is a summary of the submitted operating budget, presented in 2013 dollars, for the first year subsequent to change in ownership:

	Per Diem	Total
Revenues:		
Medicaid	$213.98	$6,443,932
Medicare	376.81	1,992,941
Private Pay/Other	364.05	2,471,183
Total		$10,908,056
Expenses:		
Operating		$8,402,263
Capital		88,863
Total		$8,491,126
Net Income		$2,416,930
Utilization: (patient days)		42,191
Occupancy		96.33%

The following is noted with respect to the submitted operating budget:

- Medicaid and Medicare revenues are based on actual 2013 rates.
- Private rate was adjusted lower to be at the level of the Medicare rate.
- Overall utilization is projected at 96.33%, while utilization by payor source is expected as follows:

Medicaid	71.38%
Medicare	12.54%
Private Pay/Other	16.08%

- Breakeven utilization is projected at 74.99%.

With the applicant as receiver since 2012, the facility has been able to significantly increase their overall occupancy. The projected occupancy is based on the May 31, 2013 internal financial statements for the facility, showing the facility operating at approximately 96% occupancy. The facility has exceeded those results as of January 8, 2014, with an occupancy rate of 99.2%, and as of February 5, 2014, achieved 100% occupancy as reflected on the Department of Health's website.

Capability and Feasibility

Through an assignment and assumption agreement of an Asset Purchase agreement CSRNC, LLC d/b/a Capstone Center for Rehabilitation and Nursing will acquire the operating Interest of Capstone Center for Rehabilitation and Nursing (formerly Mount Loretto Nursing Home, an existing 120-bed voluntary residential health care facility, which will be changed to a proprietary residential Health care facility upon approval of this application). Through an assignment and assumption agreement of an Asset Purchase Agreement, 302 Swart Hill Road, LLC, will acquire the Real Estate Interest of Capstone Center for Rehabilitation and Nursing (formerly Mount Loretto Nursing Home).

The acquisition of both the nursing home operations and the real estate will be done through an asset purchase agreement for a total of $1,000,000. Funding will be as follows: $100,000 member equity of 302 Swart Hill Road, LLC, and $900,000 remaining balance financed through Century Health Capital, Inc. at the above stated terms.

Working capital requirements are estimated at $1,415,188, based on two months' of first year expenses, which will by satisfied from existing facility cash and accounts receivable totaling $57,580 and $2,507,166. BFA Attachment C, CSRNC, LLC d/b/a Capstone Center for Rehabilitation and Nursing pro-forma balance sheet, indicates negative members' equity of $278,200 as of December 31, 2012. The applicant members state they will contribute equity to fund any shortfall in working capital.

BFA Attachment D is the pro-forma balance sheet of 302 Swart Hill Road, LLC, which indicates positive members' equity of $100,000 as of December 31, 2013.

The submitted budget indicates that a net income of $2,416,930 would be maintained during the first year following change in ownership. The following is a comparison of the 2012 historical and projected revenue and expense:

Projected Income	$10,908,056
Projected Expense	8,491,126
Projected Net Income	$2,416,930
Annual 2012 Income	$6,236,441
Annual 2012 Expense	6,514,641
Annual 2012 Net Income (Loss)	($278,200)
Incremental Net Income (Loss)	$2,695,130

It is estimated that incremental revenues will increase by $2,695,130 with utilization increasing by 10,889 patient days, the anticipated changes are as follows: increase of 6,235 Medicaid patient days, increasing revenues by $2,916,530 with the daily rate per patient day going from $147.72 to $213.99 and bringing utilization to 71.38%. There is an increase of 715 Medicare patient days plus an increase in the daily rate, going from $297.09 per patient day to $376.82 per day, which increases revenues by $634,029.

Private pay days also increased by 3,940 private pay patient days, along with decreasing the daily rate per patient day from $484.70 to $305.52 per patient day, which increases revenues by $693,273, while the balance of the increase is comprised of the assessment revenue. Expenses are expected to increase by $1,976,485 primarily from the increase in salaries and wages of 1,241,781, and the increase in employee benefits of 264,263 with the remainder of the increase due to other direct expenses. The budget appears reasonable.

Staff notes that with the expected 2014 implementation of managed care for nursing home residents, Medicaid reimbursement is expected to change from a state-wide price with cost-based capital component payment methodology to a negotiated reimbursement methodology. Facility payments will be the result of negotiations between the managed long term care plans and the facility. At this point in time, it cannot be determined what financial impact this change in reimbursement methodology will have on this project.

BFA Attachment A presents a summary net worth statement of the proposed members of CSRNC, LLC d/b/a Capstone Center for Rehabilitation and Nursing. All three of the proposed members have ownership interest in the following RHCF facilities; Bridgewater Center for Rehabilitation & Nursing, LLC, Pine Valley Center for Rehabilitation and Nursing, and Central Park Rehabilitation and Nursing Center. Their financial summaries are presented as BFA Attachments F through G.

Through CON 122147, which was contingently approved in December 2012, the applicants' status will change from receiver to owner of Vestal Park Rehabilitation and Nursing Center, and a replacement facility will be constructed. Therefore there are no financial statements for the new entity. The proposed members are also receivers in the following two RHCFs: Beechtree Care Center and Folts Center for Rehabilitation and Nursing.

As shown on BFA Attachment E, CSRNC, LLC d/b/a Capstone Center for Rehabilitation and Nursing for the period March 19, 2012, through December 31, 2012, the RHCF generated an average net loss of $ 278,200, had an average negative net asset position, and had an average negative working capital position. The working capital deficit appears to be attributable to a lack of liquid assets due to the fact that the prior operator apparently allowed accounts payable and accrued payroll to lag beyond the standard terms; the balances in those categories make up for the shortfall. As to negative equity, it appears that historical operating losses were not reimbursed by the prior operator. Capstone Center was placed in receivership during March, 2012. At the time, the facility was at approximately 50-60% occupancy, which caused significant financial strain. Under the receiver's operations, the facility is currently running at over 95% occupancy and it has eliminated any negative capital. The members of the proposed new operator are committed to improving the facility's operations, including maintaining positive member equity.

As shown on BFA Attachment F, Bridgewater Center for Rehabilitation and Nursing, LLC, for the years 2010 through 2012, the RHCF generated an average operating surplus of $288,457, had an average positive net asset position of $461,913, and had an average positive working capital position of $222,964.

As shown on BFA Attachment G, Pine Valley Center, LLC, d/b/a Pine Valley Center for Rehabilitation and Nursing, for the years 2010 through 2012, the RHCF generated an average operating surplus of $434,863, had an average positive net asset position of $2,600,993, and had an average positive working capital position of $4,631,666.

As shown on BFA Attachment H, CPRN, LLC d/b/a Central Park Rehabilitation and Nursing Center, for the years 2010 through 2012, the RHCF generated an average operating surplus of $287,300, the net asset position turned positive in 2011, and as of 2012, it was a positive $15,200. During this time period, the RHCF had an average positive working capital position of $2,239,042.

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, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth of Proposed Members of CSRNC, LLC d/b/a Capstone Center for Rehabilitation and Nursing
BFA Attachment B	Net Worth of Proposed Members of 302 Swart Hill Road, LLC
BFA Attachment C	Pro-forma Balance Sheet, CSRNC, LLC d/b/a Capstone Center for Rehabilitation and Nursing
BFA Attachment D	Pro-forma Balance Sheet, 302 Swart Hill Road, LLC
BFA Attachment E	Financial Summary, CSRNC, LLC d/b/a Capstone Center for Rehabilitation and Nursing
BFA Attachment F	Financial Summary, Bridgewater Center for Rehabilitation and Nursing, LLC
BFA Attachment G	Financial Summary, Pine Valley Center, LLC d/b/a Pine Valley Center for Rehabilitation and Nursing
BFA Attachment H	Financial Summary, CPRN, LLC d/b/a Central Park Rehabilitation and Nursing Center

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Hendon Garden Center, LLC d/b/a Hendon Garden Nursing and Rehabilitation Center

(Queens County)

To be distributed under separate cover

Public Health and Health Planning Council

Project # 132334-B
NCRNC, LLC d/b/a Northeast Center for Rehabilitation and Brain Injury

County: **Ulster**
Purpose: **Establishment and Construction**
Program: **Residential Health Care Facility**
Acknowledged: **December 18, 2013**

Executive Summary

Description

NCRNC, LLC d/b/a Northeast Center for Rehabilitation and Brain Injury (the Center), is seeking approval to be established as the new operator of the Northeast Center for Special Care, an existing 280-specialty bed proprietary residential health care facility (RHCF) located at 300 Grant Avenue, Lake Katrine, NY (Ulster County). The Center is currently certified for 40 Residential Health Care beds, 20 Behavioral Intervention (BI) beds, 180 Traumatic Brain Injury (TBI) beds, and 40 Ventilator (Vent) beds. The applicant is also proposing to convert 10 of the ventilator beds to 10 Residential Health Care beds, resulting in 30 vent beds and 50 RHCF beds. There will be no change to the overall bed complement of the facility.

NCRNC, LLC d/b/a Northeast Center for Rehabilitation and Brain Injury (the Center) is the current receiver of Northeast Center for Special Care. On June 10, 2011, KRNH, Inc. d/b/a entered into an Operations Transfer Agreement with Northeast Center, LLC to sell and acquire for $10, the operating interest in the 280-specialty bed RHCF facility. On November 1, 2013, Northeast Center, LLC assigned all its rights and interest in the Operational Transfer Agreement to NCRNC, LLC d/b/a Northeast Center for Rehabilitation and Brain Injury.

Ownership of the operations before and after the requested change is as follows:

Current Owner		Current Receiver/Proposed Operator/Owner	
KRNH, Inc. d/b/a Northeast Center for Special Care		NCRNC,LLC d/b/a Northeast Center for Rehabilitation and Brain Injury	
	Interest		Interest
Estate of Anthony Salerno	50.00%	Efraim Steif	39.90%
Harry Satin	30.00%	Uri Koenig	60.00%
Patrick Donnellan	10.00%	David Camerota	0.10%
Jeffrey Sunshine	10.00%		

There will be no change in the real property ownership.

There are seven companion applications the proposed members are seeking to convert from being the receiver to being established as the new operator:

- CON 132228 CRNC, LLC d/b/a Cortland Park Rehabilitation and Nursing Center
- CON 132226 ORNC, LLC d/b/a Chestnut Park Rehabilitation and Nursing Center
- CON 132229 HRNC, LLC d/b/a Highland Park Rehabilitation and Nursing Center
- CON 132231 JBRNC, LLC d/b/a Hudson Park Rehabilitation and Nursing Center
- CON 132260 RSRNC, LLC d/b/a Riverside Center for Rehabilitation and Nursing
- CON 132261 CSRNC, LLC d/b/a Capstone Center for Rehabilitation and Nursing.
- CON 132227 RRNC, LLC d/b/a Colonial Park Rehabilitation and Nursing Center (the Center)

DOH Recommendation

Contingent Approval

Need Summary

Northeast Center for Rehabilitation and Brain Injury's utilization during 2010-2012 was 98.5%, 138.4%, and 101.7%, respectively. Current utilization, as of January 1, 2014 is 97.5%. Due to the high utilization within the RHCF unit and current utilization in the vent unit, there are no available beds for vent patients that have undergone decannulation. Conversion of vent to RHCF beds will not result in a displacement of patients and will result in patients being placed in the appropriate care setting within the facility.

The change in ownership will not result in a change in net new beds or services.

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 sprinkler mandates.

Financial Summary

Northeast Center, LLC will acquire the operating interests in the Specialty RHCF for $10. There are no project costs associated with this proposal.

Budget	Revenues	$40,305,471
	Expenses	38,829,514
	Gain/(Loss)	$1,475,957

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Health Systems Management

<u>Approval contingent upon</u>:

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:
    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;
        - 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 photocopy of an executed Certificate of Amendment of the Articles of Organization of NCRNC, LLC, acceptable to the Department. [CSL]
4. Submission of a photocopy of an executed amended operating agreement of NCRNC, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of an executed Certificate of Dissolution or Certificate of Amendment of the Certificate of Incorporation of KRNH, Inc., acceptable to the Department. [CSL]

<u>Approval conditional upon</u>:

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

April 10, 2014

Need Analysis

Background

NCRNC, LLC, d/b/a Northeast Center for Rehabilitation and Brain Injury, seeks approval to become the established operator of Northeast Center for Rehabilitation and Brain Injury, a 280-bed Article 28 residential health care facility located at 300 Grant Avenue, Lake Katrine, 12449, in Ulster County. Northeast Center for Rehabilitation and Brain Injury is currently certified for 40 RHCF beds, 20 Behavioral Intervention (BI) beds, 180 Traumatic Brain Injury (TBI) beds, and 40 vent beds. The applicant also seeks approval to convert 10 vent beds into 10 RHCF beds.

Shown below is a bed chart reflecting the proposed changes to this facility.

Beds	Current	Proposed Action	Upon Completion
RHCF	40	+10	50
BI	20	0	20
TBI	180	0	180
Vent	40	(10)	30
Total	**280**	**0**	**280**

Analysis

There is currently a need of 79 beds in Ulster County as indicated in Table 1 below. However, the overall occupancy for Ulster County was 93.4% for 2012 as indicated in Table 2.

Table 1: RHCF Need – Ulster County

2016 Projected Need	1,078
Current Beds	999
Beds Under Construction	0
Total Resources	999
Unmet Need	79

Northeast Center for Rehabilitation and Brain Injury's utilization was 98.5% in 2010, 138.4% in 2011, and 101.7% in 2012. In October, 2012, the Northeast Center for Rehabilitation and Brain Injury submitted a Vital Access Provider (VAP) submission to the DOH detailing a transition plan to transfer the facility from bankrupt to financially stable in order to cost effectively provide vital services to a population for whom appropriate services are in critical shortage. The plan included the conversion of vent beds to RHCF beds.

The 2010 vent bed need was 128; currently there are 170 vent beds existing in the Hudson Valley Region, which is a surplus of 42. Northeast Center for Rehabilitation and Brain Injury currently has 40 vent beds. Wingate of Ulster is the only other facility in Ulster County with vent beds (21), for a combined total of 61 vent beds currently in the county.

The facility regularly admits patients who are either misplaced at RHCFs or difficult to care for by traditional nursing homes. The average age of their patients is 48, which is far younger than those cared for in RHCFs. The facility also accepts patients other RHCFs could not consider, such as medically complex patients and individuals with aggressive and challenging behaviors.

Table 2: Northeast Center for Rehabilitation and Brain Injury/Ulster County Occupancy

Facility/County	2010	2011	2012
Northeast Center for Rehabilitation and Brain Injury	98.5%	138.4%	101.7%
Ulster County	96.9%	98.0%	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, or of the Health Systems Agency area Medicaid admissions percentage, 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 or the Health Systems Agency percentage, whichever is applicable.

Northeast Center for Rehabilitation and Brain Injury's Medicaid admissions for 2011 and 2012 was 78.6% and 65.4%, respectively, which exceeds the Ulster County 75% rates of 34.2% in 2011 and 31.6% in 2012.

Conclusion

Approval of this application will result in the maintenance of a necessary resource that provides needed services within its community.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Program Description

	Existing	Proposed
Facility Name	Northeast Center for Rehabilitation and Brain Injury	Same
Address	300 Grant Avenue, Lake Katrine, NY 12449	Same
RHCF Capacity	280	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Limited Liability Company	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	KRNH, Inc. <u>Receivership</u> NCRNC, LLC Members: Efraim Steif Uri Koenig David Camerota	NCRNC, LLC, d/b/a Northeast Center for Rehabilitation and Brain Injury Members: Uri Koenig 60.00% Efraim Steif 39.90% David Camerota 0.10%

Character and Competence - Background

<u>Facilities Reviewed</u>

<u>Nursing Homes</u>

Beechtree Care Center	09/2013 to present
Bridgewater Center for Rehabilitation & Nursing, LLC	02/2005 to present
Central Park Rehabilitation and Nursing Center	11/2008 to present
Capstone Center for Rehabilitation and Nursing	03/2012 to present
Chestnut Park Center for Rehabilitation and Nursing	06/2011 to present

Cortland Park Center for Rehabilitation and Nursing	06/2011 to present
Colonial Park Center for Rehabilitation and Nursing	06/2011 to present
Folts Home	10/2013 to present
Highland Park Center for Rehabilitation and Nursing	06/2011 to present
Hudson Park Rehabilitation and Nursing	06/2011 to present
Northeast Center for Special Care	11/2013 to present
Pine Valley Center for Rehabilitation and Nursing	12/2004 to present
Riverside Center for Rehabilitation and Nursing	03/2012 to present
Vestal Park Center for Rehabilitation and Nursing	06/2011 to present
Westchester Center for Rehabilitation and Nursing	11/2003 to 12/2006

Adult Care Facilities

Riverside Manor Adult Care (closed)	09/2009 to 07/2010

Individual Background Review

Uri Koenig is a CPA in good standing and owner of JK Koenig & Co., an accounting firm located in Spring Valley, NY. Mr. Koenig discloses the following health facility interests:

Bridgewater Center for Rehabilitation & Nursing	08/2006 to present
Pine Valley Center for Rehabilitation and Nursing	01/2008 to present
Central Park Rehabilitation and Nursing Center	03/2012 to present

Receiverships:

Capstone Center for Rehabilitation and Nursing	03/2012 to present
Chestnut Park Rehabilitation and Nursing Center	06/2011 to present
Cortland Park Rehabilitation and Nursing Center	06/2011 to present
Colonial Park Rehabilitation and Nursing Center	06/2011 to present
Highland Park Rehabilitation and Nursing Center	06/2011 to present
Hudson Park Rehabilitation and Nursing Center	06/2011 to present
Riverside Center for Rehabilitation and Nursing	03/2012 to present
Vestal Park Rehabilitation and Nursing Center	06/2011 to present
Beechtree Care Center	09/2013 to present
Folts Home	10/2013 to present
Northeast Center for Special Care	11/2013 to present

Efraim Steif is a licensed nursing home administrator in good standing in the States of New York and New Jersey. Mr. Steif is the president of FRS Healthcare Consultants, Inc., and formerly served as administrator at Forest View Center for Rehabilitation and Nursing in Forest Hills from 2000 to 2005. Mr. Steif discloses the following health care facilities interests:

Bridgewater Center for Rehabilitation & Nursing, LLC	02/2005 to present
Pine Valley Center for Rehabilitation and Nursing	12/2004 to present
Central Park Rehabilitation and Nursing Center	11/2008 to present
Riverside Manor Adult Care (closed)	09/2009 to 07/2010

Receiverships:

Beechtree Care Center	09/2013 to present
Capstone Center for Rehabilitation and Nursing	03/2012 to present
Chestnut Park Center for Rehabilitation and Nursing	06/2011 to present
Cortland Park Center for Rehabilitation and Nursing	06/2011 to present
Colonial Park Center for Rehabilitation and Nursing	06/2011 to present
Folts Home	10/2013 to present
Highland Park Center for Rehabilitation and Nursing	06/2011 to present
Hudson Park Center for Rehabilitation and Nursing	06/2011 to present
Northeast Center for Special Care	11/2013 to present
Riverside Center for Rehabilitation and Nursing	03/2012 to present
Vestal Park Center for Rehabilitation and Nursing	06/2011 to present
Westchester Center for Rehabilitation and Nursing	01/2003 to 12/2006

David Camerota is a licensed nursing home administrator in good standing. He is currently employed as chief operating officer with Upstate Services Group, LLC, which provides administrative and operational support to its affiliated skilled nursing facilities throughout New York. Mr. Camerota has served nearly continuously as administrator for the past eleven years at several upstate New York skilled nursing facilities. Mr. Camerota has disclosed the following nursing home ownership interests.

Pine Valley Center for Rehabilitation and Nursing	06/2011 to present
Central Park Rehabilitation and Nursing Center	02/2012 to present
Receiverships:	
Highland Park Rehabilitation and Nursing Center	06/2011 to present
Hudson Park Rehabilitation and Nursing Center	06/2011 to present
Vestal Park Rehabilitation and Nursing Center	06/2011 to present
Chestnut Park Rehabilitation and Nursing Center	06/2011 to present
Cortland Park Rehabilitation and Nursing Center	06/2011 to present
Colonial Park Rehabilitation and Nursing Center	06/2011 to present
Riverside Center for Rehabilitation and Nursing	03/2012 to present
Capstone Center for Rehabilitation and Nursing	03/2012 to present
Beechtree Care Center	09/2013 to present
Folts Home	10/2013 to present
Northeast Center for Special Care	11/2013 to present

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants.

A review of Bridgewater Center for Rehabilitation & Nursing for the period identified reveals the following:

- The facility was fined $4,000 pursuant to a Stipulation and Order NH-13-016 issued May 29, 2013 for surveillance findings on July 6, 2011. Deficiencies were found under 10 NYCRR 415.26(f)(1) Written Plans for Emergency/Disasters, and 415.26(f)(3) Emergency Procedure/Drills.

A review of Central Park Rehabilitation & Nursing Center for the period identified reveals the following :

- The facility was fined $2,000 pursuant to a Stipulation and Order NH-10-064 issued December 6, 2010 for surveillance findings on May 26, 2009. Deficiencies were found under 10 NYCRR 415.19(a) Quality of Care: Infection Control.

A review of operations for Central Park Rehabilitation and Nursing Center and Bridgewater Center for Rehabilitation and Nursing, LLC for the periods identified above, results in a conclusion of consistent high level of care since there were no repeat enforcements.

A review of operations for Capstone Center for Rehabilitation and Nursing, Chestnut Park Rehabilitation and Nursing Center, Colonial Park Rehabilitation and Nursing Center, Cortland Park Rehabilitation and Nursing Center, Highland Park Rehabilitation and Nursing Center, Hudson Park Rehabilitation and Nursing Center, Pine Valley Center for Rehabilitation and Nursing, Riverside Center for Rehabilitation and Nursing, Vestal Park Rehabilitation and Nursing Center, and Westchester Center for Rehabilitation and Nursing, and Riverside Manor Adult Care 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. No administrative services or consulting agreements are proposed in this application.

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

Operations Transfer Agreement

The applicant has submitted an executed operations transfer agreement, the terms of which are summarized below:

Date:	June 10, 2011
Transferor:	KRNH, Inc
Transferee:	Northeast Center, LLC
Purchase Price:	$10 Payable at closing
Assets Transferred:	All rights, title and interest in the assets including trade name “Northeast Center for Special Care”, leasehold improvements, equipment and furniture, supplies and inventory, prepaid expenses, all documents and records, assignable licenses and permits including Medicare and Medicaid provider numbers, phone numbers, fax numbers and all logos, names, trade names, trademarks and service marks, assignable software, resident trust funds, deposits and prepayments, cash and cash equivalents, Medicare and Medicaid provider agreements and Medical records custody agreement.
Assumed Liabilities:	Obligations of Transferor under or which may arise in connection with the Provider Agreement and the Assets, assumed by Transferee pursuant to the terms hereof and the Assignment of Provider Agreement

The Operations Transfer Agreement was between Northeast Center, LLC, formed by Mr. Koenig and Mr. Steif. All documents executed by Northeast Center, LLC will be assigned to NCRNC, LLC.

Assignment and Assumption Agreement

The applicant has submitted an executed assignment and assumption agreement, the terms of which are summarized below:

Date:	November 1, 2013
Assignor::	Northeast Center, LLC
Assignee::	NCRNC, LLC d/b/a Northeast Center for Rehabilitation and Brain Injury
Assignment and Assumption:	All rights and interest with respect to the operations transfer agreement.

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 and Medicaid Capital Reimbursement

Facility occupancy is subject to the executed lease agreement, the terms of which are summarized as follows:

Date:	November 1, 2013
Premises:	A 280 bed specialty Proprietary RHCF located at 300 Grant Avenue, Lake Katrine, NY (Ulster County)
Lessor:	Hudson River Valley, LLC
Lessee:	NCRNC, LLC
Term:	25 years Commencing June 10, 2011
Rental:	$425,000 per year ($35,416.67 per month)

Provisions: Triple Net Lease

The original lease dated June 10, 2011, was between Park Group Realty Three, LLC, formed by Mr. Koenig and Mr. Steif. All documents executed by Park Group Realty Three, LLC will be assigned to NCRNC, LLC. The lease arrangement is an arm's length agreement.

Currently, Medicaid capital reimbursement is based on mortgage interest and amortization methodology and will not be altered upon the change in ownership. Based on 2014 Nursing Home Consolidated Capital (Schedule VI – Property), the facility is only qualifying for mortgage interest reimbursement at this time.

Operating Budget

Following is a summary of the submitted operating budget, presented in 2014 dollars for the first year subsequent to change in ownership:

For the full 280-Bed RHCF:	Per Diem	Total
Revenues:		
Commercial	$533.00	$2,368,663
Medicaid	316.21	25,599,223
Medicare	429.56	4,670,281
Private Pay/Other	982.94	1,005,549
Assessment Revenue		1,480,571
Medicaid Rate Enhancement		5,181,184
Total		$40,305,471
Expenses:		
Operating		$33,903,907
Capital		4,925,547
Total		$38,829,454
Net Income		$1,476,017
Utilization: (patient days)		97,296
Occupancy		95.20%

For the 50-Bed RHCF:	Per Diem	Total
Revenues:		
Commercial	$495.35	$454,734
Medicaid	243.87	1,873,667
Medicare	418.62	3,168,940
Private Pay/Other	466.40	118,465
Assessment Revenue		140,511
Total		$5,756,317
Utilization: (Patient days)		16,425
Occupancy		89.75%

For the 180-Bed TBI:	Per Diem	Total
Revenues:		
Commercial	$499.57	$1,109,035
Medicaid	301.08	17,645,907
Medicare	386.76	855,521
Private Pay/Other	863.69	224,558
Assessment Revenue		1,071,858

Total		$20,906,879
Utilization: (Patient days)		63,300
Occupancy		96.08%

For the 30-Bed Vent:	Per Diem	Total
Revenues:		
Commercial	$617.42	$640,878
Medicaid	499.44	3,958,086
Medicare	639.57	595,440
Private Pay/Other	1,301.62	662,526
Assessment Revenue		144,937
Total		$6,001,867
Utilization: (Patient days)		10,403
Occupancy		94.75%

For the 20-Bed BI:	Per Diem	Total
Revenues:		
Commercial	$612.00	$164,016
Medicaid	314.77	2,121,563
Medicare	314.87	50,380
Private Pay/Other		0
Assessment Revenue		123,265
Total		$2,459,224
Utilization: (Patient days)		7,168
Occupancy		97.92%

*Note: Medicaid Rate Enhancement is included in the Medicaid rate for all of the specific Nursing home units.

The following is noted with respect to the submitted operating budget:

- Medicare rates were decreased from the original 2012 rate of $505.46 to $429.53 for year one projections. This is due to the facility wanting to stay consistent with the 2012 projected rate per their Vital Access Provider application of $447.09.
- Medicaid rates were decreased from the original 2012 rate of $327.76 to $316.21 for year one projections. This is due to the facility wanting to stay consistent with the 2012 projected rate per their Vital Access Provider application of $308.27. The facility however did a comparison of the VAP proposed rate and the actual 2012 rate and averaged the two.
- Private rates were increased from the original 2012 rate of $731.58 to $982.94 for year one projections. This is due to the facility wanting to stay consistent with the 2012 projected rate per their Vital Access Provider Application of $1,004.95. The rate is only slightly lower than the proposed VAP based rate.
- Commercial rate will decrease significantly from the original 2012 rate of $863.90 to $533.00 for year one projections. This is due to the facility wanting to stay consistent with the 2012 projected rate per their Vital Access Provider Application of $526.69. The rate is only slightly higher than the proposed VAP rate.
- Overall utilization is projected at 95.20%, while utilization by payor source is expected as follows:

Commercial	4.56%
Medicaid	83.21%
Medicare	11.18%
Private Pay/Other	1.05%

- Breakeven utilization is projected at 93.29%.

Capability and Feasibility

BFA Attachment A presents a summary net worth statement of the proposed members. All three of the proposed members have ownership interest in the following RHCF facilities; Bridgewater Center for Rehabilitation & Nursing, LLC, Pine Valley Center for Rehabilitation and Nursing, and Central Park Rehabilitation and Nursing Center. Their financial summaries are presented as BFA Attachments F through H.

Through CON 122147, which was contingently approved in December 2012, the applicants' status will change from receiver to owner of Vestal Park Rehabilitation and Nursing Center, and a replacement facility will be constructed. Therefore there are no financial statements for the new entity. The proposed members are also receivers in the following two RHCFs: Beechtree Care Center and Folts Center for Rehabilitation and Nursing.

The Center is in receipt of a VAP/Safety Net award notification for a Medicaid rate adjustment in the amount of $20,640,32; $10,584,353 to be paid in calendar year 2013, $8,424,006 in calendar year 2014, and $1,631,963 in calendar year 2015. The VAP/Safety net proposal involves transforming the facility from practically bankrupt to a financially stable organization that can cost effectively provide the vital services needed for this unique population of patients. Some of the aspects of the plan include:

- Reducing the size of the vent unit for 40 beds to 30 beds and increasing the SNF unit from 40 beds to 50 beds.
- Converting the SNF Medically Complex unit to a short term Medicare unit with emphasis on rehabilitative services.
- Reduction in prior operator vendor payments.
- Significant Capital re-investment of $4,000,000 over the next 4 years.
- Repayment of 3rd party liabilities of $11.5 million over the next three years.
- Restructuring of liabilities with extended payment terms.
- Medicaid Rate Enhancement of $64 per day over three years.
- Financially stable and profitable by 2015.

On November 1, 2013, through an assignment and assumption agreement of an Operational Transfer Agreement, NCRNC, LLC d/b/a Northeast Center for Rehabilitation and Brain Injury acquired the operating interest of KRNH, Inc. d/b/a Northeast Center for Special Care an existing 280-bed specialty proprietary Resident Health Care Facility. Northeast Center, LLC will acquire the operating interests in the Specialty RHCF for $10. There are no project costs associated with this proposal.

Working capital requirements are estimated at $6,471,585 based on two months' of first year expenses, which will by satisfied from existing facility cash, accounts receivable and VAP Award, totaling $715,205, $4,870,337 and $20,640,321, respectively. BFA Attachment B is the Pro-forma Balance Sheet of NCRNC, LLC d/b/a Northeast Center for Rehabilitation and Brain Injury. It is noted that of the $20,640,321 VAP Award, $6,527,851 is available to use during the 2014-2015 state fiscal year. The applicant members state they will contribute equity to fund any shortfall in working capital. BFA Attachment B indicates positive members' equity of $5,734,154 as of December 31, 2013. Without the VAP award the facility would have had a severely negative member equity position of $14,906,167.

The submitted budget indicates that a net income of $1,476,017 would be generated in the first year after the change in ownership. The following is a comparison of the 2012 historical and projected revenue and expense:

Projected Income	$40,305,471
Projected Expense	38,829,454
Projected Net Income	$1,476,017
Annual 2012 Income	$34,937,745
Annual 2012 Expense	35,024,719

Annual 2012 Net Income (Loss)	($86,974)
Incremental Net Income (Loss)	$1,562,991

It is estimated that incremental revenues will increase by $1,562,991 with utilization decreasing by 58 patient days; the anticipated changes are as follows: decrease of Medicaid patient days by 6,975 with Medicaid revenues decreasing from $327.76 per patient day to $316.21 per patient day, therefore decreasing Medicaid revenues by $3,221,001and bringing utilization to 83.21%. For Medicaid, there was an increase of the Medicare patient days of 6,017 plus a decrease in the daily rate, going from $505.46 per day to $429.53 per day, which increases revenues by $2,215,786. There was also a slight decrease of 23 private pay patient days along with increasing the daily rate from $731.58 per day to $982.94 per day which increases revenues by $240,314. The facility also has commercial patient days which increased by 1,039 while the commercial rate decreased from $863.90 per patient day to $533.00 per patient day which decreases revenue by 572,918.

The remaining adjustments to revenues is categorized as assessment revenues, which increased revenues by $1,079,559 and a Medicaid Rate Enhancement, which is due to the VAP award discussed above in the amount of $5,181,184 for year one. Expenses are expected to increase by $3,804,735 primarily from the increase in FTE's by 17.38, which increased the salaries and wages by approximately $860,000 and the employee benefits by approximately $240,000. The remainder of the increases are noted as other direct expenses of $2,704,930, broken out as such repayment of 3rd party liabilities $3,500,000, Non-revenue/Ancillary/Program expense $2,058,915, capital $14,744 and other expenses (assessments, interest, due to related parties) of $1,278,589. The budget appears reasonable.

Staff notes that with the expected 2014 implementation of managed care for nursing home residents, Medicaid reimbursement is expected to change from a state-wide price with cost-based capital component payment methodology to a negotiated reimbursement methodology. Facility payments will be the result of negotiations between the managed long term care plans and the facility. At this point in time, it can not be determined what financial impact this change in reimbursement methodology will have on this project.

As shown on BFA Attachment C, Financial Summary of KRNH, Inc. d/b/a Northeast Center for Special Care for the year 2012, the RHCF generated an average net income of $4,086,896, had an average negative net asset position and had an average negative working capital position. It is noted that the proposed operator only took over operations on November 1, 2013. The working capital deficit appears to be attributable to the fact that the prior operator apparently allowed accounts payable, accrued payroll and amounts owed to third parties to lag beyond the standard terms; the balances in those categories make up for the shortfall. As to negative equity, it appears that historical operating losses were not reimbursed by the prior operator. The facility has suffered recurring losses from operations over the years that have resulted in an accumulated liability to third party payers. Under new management, the Center has devoted its attention toward bringing financial stability to the operations. As a result of the community need for the services that this facility provides, the facility was recently awarded over $20 million in VAP funding to apply to the continued operation and stabilization of the facility. The members of the proposed new operator are committed to improving the facility's operations, including maintaining positive member equity.

As shown on BFA Attachment D, Bridgewater Center for Rehabilitation and Nursing, LLC for the years 2010 through 2012, the RHCF generated an average operating surplus of $288,457, had an average positive net asset position of $461,913, and had an average positive working capital position of $222,964.

As shown on BFA Attachment E, Pine Valley Center, LLC d/b/a Pine Valley Center for Rehabilitation and Nursing for the years 2010 through 2012, the RHCF generated an average operating surplus of $434,863, had an average positive net asset position of $2,600,993, and had an average positive working capital position of $4,631,666.

As shown on BFA Attachment F, CPRN, LLC d/b/a Central Park Rehabilitation and Nursing Center for the years 2010 through 2012, the RHCF generated an average operating surplus of $287,300, the net asset position turned positive in 2011, and as of 2012, it was a positive $15,200. During this time period, the RHCF had an average positive working capital position of $2,239,042.

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,

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Net Worth of Proposed Members of NCRNC, LLC d/b/a Northeast Center for Rehabilitation and Brain Injury
BFA Attachment B	Pro-forma Balance Sheet NCRNC, LLC d/b/a Northeast Center for Rehabilitation and Brain Injury
BFA Attachment C	Financial Summary, KRNH, Inc. d/b/a Northeast Center for Special Care
BFA Attachment D	Financial Summary, Bridgewater Center for Rehabilitation and Nursing, LLC
BFA Attachment E	Financial Summary, Pine Valley Center, LLC d/b/a Pine Valley Center for Rehabilitation and Nursing
BFA Attachment F	Financial Summary, CPRN, LLC d/b/a Central Park Rehabilitation and Nursing Center

Public Health and Health Planning Council

Project # 132193-E
Visiting Nurse Association of Western New York, Inc.

County:	**Livingston**	***Program:***	**Certified Home Health Agency**
Purpose:	**Establishment**	***Acknowledged:***	**October 11, 2013**

Executive Summary

Description
Kaleida Health VNA of Western New York, a not-for-profit certified home health agency, requests approval to purchase and become the operator of the Livingston County Department of Health Home Health Agency Article 36 CHHA, pursuant to a draft Asset Purchase Agreement entered into by the applicant and the County of Livingston.

DOH Recommendation
Contingent Approval

Need Summary
There will be no need review of this application.

Program Summary
Visiting Nursing Association of Western New York, Inc., a not-for-profit Article 36 certified home health agency (CHHA) and long term home health care program (LTHHCP), proposes to purchase, acquire, and merge the Livingston County Department of Health Home Health Agency CHHA into the existing Visiting Nursing Association of Western New York, Inc. CHHA.

Financial Summary
The purchase price for the operation will be $1,000,000. The purchase price will be met via equity from the operations of Kaleida Health Home Care Affiliates.

Budget:

Revenues	$2,170,636
Expenses	1,807,727
Excess of Revenues over Expenses	$362,909

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

Finger Lakes Health Systems Agency recommends approval of this application.

Office of Health Systems Management

Approval contingent upon:

1. Clarification of the name of the new facility, acceptable to the Department. [CSL]
2. Submission of evidence of site control, acceptable to the Department. [BFA, CSL]
3. Submission of photocopies of the applicant's fully executed Certificates of Incorporation, and any and all amendments or restatements thereto, acceptable to the Department. [CSL]
4. Submission of Bylaws, acceptable to the Department. [CSL]
5. Submission of a photocopy of a fully executed Asset Purchase Agreement, acceptable to the Department. [BFA, 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]

Council Action Date

April 10, 2014

Program Analysis

Review Summary

Visiting Nursing Association of Western New York, Inc., a not-for-profit Article 36 certified home health agency (CHHA) and long term home health care program (LTHHCP), proposes to purchase, acquire, and merge the Livingston County Department of Health Home Health Agency CHHA into the existing Visiting Nursing Association of Western New York, Inc. CHHA. Visiting Nursing Association of Western New York, Inc. CHHA is currently approved to serve Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, Steuben, and Wyoming Counties, and its LTHHCP is currently approved to serve Erie and Niagara Counties. Livingston County Department of Health Home Health Agency CHHA is currently approved to serve Livingston County. As a result of a proposed Asset Purchase Agreement with the County of Livingston for the purchase, acquisition, and merger of the Livingston County Department of Health Home Health Agency CHHA, Visiting Nursing Association of Western New York, Inc. CHHA will also be able to serve patients residing in Livingston County.

Visiting Nurse Association of Western New York, Inc., currently has its main parent office practice location in Williamsville (Erie County), and seven (7) additional branch office practice locations in Belmont (Allegany County), Olean (Cattaraugus County), Jamestown (Chautauqua County), Batavia (Genesee County), North Tonawanda (Niagara County), Bath (Steuben County), and Silver Springs (Wyoming County). Visiting Nursing Association of Western New York, Inc. plans to open an eighth additional branch office practice location in Livingston County at some point in the future, at which time it will submit the required documentation to both the NYSDOH Western Regional Office, and the federal Medicare Administration Contractor / Fiscal Intermediary, for review and recommendation for CMS final approval. In the interim, Visiting Nursing Association of Western New York, Inc. plans to serve Livingston County from its existing practice locations identified above.

Visiting Nursing Association of Western New York, Inc. CHHA plans to continue providing the following home health care services: home health aide; medical social services; medical supply, equipment and appliances; nursing; nutritional; occupational therapy; physical therapy; respiratory therapy; and speech language pathology.

Visiting Nursing Association of Western New York, Inc. is a not-for-profit corporation whose member (parent) corporation, Kaleida Health, Inc., is also a not-for-profit corporation. Kaleida Health, Inc., is also the member (parent) corporation of the following:

Buffalo General Medical Center
Women's and Children's Hospital of Buffalo
Millard Fillmore Suburban Hospital
DeGraff Memorial Hospital
DeGraff Memorial Hospital SNF
Waterfront Health Care Center
HighPointe on Michigan Health Care Facility
Millard Fillmore Ambulatory Surgery Center, Inc.
Millard Fillmore Surgery Center, LLC
Visiting Nurse Association Home Care Services (LHCSA)

The members of the Board of Directors of Visiting Nursing Association of Western New York, Inc. are as follows:

Michael R. Spychala, CPA, Chairperson Senior VP & Controller, M & T Bank	James N. Schmit, Esq., Vice Chairperson Special Counsel, Jaeckle, Fleischmann & Mugel (law firm)

Matthew J. O'Brien, MD, Secretary/
Treasurer
Physician, Buffalo Medical Group

Judy L. Baumgartner
President, VNA of Western New York, Inc.
Affiliation: Family Pharmaceutical Services, LLC (retail pharmacy)

Douglas C. Bean
COO, Eric Mower & Associates
(advertising agency)

Donald N. Boyd
Senior VP, Kaleida Health
Affiliation: Millard Fillmore Surgery Center, LLC

Carol S. Brewer, PhD, RN
Professor, University at Buffalo

Brian P. Crosby, Esq.
Managing Partner, Gibson, McAskill, and Crosby, LLP (law firm)

Barry S. Swartz
President, Practice Management Center
(medical billing company)

George E. Matthews, MD (NY and PA)
Cardiologist, Buffalo Cardiology & Pulmonary Associates

The members of the Board of Directors of Kaleida Health, Inc., are as follows:

John R. Koelmel, Chairperson
President/CEO, First Niagara Bank

Robert M. Zak, Vice Chairperson
President/CEO, Merchants Mutual Insurance Company

Francisco M. Vasquez, PhD, Secretary
President/CEO, Child and Family Services
(human services organization)

Herman S. Mogavero, Jr., MD, Treasurer
Clinical Assistant Professor of Medicine & Dermatology, SUNY at Buffalo School of Medicine;
Physician, Buffalo Medical Group

Amy L. Clifton
CFO, L.P. Ciminelli, Inc.
(construction management)

Evan J. Evans, MD
Owner, Delaware Surgical Group, P.C.

Kevin J. Gibbons, MD
Surgeon, University of Buffalo Neurosurgery

Christopher T. Greene, Esq.
Partner, Damon Morey, LLP (law firm)

Robert J. Halonen
Retired

James R. Kaskie
President/CEO, Kaleida Health

Darren J. King
Executive VP, M & T Bank Corp.

David A. Milling, MD
Senior Associate Dean, SUNY at Buffalo School of Medicine

George E. Matthews, MD (NY and PA)
Cardiologist, Buffalo Cardiology & Pulmonary Associates

The applicant has confirmed that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate.

A search of all of the above named board members, employers, and affiliations revealed no matches on either the Medicaid Disqualified Provider List or the Office of the Inspector General's Provider Exclusion List.

The Office of the Professions of the New York State Education Department, the New York State Physician Profile, the NYSDOH Office of Professional Medical Conduct, the NYS Unified Court System, and the Pennsylvania Department of State indicate no issues with the licensure of the health professionals and other licensed professionals associated with this application. In addition, the attorneys have all submitted current Certificates of Good Standing.

A seven year review of the operations of the following agencies/facilities was performed as part of this review:

Buffalo General Medical Center
Women's and Children's Hospital of Buffalo
Millard Fillmore Suburban Hospital
DeGraff Memorial Hospital
DeGraff Memorial Hospital SNF
Waterfront Health Care Center
HighPointe on Michigan Health Care Facility
Millard Fillmore Ambulatory Surgery Center
Millard Fillmore Surgery Center, LLC
Visiting Nurse Association Home Care Services (LHCSA)
Visiting Nurse Association of Western New York (CHHA and LTHHCP)

The Division of Hospitals and Diagnostic and Treatment Centers reviewed the compliance history of all affiliated hospitals and diagnostic and treatment centers for the time period 2007 through 2014. The review revealed that the following facility was the subject of an enforcement action:

Women's and Children's Hospital of Buffalo was the subject of an enforcement action in 2007 based on violations citing inadequate Emergency Department care, resulting in two patient deaths where treatment was delayed or inappropriate to the condition. A $24,000 civil penalty was imposed and paid to resolve this matter. The hospital has been in substantial compliance since that time.

It has been determined that the affiliated hospitals and diagnostic and treatment centers have provided a substantially consistent high level of care.

The Division of Residential Services reviewed the compliance history of the affiliated residential health care facilities for the time period 2007 through 2014.

An enforcement action was taken against Waterfront Health Care Center, Inc., in 2013 based on a September, 2011 survey citing a violation in Quality of Care: Accidents and Supervision. This enforcement was resolved with a $2000 civil penalty.

It has been determined that the residential health care facilities have been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

The Division of Home and Community Based Services reviewed the compliance history of the affiliated certified home health agency, long term home health care program, and licensed home care service agency, for the time period 2007 to 2014. It has been determined that the certified home health agency, long term home health care program, and licensed home care service agency have exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations. The agencies have 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 board members of Visiting Nurse Association of Western New York, Inc., and Kaleida Health, Inc., to adversely affect their positions on the boards. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

Recommendation
From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement
The applicant has submitted a draft asset transfer agreement for the purchase of Livingston County Department of Health Home Health Agency Article 36 CHHA, summarized below:

Seller:	County of Livingston
Purchaser:	Visiting Nurse Association of Western New York, Inc.
Purpose:	The Seller desires to sell and the Purchaser desires to acquire, substantially all of the assets related to the Home Care Business.
Assets Transferred:	The Home Care Business Assets shall include but not be limited to the following: the books and records; computer software, including any licenses thereof; any permits and similar rights to the extent transferable and related solely to the operation of the Home Care Business; tangible assets and the goodwill of the Home Care Business.
Liabilities Assumed:	None
Purchase Price:	$1,000,000

The applicant submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to 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.

Operating Budget
The applicant has submitted an incremental operating budget, in 2014 dollars, during the first year after the change in operator, summarized below:

Revenues:	
Medicaid Managed Care	$ 96,512
Medicare Fee-For-Service	1,119,183
Medicare Managed Care	617,334
Commercial Fee-For-Service	334,957
Private Pay	2,640
Total Revenues	$2,170,636
Expenses:	
Operating	$1,746,021
Capital	61,706
Total Expenses	$1,807,727
Excess of Revenues over Expenses	$362,909
Utilization:	
Visits	14,102
Hours	5,355

Utilization broken down by payor source during the first year is as follows:

Medicaid Managed Care	5.70%
Medicare fee-For-Service	43.88%
Medicare Managed Care	28.53%
Commercial Fee-for-Service	19.97%
Private Pay	1.92%

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

Capability and Feasibility

The purchase price of $1,000,000 will be met via equity from the operations of Kaleida Health Home Care Affiliates.

Working capital requirements are estimated at $301,287, which is equivalent to two months of first year expenses. The applicant has indicated that the working capital requirement will be met via equity from the operations of Kaleida Health Home Care Affiliates BFA Attachment A is the 2011 and 2012 certified financial statement of Kaleida Health Home Care Affiliates, which indicates the availability of sufficient funds to meet the purchase price and the working capital requirements.

The submitted budget indicates an incremental excess of revenues over expenses of $362,909 during the first year after the change in operator. Revenues are reflective of current payment rates as well as the recent implementation of the Medicaid Episodic Payment System. The budget appears reasonable. The applicant has provided financial data relative to Livingston County Department of Health Home Care Health Agency CHHA in 2012. The facility incurred operating losses of $395,409 in 2012.

BFA Attachment A is the 2011 and 2012 certified financial statement of Kaleida Health Home Care Affiliates. As shown on Attachment A, the facility had an average positive working capital position and an average positive net asset position during 2011 and 2012. Also, the applicant achieved an average income of operations of $7,645,000 from 2011 through 2012.

BFA Attachment B is the September 30, 2013 internal financial statement for Kaleida Health Home Care Affiliates. As shown on Attachment B, the facility had a positive working capital position and a positive net asset position through September 30, 2013. Also, the facility achieved an income of operations of $8,656,148 through September 30, 2013.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Financial Summary- Kaleida Health Home Care Affiliates- 2011 / 2012
BFA Attachment B	Internal financial statements of Kaleida Health Home Care Affiliates- Through September 30, 2013

132236

Visiting Nurse Association of Long Island, Inc.

(Nassau County)

To be distributed under separate cover

Public Health and Health Planning Council

Project # 141100-E

Westchester Medical Center

County:	**Dutchess**	***Program:***	**Hospital**
Purpose:	**Establishment**	***Acknowledged:***	**March 6, 2014**

Executive Summary

Description

Westchester County Health Care Corporation (WCHCC) d/b/a Westchester Medical Center, requests approval to acquire the assets of St. Francis Hospital Certified Home Health Services, an Article 36 certified home health agency, which is part of St. Francis Hospital. WCHCC has entered into an Asset Purchase Agreement with SFH to acquire the assets of the SFH facility and related programs, which has declared bankruptcy. As part of this Asset Purchase Agreement, WCHCC will acquire SFH's certified home health agency (CHHA) with offices at 26 IBM Road, Poughkeepsie, New York, which is certified to provide services to the residents of Dutchess County.

Concurrent with this project, Westchester Medical Center (WMC) via CON#141092 is acquiring the assets of St. Francis Hospital and making it a division of WMC.

DOH Recommendation

Contingent Approval

Need Summary

As this is a change in ownership there will be no need review of the project.

Program Summary

This proposal seeks a change of ownership for the St. Francis Hospital Certified Home Health Services Article 36 CHHA, from St. Francis Hospital to Westchester County Health Care Corporation, d/b/a Westchester Medical Center. Upon PHHPC approval, the applicant will file with the NYS Department of State a Certificate of Assumed Name to change the name of the CHHA from St. Francis Hospital, d/b/a St. Francis Hospital Certified Home Health Services, to Westchester County Health Care Corporation, d/b/a Mid-Hudson Valley Division of Westchester Medical Center Certified Home Health Services.

Financial Summary

The purchase price for the acquisition of St. Francis Hospital Certified Home Health Services and other entities is $3,500,000, which will be met via operations from Westchester County Health Care Corporation.

The applicant has submitted an operating budget, in 2014 dollars, for the first year subsequent to the change in operator of the CHHA, which is summarized below:

Budget:	
Revenues	$6,332,563
Expenses	6,096,914
Excess of Revenues over Expenses	$235,649

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 an executed lease assignment, acceptable to the Department. [BFA]
2. Submission of the finalized and executed Asset Purchase Agreement by and among St. Francis' Hospital, Poughkeepsie, New York, et al. and Westchester County Health Care Corporation, acceptable to the Department. [BFA, 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

April 10, 2014

Program Analysis

Program Description

St. Francis Hospital Certified Home Health Services is an Article 36 certified home health agency (CHHA) serving Dutchess County only, operated by St. Francis Hospital, an Article 28 hospital. The current proposal seeks to change the ownership of the Article 36 CHHA from St. Francis Hospital to Westchester County Health Care Corporation, d/b/a Westchester Medical Center, a public benefit corporation that currently operates an Article 28 hospital. Upon PHHPC approval, the applicant will file with the NYS Department of State a Certificate of Assumed Name to change the name of the CHHA from St. Francis Hospital, d/b/a St. Francis Hospital Certified Home Health Services, to Westchester County Health Care Corporation, d/b/a Mid-Hudson Valley Division of Westchester Medical Center Certified Home Health Services.

St. Francis Hospital, an Article 28 hospital and Article 36 certified home health agency, located in Poughkeepsie, New York (Dutchess County), officially filed for bankruptcy protection with U.S. Bankruptcy Court in December 2013. Pursuant to the U.S. Bankruptcy Court auction held in February 2014, Westchester County Health Care Corporation, d/b/a Westchester Medical Center, a public benefit corporation that currently operates an Article 28 hospital in Valhalla, New York (Westchester County), was the successful bidder to purchase, acquire all assets, and operate, both the St. Francis Hospital Article 28 hospital, and the St. Francis Hospital Certified Home Health Services Article 36 CHHA. The current CON application # 141100-E pertains to the CHHA acquisition, and companion CON application # 141092-C pertains to the Hospital acquisition. St. Francis Home Care Services Corporation, an existing not-for-profit Article 36 Licensed Home Care Services Agency (LHCSA), whose member corporation is St. Francis Hospital, is also being acquired by Westchester County Health Care Corporation, d/b/a Westchester Medical Center, which will be addressed in a separate LHCSA change of ownership application.

Upon approval, the applicant, Westchester County Health Care Corporation, d/b/a Westchester Medical Center, plans to operate the Article 28 hospital as Westchester County Health Care Corporation, d/b/a Mid-Hudson Valley Division of Westchester Medical Center, and to operate the Article 36 CHHA as Westchester County Health Care Corporation, d/b/a Mid-Hudson Valley Division of Westchester Medical Center Certified Home Health Services. The CHHA will continue to operate from its current practice location address of 26 IBM Road, Suite 1-A, Poughkeepsie, New York 12601, as all current leases held by St. Francis Hospital will be assigned to, and assumed by, Westchester County Health Care Corporation. The CHHA will also continue to be approved to serve Dutchess County only, and will continue to be approved to provide the same CHHA services as follows: Home Health Aide, Medical Social Services, Medical Supplies/Equipment/Appliances, Nursing, Nutritional, Occupational Therapy, Physical Therapy, Respiratory Therapy, and Speech Language Pathology.

Westchester County Health Care Corporation was created as, and currently exists as, a public benefit corporation pursuant to Title 1, Article 10-C, Chapter 43-A of the Public Authorities Law of the State of New York. This public benefit corporation is governed by fifteen (15) voting board members; eight (8) are appointed by the New York State governor and seven (7) are appointed by the Westchester County legislature. There are also four (4) additional non-voting board members, consisting of one chief executive officer appointed by the fifteen (15) voting board members, one appointed by the Westchester County executive, one appointed by the majority leader of the Westchester County legislature, and one appointed by the minority leader of the Westchester County legislature. Based on advice from the NYSDOH Division of Legal Affairs, Bureau of House Counsel, a public benefit corporation is a government agency. Pursuant to 10 NYCRR 760.3(c)(1)-(4), character and competence review of the governing body of any government subdivision shall consider the governing body as a whole, rather than the individual elected or appointed members of the governing body.

According to the corporate organizational chart submitted by the applicant that depicts the organizational structure following the proposed change of ownership transaction, the public benefit corporation, Westchester County Health Care Corporation, which will continue to do business as (d/b/a) Westchester

Medical Center, will be comprised of two hospital divisions: the current Westchester Medical Center University Hospital and the proposed Mid-Hudson Valley Division of Westchester Medical Center, which will be the new d/b/a for the acquired St. Francis Hospital. Mid-Hudson Valley Division of Westchester Medical Center Certified Home Health Services, the new d/b/a for the acquired St. Francis Hospital CHHA, will be a department of the Mid-Hudson Valley Division of Westchester Medical Center hospital. In addition, Westchester County Health Care Corporation, d/b/a Westchester Medical Center, will be the parent organization (member corporation) of the following entities:

- WMC New York, Inc. (NFP management company of the charitable fund raising foundations),
- The Westchester Medical Center Foundation, Inc. (charitable fund raising foundation),
- The Children's Hospital Foundation of WMC, Inc. (charitable fund raising foundation),
- Mid-Hudson Valley Division of Westchester Medical Center Healthcare Foundation, formerly St. Francis Hospital Health Care Foundation, Inc. (charitable fund raising foundation),
- Mid-Hudson Valley Division of Westchester Medical Center Preschool, formerly St. Francis Hospital Preschool (NYS Education Department-approved special needs and special education preschool),
- Mid-Hudson Valley Division of Westchester Medical Center Home Care Services Corporation, formerly St. Francis Home Care Services Corporation (Licensed Home Care Services Agency)

A search of the above named applicant 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 Hospitals and Diagnostic and Treatment Centers has reviewed the compliance history of Westchester Medical Center hospital, for the time period 2007 to 2014. Westchester Medical Center hospital was the subject of an enforcement action in 2008 based on violations citing inadequate medical work-up for a child who ultimately died after being seen in the Emergency Department on three (3) separate occasions. The hospital paid a $6,000 civil penalty to resolve this matter. The hospital has been in substantial compliance since that time.

A review of all information indicates that the applicant, Westchester County Health Care Corporation, which currently does business as (d/b/a) Westchester Medical Center, has the appropriate character and competence under Article 36 of the Public Health Law.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Lease Rental Agreement

The applicant will have the following lease assigned to them. As of this date, the applicant provided a draft lease assignment. The terms of the assigned lease is summarized below:

Premises:	6,127 square feet located at 26 IBM Road, Poughkeepsie, New York.
Lessor:	Hark Kandr, LLC
Lessee:	Westchester County Health Care Corporation
Term:	The lease expires February 28, 2018
Rental:	$114,000 annually ($18.60 per sq.ft.)
Provisions:	The lease shall be responsible for maintenance, real estate taxes and utilities.

Asset Purchase Agreement

The applicant has submitted a draft asset purchase agreement for the acquisition of the St. Francis Hospital site, which is summarized below:

Date:	February 10, 2014

Seller:	St. Francis Hospital; St. Francis Hospital Home Care Services Corporation; St. Francis Health Care Foundation, Inc.; St. Francis Hospital Preschool Program and SFH Ventures, Inc.
Purchaser	Westchester County Health Care Corporation
Purchased Assets:	All inventories of medical supplies, drugs and pharmaceuticals, food, janitorial and office supplies and other disposable and consumables relating to the Business and maintained, held or stored by or for Seller in connection with the Business; all equipment owned by Seller; all owned real property of Sellers; each of Seller's Permits (other than Seller's Article 28 operating license) that are assignable pursuant to applicable law and pending applications therefore; all business intellectual property; all documents; all telephone, telex and telephone facsimile numbers, remote access portals and other directory listing used in connection with the business; all purchased deposits; all insurance policies, and the rights to proceeds thereof, relating or allocable to any Purchased Asset or Assumed Liabilities, in each case to the extent assignable to Buyer; the real property leases; the operating licenses; the hospital's 49% interest in Hudson Valley Oncology Associates, PLLC, which is held through a nominee agreement; all other or additional privileges, rights and interests associated with the Purchased Assets of every kind and description and wherever located that are used or intended for use in connection with, or that are necessary to the continuous operation of, the Business and all goodwill associated with the Business or the Purchased Assets.
Excluded Assets:	Other than Purchased Deposits, all cash and cash equivalents, including, checks, commercial paper, treasury bills, certificate of deposit and other bank deposits; any shares of capital stock or other equity interest of Seller or any securities convertible into, exchangeable or exercisable for shares of capital stock or other equity interest of Seller; all minute books, stock ledgers, corporate seals and stock certificate of Seller; the purchase price and all rights of Seller under this agreement; benefit plans; any and all rights of Seller under this agreement; benefit plans; any and all rights, claims or causes of action of Seller against third parties arising, out of events occurring prior to the Petition Date and any and all rights, claims or causes of action of Seller against third parties with respect to the Excluded Assets arising out of events occurring after the Petition Date; all avoidance actions; all accounts receivable; any deposits or prepaid charges the expenses paid prior to the Closing Date that are not Purchased Deposits; all personnel records and other records and files that Seller is required by law to retain in its possession; the name "Saint Francis" and "St. Francis" and any derivatives thereof and any name or phrase which includes the forgoing; all personnel property of religious significance, which shall be removed from all premises from which the Business operated prior to Closing; any monies, securities, funds or accounts established under of held by the Bond Trustee pursuant to the Bond Documents; all operating licenses of Seller; each Seller's Permits that are not assignable pursuant to applicable law and pending applications therefore; the hospital's 85.5% interest in Hudson Valley Center at St. Francis, which is held through a nominee agreement; all rights with respect to any Proceeding pending as of the Closing Date and all documents relating exclusively to an Excluded Assets.
Assumed Liabilities:	All obligations and liabilities of Seller under the Assumed Contracts and the Assumed Leases and all obligations and liabilities of Seller under the real property leases each only to the extent such obligations are to be initially performed, or accrue, on or after the Closing Date and relate solely to data of service from and after the Closing Date.
Excluded Liabilities:	Any liability of Seller or its directors, officers, stockholders or agents

	arising out of, or relating to, this agreement, whether incurred prior to, at or subsequent to Closing Date; any liability relating to events or conditions occurring or existing in connection with or arising out of, the Business as operated by Seller, or the ownership, possession, use, operation or sale of other disposition prior to the Closing Date of any Purchased Assets; any liability to any persons at any time employee by Seller or its predecessors in interest at any time; all liabilities of Seller, or with respect to the Business, in connection with claims of professional malpractice or tort; any liability of Seller under COBRA or similar state law and all liabilities owed by Seller to Seller's employees
Purchase Price:	$3,500,000
Payment of Purchase Price:	Cash at Closing

The applicant submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to 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.

Operating Budget

The applicant has submitted an operating budget, in 2014 dollars, for the first year after the acquisition of the CHHA, summarized below:

Revenues:	
Medicaid Managed Care	$219,035
Medicare Fee-For-Service	4,807,493
Commercial Managed Care	1,296,035
Total Revenues	$6,332,563
Expenses:	
Operating	$5,148,345
Capital	948,569
Total Expenses	$6,096,914
Excess of Revenues over Expenses	$235,649
Utilization:	
Visits	34,999
Hours	13,520

Utilization, broken down by payor source, during the first year after the acquisition of the CHHA is broken down as follows:

Medicaid Managed Care	2.76%
Medicare Fee-For-Service	75.73%
Commercial Managed Care	19.51%
Charity Care	2.00%

Expense and utilization assumptions are based on the historical experience of the CHHA. Revenues are reflective of the current payment rates and the Medicaid Episodic Payment System.

Capability and Feasibility

BFA Attachment A is the organizational chart of Westchester County Health Care Corporation after acquiring the assets of St. Francis Hospital and St. Francis Hospital Certified Home Health Services.

The purchase for the acquisition of St. Francis Hospital Certified Home Health Services and other entities is $3,500,000. The purchase price will be met via operations of Westchester County Health Care Corporation.

Working capital requirements are estimated at $1,016,152, which appears reasonable based on two months of first year expenses. The applicant will meet the working capital requirement via operations from Westchester County Health Care Corporation. BFA Attachment B is the 2012 certified financial statement and the 2013 draft certified financial statement of Westchester County Health Care Corporation, which indicates the availability of sufficient funds for the equity contribution to meet the purchase price and the working capital requirements for this project and CON#141092.

The submitted budget indicates an excess of revenues over expenses of $235,649 during the first year after the change in ownership. Revenues are based on current payment rates and the Medicaid Episodic Payment System.

As shown on Attachment B, Westchester County Health Care Corporation had an average positive working capital position and an average negative net asset position from 2012 through 2013.

The applicant has indicated that the reason for the average negative net asset position is due to the facility had a negative net asset position of $182 million in 2005 due to prior year losses but with eight consecutive years of positive bottom line results have dramatically improved the net asset position. Also, the applicant achieved an average operating income of $22,507,963 from 2012 through 2013.

BFA Attachment C is the 2011 and 2012 certified financial statement of Hastings Health System, Inc. and Subsidiaries. As shown on Attachment C, the entity had an average positive working capital position and an average positive net asset position from 2011 through 2012. Also, the entity incurred an average loss of operations of $4,075,941 from 2011 through 2012. The applicant has indicated that the loss in operations in 2012 was the result of a failure in the implementation of a new billing system where bills were not sent out. This created an immediate shortfall in cash flow. Though SFH corrected this going forward, there may be some permanent loss of cash and revenue.

BFA Attachment D is the 2012 certified financial statement and the 2013 draft certified financial statement of Hastings Health System, Inc. and Subsidiaries. As shown, the entity had a positive working capital position and a positive net asset position from 2012 through 2013. Also, the entity incurred average operating losses of $14,050,944 from 2012 through 2013. The applicant has indicated that the loss in operations in 2012 and 2013 was the result of a failure in the implementation of a new billing system where bills were not sent out. This created an immediate shortfall in cash flow, which resulted in the hospital to declare bankruptcy.

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	Organizational Chart
BFA Attachment B	Financial Summary- 2012 certified financial statements and the 2013 draft certified financial statements of Westchester County Health Care Corporation.
BFA Attachment C	Financial Summary- 2011 and 2012 certified financial statements of Hastings Health System, Inc. and Subsidiaries.
BFA Attachment D	Financial Summary- 2013 internal financial statements of Hastings Health System, Inc. and Subsidiaries.

STATE OF NEW YORK - DEPARTMENT OF HEALTH

MEMORANDUM

TO: Public Health and Health Planning Council

FROM: James E. Dering, General Counsel

DATE: February 20, 2014

SUBJECT: Proposed Incorporation of Hope for Haven, Inc.

Hope for Haven, Inc. ("the Foundation") requests that the Public Health and Health Planning Council ("PHHPC") approve the attached proposed Certificate of Incorporation. Public Health Law § 2801-a(6) and Not-for-Profit Corporation Law § 404(o) require that the certificate of incorporation of a not-for-profit foundation that solicits contributions on behalf of an Article 28 facility must be approved by PHHPC.

The Foundation's proposed beneficiary is Golisano Children's Hospital, an Article 28 facility. In addition to the proposed executed Certificate of Incorporation, the following documents and information are attached in support of the Foundation's request for approval:

1) A copy of the Foundation's proposed bylaws;
2) A letter, dated January 17, 2014, from a representative of the Article 28 beneficiary acknowledging that it will accept funds and other donations from the Foundation;
3) A letter, dated January 15, 2014, from applicant providing: (a) a generalized description of the fundraising activities to be undertaken by the Foundation; (b) as an attachment, a statement identifying the organizational relationship between the Foundation and the Article 28 beneficiary, and a statement that no entities control or are controlled by the Foundation; and (c) as a separate attachment, information regarding the Foundation's proposed Board of Directors.

The proposed Certificate of Incorporation is in legally acceptable form.

Attachments

CERTIFICATE OF INCORPORATION

OF

HOPE FOR HAVEN INC.

Under Section 402 of the Not-for-Profit Corporation Law

FILER:

Jessica Parker
1 Bush Ave.
Wayland, NY 14572

CUST. REF. #:

CERTIFICATE OF INCORPORATION

OF

HOPE FOR HAVEN INC.

Under Section 402 of the Not-for-Profit Corporation Law

IT IS HEREBY CERTIFIED THAT:

(1) The name of the corporation is:

HOPE FOR HAVEN INC.

(2) The corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not For Profit Corporation Law: the corporation is a Type B Corporation.

(3) The purpose or purposes for which this corporation is formed are as follows:

The corporation is a charitable Not for Profit that will provide financial funding to Golisano Children's Hospital for new equipment, and financial donations as needed for pediatric chronic illness and rare diseases, which will benefit both the hospital and children who are suffering from pediatric chronic illness and rare diseases.

The corporation will raise awareness through information about pediatric chronic illness and rare disease that affect infants and children.

Nothing in this Certificate of Incorporation shall authorize the corporation within the State of New York, to (1) provide hospital services or health related services, as such terms are defined in the New York State Public Health Law (PHL); (2) establish operate or maintain a hospital, a home care services agency, a hospice, a managed care organization or a health maintenance organization, as provided for by Articles 28, 36, 40 and 44 respectively, of the PHL and implementing regulations; (3) establish and operate an independent practice association, (4) establish, operate, construct, lease, or maintain an adult home, an enriched housing program, a residence for adults, or an assisted living program, as provided for by Article 7 of the New York State Social Services Law (SSL); or (5) establish, operate, construct, lease or maintain an assisted living residence, as provided for by Article 46-B of the PHL. Additionally, nothing in this Certificate of Incorporation shall authorize the corporation within the State of New York, to (a) hold itself out as providing or (b) provide any health care professional services that require licensure or registration pursuant to either Title 8 of the New York State Education Law, or the PHL, including, but not limited to, medicine, nursing, psychology, social work, occupational therapy, speech therapy, physical therapy, or radiation technology.

To do any other act or thing incidental to or connected with the foregoing purposes or in the advancement thereof, but not for the pecuniary profit or financial gain of its members, directors, or officers.

Nothing herein shall authorize this Corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in Not-for-Profit Corporation Law Section 404 (a) through (v).

In furtherance of its corporate purposes, the Corporation shall have all general powers enumerated in Section 202 of the Not-for-Profit Corporation Law, together with the powers to solicit grants and contributions for corporate purposes.

(4) The following language relates to the corporation's tax exempt status and is not a statement of purposes and powers. Consequently this language does not expand or alter the corporation's purposes or powers set forth in paragraph 3.

Said organization is organized exclusively for charitable, religious, educational, and scientific purposes, including for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501 (c) (3) of the Internal Revenue Code, or corresponding section of any future federal tax code.

No part of the net earnings of the corporation shall inure to the benefit of or be distributable to its members, trustees, officers, or other private persons, except that the organization shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in the purpose clause hereof. No substantial part of the activities of the organization shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the organization shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of this document, the organization shall not carry on any other activities not permitted to be carried on (a) by an organization exempt from federal income tax under section 501 (c) (3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or (b) by an organization, contributions to which are deductible under section 170 (c) (2) of the Internal Revenue Code, or corresponding section of any future federal tax code.

Upon the dissolution of the organization, assets shall be distributed for one or more exempt purposes within the meaning of section 501 (c) (3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not disposed of shall be disposed of by a Court of Competent Jurisdiction of the county in which the principal office of the organization is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

In any taxable year in which the corporation is a private foundation as described in Internal Revenue Code Section 509 (a), the corporation shall distribute its income for said period at such time and manner as not to subject it to tax under Internal Revenue Code Section 4942, and the corporation shall not (A) engage in any act of self-dealing as defined in Internal Revenue Code Section 4941 (d), retain any excess business holdings as defined in Internal Revenue Code Section 4943 (c), (B) make any investments in such manner as to subject the corporation to tax under Internal Revenue Code Section 4944, or (C) make any taxable expenditures as defined in Internal Revenue Code Section 4945 (d) or corresponding provisions of any subsequent Federal tax laws.

Nothing contained in this certificate shall authorize or empower the corporation to perform or engage in any act or practice prohibited by General Business Law, Section 340 or any other anti-monopoly or anti-trust statute of the State of New York.

(5) The office of the corporation is to be located in the county of Steuben.

(6) The initial directors of the corporation until the first annual meeting are as follows:

Jessica Parker, 1 Bush Ave., Wayland, NY 14572
Jacqueline Millard, 207 East Naples St., Wayland, NY 14572
Sara Fox, Winton Rd, Rochester, NY 14610

(7) The duration of the corporation is perpetual.

(8) The Secretary of State is designated as agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him is: 1 Bush Ave., Wayland, NY 14572.

IN WITNESS WHEREOF, I hereunto sign my name and affirm that the statements made herein are true under the penalties of perjury.

Dated: February 13, 2014

Scott J. Schuster, Incorporator
283 Washington Avenue
Albany, New York 12206

BYLAWS
OF
HOPE FOR HAVEN INC

The name of the organization is Hope for Haven Inc. The organization is organized in accordance with the New York Non Profit Corporation Act, as amended. The organization has not been formed for the making of any profit, or personal financial gain. The assets and income of the organization shall not be distributable to, or benefit the trustees, directors, or officers or other individuals. The assets and income shall only be used to promote corporate purposes as described below. Nothing contained herein, however, shall be deemed to prohibit the payment of reasonable compensation to employees and independent contractors for services provided for the benefit of the organization. This organization shall not carry on any other activities not permitted to be carried on by an organization exempt from federal income tax. The organization shall not endorse, contribute to, work for, or otherwise support (or oppose) a candidate for public office. The organization is organized exclusively for purposes subsequent to section 501(c)(3) of the Internal Revenue Code.

ARTICLE I
MEETINGS

Section 1. **Annual Meeting** . An annual meeting shall be held once each calendar year for the purpose of electing directors and for the transaction of such other business as may properly come before the meeting. The annual meeting shall be held at the time and place designated by the Board of Directors from time to time.

Section 2. **Special Meetings** . Special meetings maybe be requested by the President or the Board of Directors.

Section 3. **Notice** . Written notice of all meetings shall be provided under this section or as otherwise required by law. The Notice shall state the place, date, and hour of meeting, and if for a special meeting, the purpose of the meeting. Such notice shall be mailed to all directors of record at the address shown on the corporate books, at least 10 days prior to the meeting. Such notice shall be deemed effective when deposited in ordinary U.S. mail, properly addressed, with postage prepaid.

Section 4. **Place of Meeting** . Meetings shall be held at the organization's principal place of business unless otherwise stated in the notice.

Section 5. **Quorum** . A majority of the directors shall constitute at quorum at a meeting. In the absence of a quorum, a majority of the directors may adjourn the meeting to another time without further notice. If a quorum is represented at an adjourned meeting, any business may be transacted that might have been transacted at the meeting as originally scheduled. The directors present at a meeting represented by a quorum may continue to transact business until adjournment, even if the withdrawal of some directors results in representation of less than a quorum.

Section 6. Informal Action . Any action required to be taken, or which may be taken, at a meeting, may be taken without a meeting and without prior notice if a consent in writing, setting forth the action so taken, is signed by the directors with respect to the subject matter of the vote.

ARTICLE II
DIRECTORS

Section 1. Number of Directors . The organization shall be managed by a Board of Directors consisting of 5 director(s).

Section 2. Election and Term of Office . The directors shall be elected at the annual meeting. Each director shall serve a term of 1 year year(s), or until a successor has been elected and qualified.

Section 3. Quorum . A majority of directors shall constitute a quorum.

Section 4. Adverse Interest . In the determination of a quorum of the directors, or in voting, the disclosed adverse interest of a director shall not disqualify the director or invalidate his or her vote.

Section 5. Regular Meeting . The Board of Directors shall meet immediately after the election for the purpose of electing its new officers, appointing new committee chairpersons and for transacting such other business as may be deemed appropriate. The Board of Directors may provide, by resolution, for additional regular meetings without notice other than the notice provided by the resolution.

Section 6. Special Meeting . Special meetings may be requested by the President, Vice-President, Secretary, or any two directors by providing five days' written notice by ordinary United States mail, effective when mailed. Minutes of the meeting shall be sent to the Board of Directors within two weeks after the meeting.

Section 7. Procedures . The vote of a majority of the directors present at a properly called meeting at which a quorum is present shall be the act of the Board of Directors, unless the vote of a greater number is required by law or by these by-laws for a particular resolution. A director of the organization who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless their dissent shall be entered in the minutes of the meeting. The Board shall keep written minutes of its proceedings in its permanent records.

Section 8. Informal Action . Any action required to be taken at a meeting of directors, or any action which may be taken at a meeting of directors or of a committee of directors, may be taken without a meeting if a consent in writing setting forth the action so taken, is signed by all of the directors or all of the members of the committee of directors, as the case may be.

Section 9. Removal / Vacancies . A director shall be subject to removal, with or without cause, at a meeting called for that purpose. Any vacancy that occurs on the Board of Directors, whether by death, resignation, removal or any other cause, may be filled by the remaining directors. A director elected to fill a vacancy shall serve the remaining term of his or her predecessor, or until a successor has been elected and qualified.

Section 10. **Committees** . To the extent permitted by law, the Board of Directors may appoint from its members a committee or committees, temporary or permanent, and designate the duties, powers and authorities of such committees.

ARTICLE III
OFFICERS

Section 1. **Number of Officers** . The officers of the organization shall be a President, one or more Vice-Presidents (as determined by the Board of Directors), a Treasurer, and a Secretary. Two or more offices may be held by one person, although the offices of Secretary and President cannot be held concurrently by the same person. The President may not serve concurrently as a Vice President.

- **a. President/Chairman.** The President shall be the chief executive officer and shall preside at all meetings of the Board of Directors and its Executive Committee, if such a committee is created by the Board.
- **b. Vice President.** The Vice President shall perform the duties of the President in the absence of the President and shall assist that office in the discharge of its leadership duties.
- **c. Secretary.** The Secretary shall give notice of all meetings of the Board of Directors and Executive Committee, shall keep an accurate list of the directors, and shall have the authority to certify any records, or copies of records, as the official records of the organization. The Secretary shall maintain the minutes of the Board of Directors' meetings and all committee meetings.
- **d. Treasurer/CFO.** The Treasurer shall be responsible for conducting the financial affairs of the organization as directed and authorized by the Board of Directors and Executive Committee, if any, and shall make reports of corporate finances as required, but no less often than at each meeting of the Board of Directors and Executive Committee.

Section 2. **Election and Term of Office** . The officers shall be elected annually by the Board of Directors at the first meeting of the Board of Directors, immediately following the annual meeting. Each officer shall serve a one year term or until a successor has been elected and qualified.

Section 3. **Removal or Vacancy** . The Board of Directors shall have the power to remove an officer or agent of the organization. Any vacancy that occurs for any reason may be filled by the Board of Directors.

ARTICLE IV
CORPORATE SEAL, EXECUTION OF INSTRUMENTS

The organization shall have a corporate seal, which shall be affixed to all deeds, mortgages, and other instruments affecting or relating to real estate. All instruments that are executed on behalf of the organization which are acknowledged and which affect an interest in real estate shall be executed by the President or any Vice-President and the Secretary or Treasurer. All other instruments executed by the organization, including a release of mortgage or lien, may be executed by the President or any Vice-President. Notwithstanding the preceding provisions of this section, any written instrument may be executed by any officer(s) or agent(s) that are specifically designated by resolution of the Board of Directors.

ARTICLE V
AMENDMENT TO BYLAWS

The bylaws may be amended, altered, or repealed by the Board of Directors by a majority of a quorum vote at any regular or special meeting. The text of the proposed change shall be distributed to all board members at least ten (10) days before the meeting.

ARTICLE VI
DISSOLUTION

The organization may be dissolved only with authorization of its Board of Directors given at a special meeting called for that purpose, and with the subsequent approval by no less than two-thirds (2/3) vote of the members. In the event of the dissolution of the organization, the assets shall be applied and distributed as follows:

All liabilities and obligations shall be paid, satisfied and discharged, or adequate provision shall be made therefore. Assets not held upon a condition requiring return, transfer, or conveyance to any other organization or individual shall be distributed, transferred, or conveyed, in trust or otherwise, to charitable and educational organization, organized under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, of a similar or like nature to this organization, as determined by the Board of Directors.

Certification

Jessica Parker, President of Hope for Haven Inc, and Jacqueline Millard, Secretary of Hope for Haven Inc certify that the foregoing is a true and correct copy of the bylaws of the above-named organization, duly adopted by the initial Board of Directors on January 10, 2014.

I certify that the foregoing is a true and correct copy of the bylaws of the above-named organization, duly adopted by the initial Board of Directors on January 10, 2014.

Jessica Parker, President

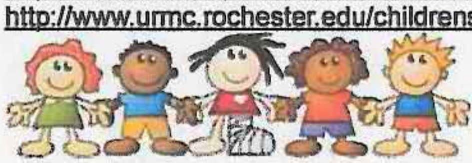
Jacqueline Millard, Secretary

To Whom it may concern:

Golisano Children's Hospital would be thrilled to have Hope for Haven Inc. as a donor. Thank you so much for thinking of us. It would be fantastic to have Hope for Haven provide new equipment, funding for research, and anything else that they are looking to donate that would be useful.

Golisano Children's Hospital treats many ill children, and to have an organization in our community desiring to help care for the children is wonderful. Thank you so much for wanting to be a donor to Golisano Children's Hospital. We look forward to working together.

Stephanie Sheets
Assistant Director of Community Affairs
Golisano Children's Hospital
300 E. River Road, Suite 212
P.O. Box 278996
Rochester, NY 14627
Office (585)275-2268
Cell (585)489-7699
Fax: (585)273-5114
www.givetokids.urmc.edu
https://www.facebook.com/GolisanoChildrensHospital
http://www.urmc.rochester.edu/childrens-hospital



Signed: Stephanie Sheets Dated: 1/17/14

01/15/13

To Whom it may concern:

I, Jessica Lynn Parker, request Public Health consent and approval, in order to file as an Incorporation, for the Not-for-profit Hope for Haven Inc.

Hope for Haven plans to hold fundraisers such as but not limited to the following:
1.) Hope for Haven t-shirt sales. All proceeds will go to Golisano Children's Hospital
2..) A formal dinner- Location and time yet to be determined
3.)Apply for not or profit grants
4.) A 5k walk will be done on April 12
5.) Donations are actively accepted on he Hope for Haven website.
Thank you for your time.

Respectfully,
Jessica Parker

Organizational Relationship

Hope for Haven and Golisano Children's Hospital will partner together. Hope for Haven will raise funds for Golisano Children's Hospital, and will advertise as such. Golisano has agreed to accept those funds. The President of Hope for Haven, and a representative of Golisano Children's Hospital will meet several times throughout the year, to keep communication open and effective.

List of Entities

At this time there are no entities that are controlled by, or control the Hope for Haven Inc.

Board of Directors

President: Jessica Lynn Parker
1 Bush Ave
Wayland, NY 14572

Employer: Stay at Home mom

No other affiliations with Not for profit or charitable organization

Secretary: Jacqueline Marie Millard
Employer: School Bus Driver
Wayland-Cohocton Central School
Rt.63
Wayland, NY 14572

No Past affiliations with not for profit or other charitable organization

3.) Sara Fox

Employer: Tim Hortons
1580 Jefferson Rd.
Henrietta, NY 14623

No past affiliations with not for profit or other charitable organization

4.)Julie Fairbrother
Employer: Livingston Mutual Insurance
337 Main St.
Dansville, NY14437

5.)Mary Parker

Employer: Home maker
4536 Arnold Rd
Bath, NY 14810

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	A Caring Hand Services, Inc.
Address:	New York
County:	New York
Structure:	For-Profit Corporation
Application Number:	2144L

Description of Project:

A Caring Hand Services, Inc. a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

A Caring Services, Inc. has authorized and issued 200 shares of stock. The sole shareholder is Karen Brown.

The Board of Directors consists of:

Karen Brown, Licensed Clinical Social Worker
Coordinator, A Caring Hand, 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 177 East 87th Street, New York 10128

New York	Queens	Kings	Bronx	Richmond	Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Medical Social Services	Homemaker	Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation:	Contingent Approval
Date:	March 3, 2014

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Ameristar Homecare Services, LLC
Address:	Brooklyn
County:	Kings
Structure:	Limited Liability Company
Application Number:	2129-L

Description of Project:

Ameristar Homecare Services, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The members of Ameristar Homecare Services, LLC are as follows:

Liya Yusupova, 47.5%
Home Attendant, Caring Professional

Timur Tankhoyev, 47.5%
Unemployed

Iryna B. Durnyeva, R.N., N.P., 5%
Staff Nurse, Maimonides Medical Center

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 130 Bay 7 Street, 2nd Floor, Brooklyn, New York 11228:

Kings	Queens	New York
Bronx	Richmond	

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Medical Social Services
Speech Language Pathology	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.

Contingeny
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: March 4, 2014

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Caring Hearts Home Care Services, LLC
Address:	Brooklyn
County:	Kings
Structure:	Limited Liability Company
Application Number:	2119-L

Description of Project:

Caring Hearts Home Care Services, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Caring Hearts Home Care Services, LLC is comprised of the following members:

Barbara D. Clarke, 50%	Pansy Thomas, R.N., 50%
Unemployed	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 4401 Avenue M, Brooklyn, New York 11234:

New York	Kings	Queens	Bronx

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: March 6, 2014

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Nightingale Home Care Network, Inc.
Address:	Jamaica
County:	Queens
Structure:	For-Profit Corporation
Application Number:	2146L

Description of Project:

Nightingale Home Care Network, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Nightingale Home Care Network, Inc. has authorized and issued 200 shares of stock. The sole shareholder is Ada J. Okoro.

The Board of Directors of Nightingale Home Care Network, Inc. is comprised of the following individuals:

Ada J. Okoro, RN, Chairperson, President, Administrator
Staff Nurse, Kings County Hospital

Anyaejere Leon Ibeka, Secretary
Child Protective Specialist, NYC Administration for Children's Services
Tri-State Bureau Representative, Class Magazine and USA Africaonline

Akaosa Eleanya, Vice President, Treasurer
Unemployed

The Office of the Professions of the State Education Department indicate 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 to be located in Queens County:

Kings	Queens	Bronx	New York	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Medical Social Services
Homemaker	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: March 4, 2014

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Otsego County d/b/a Otsego Manor Licensed Home Care Service Agency
Address:	Cooperstown
County:	Otsego
Structure:	Public
Application Number:	2397L

Description of Project:

Otsego County d/b/a Otsego Manor Licensed Home Care Service Agency requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant proposes to serve the residents of Otsego County from an office located at 128 Phoenix Mills Cross Road, Cooperstown, New York 13326..

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Medical Social Services	Nutrition
Housekeeper		

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review:

Otsego Manor Nursing and Rehabilitation Center (RHCF)
Otsego Manor Long Term Home Health Care Program (LTHHCP)
Otsego County Public Health Nursing Services (Diagnostic & Treatment Center)

Otsego Manor Nursing and Rehabilitation Center was fined $6,000 for deficiencies cited pursuant to a stipulation and order dated September 26, 2011 for surveillance findings of April 30, 2010. Deficiencies were found under 10 NYCRR 415.12 – Quality of Care: Highest Practice Potential, 415.26 – Administrator and 415.27(a-c) -- Quality Assurance Committee.

The information provided by the Bureau of Quality Assurance for Nursing Homes indicated that the residential health care facility 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 Long Term Home Health Care Program has 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: March 11, 2014

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Privatus Care Solutions, Inc.
Address:	Rye Brook
County:	Westchester
Structure:	For-Profit Corporation
Application Number:	2142-L

Description of Project:

Privatus Care Solutions, Inc., a for-profit Delaware General Corporation, authorized to do business in New York State, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 10,000,000 shares of common stock, which are owned as follows:

John G. Bernardi – 450,000 Shares
Equaling 47.5%

William W. Mullett – 450,000 Shares
Equaling 47.5%

Candace Costas – 30,000 Shares
Equaling 5%

9,070,000 shares of common stock remain unissued.

The applicant has also authorized 5,000,000 shares of preferred stock of which none have been issued.

The Board of Directors of Privatus Care Solutions, Inc. comprises the following individuals:

John G. Bernardi – President
President—General Management, Privatus Care Solutions, Inc. (Massachusetts)

Affiliations:
- President/Shareholder, Privatus Care Solutions, Inc. (Massachusetts)
  2005 - Present
- President/Shareholder, Privatus Care Solutions, Inc. (Connecticut)
  2011 - Present

William W. Mullett – Chief Executive Officer
Chief Executive Officer, Privatus Care Solutions, Inc. (Massachusetts)

Affiliations:
- CEO/Shareholder, Privatus Care Solutions, Inc. (Massachusetts)
  2005 - Present
- CEO/Shareholder, Privatus Care Solutions, Inc. (Connecticut)
  2011 - Present

Candace Costas, RN, BSN – Vice President
Vice President—General Management, Privatus Care Solutions, Inc. (Massachusetts)

Affiliations:
- Vice President/Shareholder, Privatus Care Solutions, Inc. (Massachusetts)
  2005 - Present
- Vice President/Shareholder, Privatus Care Solutions, Inc. (Connecticut)
  2011 - Present

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A search of the Office of Health and Human Services (EOHHS) of the Commonwealth of Massachusetts's website revealed that Candace Costas is currently licensed as a Registered Nurse and there is no disciplinary information regarding her license.

A seven (7) year review of the operations of the following facilities was performed as part of this review (unless otherwise noted):

Privatus Care Solutions, Inc. (Massachusetts)
Privatus Care Solutions, Inc. (Connecticut) 2011 - Present

Massachusetts Department of Public Health does not license Home Care Service Agencies as health care providers. Instead the Massachusetts Department of Labor Standards (DLS) requires registration of a Home Care Service Agency as a Service Agency. Privatus is currently registered as a Service Agency with DLS. Privatus has been advised by DLS that DLS will not issue any type of report regarding a Service Agency's good standing or status.

The Connecticut Department of Health (CTDOH) finished its on-site licensure renewal process for Privatus on November 5, 2013. Although the report is not yet available and there is no specific time frame within which it must be provided, the Connecticut Department of Health has renewed the agency's license.

The applicant proposes to serve the residents of the following counties from an office located at 1743 Williamsbridge Road, Bronx, New York, 10461:

Bronx	Kings	New York	Richmond
Queens	Westchester		

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Physical 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.

<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: February 21, 2014

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	RBRC of Albany, LLC d/b/a Visiting Angels
Address:	Latham
County:	Albany
Structure:	Limited Liability Company
Application Number:	2137-L

<u>Description of Project:</u>

RBRC of Albany, LLC d/b/a Visiting Angels, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. RBRC of Albany, LLC d/b/a Visiting Angels is an existing companion care agency operating as a franchise.

The members of RBRC of Albany, LLC d/b/a Visiting Angels are as follows:

Robert L. Bertram, R.N., 50%	Robert W. Coan, R.N., 50%
Staff Nurse: Emergency Dept. Ellis Hospital	Nurse Manager, Conifer Park

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 serve the residents of the following counties from an office located at 974 Albany Shaker Road, Latham, New York 12110:

Albany	Rensselaer	Schenectady
Saratoga	Columbia	Greene
Montgomery	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.

<u>Contingeny</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:	February 19, 2014

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Caring Touch of NY, LLC
Address:	Queens Village
County:	Queens
Structure:	Limited Liability Company
Application Number:	2165L

Description of Project:

Caring Touch of NY, LLC, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Caring Touch Homecare, Inc. was previously approved as a home care services agency by the Public Health and Health Planning Council at its August 8, 2011 meeting and subsequently licensed as 1918L001 effective June 18, 2012. The sole shareholder of Caring Touch Homecare, Inc. was Elsa Crick, RN.

The sole member of Caring Touch of NY, LLC is:

Erhina Emenike
Vice-President of Operations, Pioneer Homecare, Inc.

Affiliation:
Pioneer Homecare, 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 219-09 Jamaica Avenue, Queens Village, NY 11428

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	Respiratory Therapy	Occupational Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

A seven year review of Pioneer Homecare, Inc. was performed. The information provided by the Division of Home and Community Based Services indicated that this home care 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.

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:	February 27, 2014

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Advanced Care, Inc.
Address:	Farmingdale
County:	Nassau
Structure:	For-Profit Corporation
Application Number:	2325L

Description of Project:

Advanced Care, Inc. a business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Advanced Care Inc. was previously approved as a home care services agency by the Public Health Council at its May 29, 1992 meeting and was subsequently licensed as 9296L001, 9296L002, 9296L003 and 9296L004.

The purpose of this application is to seek approval for AxelaCare Holdings, Inc. to acquire 100% of the stock of Advanced Care, Inc. Advanced Care, Inc. has authorized 200 shares of stock with 10 shares issued to AxelaCare Holdings, Inc. as the sole shareholder. The remaining 190 shares are unissued.

The boards of directors of Advanced Care, Inc. and AxelaCare Holdings, Inc. are comprised of:

Edward P. Kramm, CEO, Pharmacist
CEO, AxelaCare Health Solutions, LLC

Affiliations:
Access I.V., LLC (California)
AxelaCare Health Solutions, LLC (Kansas)
AxelaCare Health Solutions, LLC (Pennsylvania)
AxelaCare Health Solutions, LLC (Louisiana)
AxelaCare Health Services (Illinois)
AxelaCare Health Solutions, LLC (Texas)
Guardian Health Systems, LP (Oklahoma)
HomeCare I.V. of Bend, LLC (Oregon)
Home Infusion with Heart, LLC dba AxelaCare (Nebraska)
InfuSource, LLC (California)
Serquinox, LLC dba Equinox Healthcare (Maryland)
Sirona Infusion, LLC (Arizona)
Sirona Infusion, LLC (Colorado)
Sirona Infusion, LLC (New Mexico)
Summit Home Infusion, LLC (Pennsylvania)

Ira D. Kleinman, Vice President
Senior Managing Director, Harvest Partners, LLC

Affiliations:
Access I.V., LLC (California)
AxelaCare Health Solutions, LLC (Kansas)
AxelaCare Health Solutions, LLC (Pennsylvania)
AxelaCare Health Solutions, LLC (Louisiana)
AxelaCare Health Services (Illinois)
AxelaCare Health Solutions, LLC (Texas)
Guardian Health Systems, LP (Oklahoma)
HomeCare I.V. of Bend, LLC (Oregon)
Home Infusion with Heart, LLC dba AxelaCare (Nebraska)
InfuSource, LLC (California)
Serquinox, LLC dba Equinox Healthcare (Maryland)
Sirona Infusion, LLC (Arizona)
Sirona Infusion, LLC (Colorado)
Sirona Infusion, LLC (New Mexico)
Summit Home Infusion, LLC (Pennsylvania

John C. Wilkins, Jr., Vice President, Treasurer
Managing Director, Harvest Partners, LLC

Affiliations:
Access I.V., LLC (California)
AxelaCare Health Solutions, LLC (Kansas)
AxelaCare Health Solutions, LLC

Paige Daly DeBlasi, Vice President, Secretary
Principal, Harvest Partners

Affiliations:
Access I.V., LLC (California)
AxelaCare Health Solutions, LLC (Kansas)
AxelaCare Health Solutions, LLC (Pennsylvania)

(Pennsylvania)
AxelaCare Health Solutions, LLC (Louisiana)
AxelaCare Health Services (Illinois)
AxelaCare Health Solutions, LLC (Texas)
Guardian Health Systems, LP (Oklahoma)
HomeCare I.V. of Bend, LLC (Oregon)
Home Infusion with Heart, LLC dba AxelaCare (Nebraska)
InfuSource, LLC (California)
Serquinox, LLC dba Equinox Healthcare (Maryland)
Sirona Infusion, LLC (Arizona)
Sirona Infusion, LLC (Colorado)
Sirona Infusion, LLC (New Mexico)
Summit Home Infusion, LLC (Pennsylvania)

Ian A. Adler, Director
Senior Managing Director, Marwood Group

Affiliations:
Access I.V., LLC (California)
AxelaCare Health Solutions, LLC (Kansas)
AxelaCare Health Solutions, LLC (Pennsylvania)
AxelaCare Health Solutions, LLC (Louisiana)
AxelaCare Health Services (Illinois)
AxelaCare Health Solutions, LLC (Texas)
Guardian Health Systems, LP (Oklahoma)
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Serquinox, LLC dba Equinox Healthcare (Maryland)
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Sirona Infusion, LLC (Colorado)
Sirona Infusion, LLC (New Mexico)
Summit Home Infusion, LLC (Pennsylvania)

AxelaCare Health Solutions, LLC (Louisiana)
AxelaCare Health Services (Illinois)
AxelaCare Health Solutions, LLC (Texas)
Guardian Health Systems, LP (Oklahoma)
HomeCare I.V. of Bend, LLC (Oregon)
Home Infusion with Heart, LLC dba AxelaCare (Nebraska)
InfuSource, LLC (California)
Serquinox, LLC dba Equinox Healthcare (Maryland)
Sirona Infusion, LLC (Arizona)
Sirona Infusion, LLC (Colorado)
Sirona Infusion, LLC (New Mexico)
Summit Home Infusion, LLC (Pennsylvania)

David Michael Bronson, Director
Retired

Affiliations:
Access I.V., LLC (California)
AxelaCare Health Solutions, LLC (Kansas)
AxelaCare Health Solutions, LLC (Pennsylvania)
AxelaCare Health Solutions, LLC (Louisiana)
AxelaCare Health Services (Illinois)
AxelaCare Health Solutions, LLC (Texas)
Guardian Health Systems, LP (Oklahoma)
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Serquinox, LLC dba Equinox Healthcare (Maryland)
Sirona Infusion, LLC (Arizona)
Sirona Infusion, LLC (Colorado)
Sirona Infusion, LLC (New Mexico)
Summit Home Infusion, LLC (Pennsylvania)

The sole member of AxelaCare Holdings, Inc. is AxelaCare, LLC. The sole member of AxelaCare, LLC is AxelaCare Investment Holdings, L.P. AxelaCare Investment Holdings, LP is managed by its general partner which is AxelaCare Investment, LLC. The sole member of AxelaCare Investment, LLC is Harvest Associates VI, LP which is managed by its general partner Harvest Associates VI, LLC. The limited partners do not have the power or authority to direct the actions of the applicant or to otherwise exercise any control over the applicant.

The managing member and majority owner of Harvest Associates VI, LLC is ISTM Associates VI, LLC. The membership of ISTM Associates VI, LLC is comprised of:

Ira D. Kleinman – 25%
(disclosed above)

Stephen Eisenstein – 25%
Owner/Partner – Harvest Partners, LP

Affiliations:
Access I.V., LLC (California)
AxelaCare Health Solutions, LLC (Kansas)
AxelaCare Health Solutions, LLC (Pennsylvania)

AxelaCare Health Solutions, LLC (Louisiana)
AxelaCare Health Solutions, LLC (Texas)
Guardian Health Systems, LP (Oklahoma)
HomeCare I.V. of Bend, LLC (Oregon)
Home Infusion with Heart, LLC dba AxelaCare (Nebraska)
InfuSource, LLC (California)
Serquinox, LLC dba Equinox Healthcare (Maryland)
Sirona Infusion, LLC (Arizona)
Sirona Infusion, LLC (Colorado)
Sirona Infusion, LLC (New Mexico)
Summit Home Infusion, LLC (Pennsylvania)

Thomas W. Arenz – 25%
Senior Managing Director, Harvest Partners, LP

Affiliations:
Access I.V., LLC (California)
AxelaCare Health Solutions, LLC (Kansas)
AxelaCare Health Solutions, LLC (Pennsylvania)
AxelaCare Health Solutions, LLC (Louisiana)
AxelaCare Health Solutions, LLC (Texas)
Guardian Health Systems, LP (Oklahoma)
HomeCare I.V. of Bend, LLC (Oregon)
Home Infusion with Heart, LLC dba AxelaCare (Nebraska)
InfuSource, LLC (California)
Serquinox, LLC dba Equinox Healthcare (Maryland)
Sirona Infusion, LLC (Arizona)
Sirona Infusion, LLC (Colorado)
Sirona Infusion, LLC (New Mexico)
Summit Home Infusion, LLC (Pennsylvania)

Michael B. DeFlorio – 25%
Owner/Senior Managing Director , Harvest Partners, LP

Affiliations:
Access I.V., LLC (California)
AxelaCare Health Solutions, LLC (Kansas)
AxelaCare Health Solutions, LLC (Pennsylvania)
AxelaCare Health Solutions, LLC (Louisiana)
AxelaCare Health Solutions, LLC (Texas)
Guardian Health Systems, LP (Oklahoma)
HomeCare I.V. of Bend, LLC (Oregon)
Home Infusion with Heart, LLC dba AxelaCare (Nebraska)
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Serquinox, LLC dba Equinox Healthcare (Maryland)
Sirona Infusion, LLC (Arizona)
Sirona Infusion, LLC (Colorado)
Sirona Infusion, LLC (New Mexico)
Summit Home Infusion, LLC (Pennsylvania)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to continue to serve the residents of the following counties from the offices listed below:

Address	**Counties Served**
931 Conklin St., Suite D Farmingdale, NY 11735	Dutchess, Nassau, Suffolk, Orange, Putnam, Rockland, Westchester, Sullivan and Queens
61-43 186th Street Fresh Meadows, NY 11365	Bronx, Kings, New York and Richmond
25 Walker Way, Suite 3A Albany, NY 12205	Albany, Columbia, Delaware, Fulton, Greene, Montgomery, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Ulster, Warren, Washington, Clinton, Essex, Franklin and Hamilton

6508A Basile Row East Syracuse, NY 13057	Broome, Cayuga, Chenango, Cortland, Herkimer, Madison, Oneida, Onondaga, Oswego, Tioga, Tompkins, Chemung, Jefferson, Lewis and St. Lawrence

The applicant proposes to continue to provide the nursing services.

A search of the websites maintained by the Pennsylvania Department of State and Kansas Board of Pharmacy indicate that Edward Kramm holds an active license as a pharmacist and neither entity has taken any disciplinary action against the license.

A review of the operations of the following facilities/ agencies was performed as part of this review:

Access I.V., LLC (California)
AxelaCare Health Services (Illinois)
AxelaCare Health Solutions, LLC (Kansas)
AxelaCare Health Solutions, LLC (Pennsylvania)
AxelaCare Health Solutions, LLC (Louisiana)
AxelaCare Health Solutions, LLC (Texas)
Guardian Health Systems, LP (Oklahoma)
HomeCare I.V. of Bend, LLC (Oregon)
Home Infusion with Heart, LLC dba AxelaCare (Nebraska)
InfuSource, LLC (California)
Serquinox, LLC dba Equinox Healthcare (Maryland)
Sirona Infusion, LLC (Arizona)
Sirona Infusion, LLC (Colorado)
Sirona Infusion, LLC (New Mexico)
Summit Home Infusion, LLC (Pennsylvania)

The states of Arizona, New Mexico, Oregon, Kansas, Pennsylvania, Louisiana, Oklahoma and Maryland have indicated that the above referenced agencies are in good standing with the respective licensing agencies.

The applicant requested compliance information from the States of California, Colorado, Illinois, Nebraska and Texas, but these states have not responded. The applicant submitted signed attestations stating that these states have not taken any enforcement or administrative actions against these agencies.

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: March 14, 2014