

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

COMMITTEE DAY

AGENDA

July 24, 2014
10:00 a.m.

Empire State Plaza
Concourse Level, Meeting Rooms 2 and 3
Albany

I. COMMITTEE ON ESTABLISHMENT AND PROJECT REVIEW

Christopher Booth, Vice Chair

A. Applications for Construction of Health Care Facilities

Acute Care Services - Construction

Exhibit # 1

	<u>Number</u>	<u>Applicant/Facility</u>
1.	132378 C	Samaritan Hospital (Rensselaer County)
2.	141159 C	St. Mary's Healthcare – Amsterdam Memorial Campus (Putnam County)

Cardiac Services - Construction

Exhibit # 2

	<u>Number</u>	<u>Applicant/Facility</u>
1.	132296 C	University Hospital (Suffolk County)
2.	132297 C	John T. Mather Memorial Hospital of Port Jefferson New York Inc. (Suffolk County)

Residential Health Care Facilities Pediatric Ventilator Bed – Construction

Exhibit # 3

	<u>Number</u>	<u>Applicant/Facility</u>
1.	132257 C	Sunshine Children's Home and Rehab Center (Westchester County)
2.	132369 C	Elizabeth Seton Pediatric Center (Westchester County)

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

**Residential Health Care Facilities Pediatric Ventilator Bed–
Establish/Construct**

Exhibit # 4

	<u>Number</u>	<u>Applicant/Facility</u>
1.	141137 B	Blythedale Children’s Hospital (Westchester County)

Acute Care Services – Establish/Construct

Exhibit # 5

	<u>Number</u>	<u>Applicant/Facility</u>
1.	141168 E	Cayuga Health System (Tompkins County)
2.	141283 E	Lake Erie Regional Health System (Chautauqua County)

Ambulatory Surgery Centers - Establish/Construct

Exhibit # 6

	<u>Number</u>	<u>Applicant/Facility</u>
1.	132145 E	The Rye ASC (Westchester County)

Diagnostic and Treatment Centers - Establish/Construct

Exhibit # 7

	<u>Number</u>	<u>Applicant/Facility</u>
1.	141090 B	Schenectady Specialty Services, LLC (Schenectady County)

Dialysis Services- Establish/Construct

Exhibit # 8

	<u>Number</u>	<u>Applicant/Facility</u>
1.	141205 E	Workman’s Circle Dialysis Management, LLC d/b/a Workmen’s Circle Dialysis Center (Bronx County)

Hospice- Establish/Construct

Exhibit # 9

	<u>Number</u>	<u>Applicant/Facility</u>
1.	141172 E	Hospicare & Palliative Care Services of Tompkins County, Inc. (Tompkins County)

Residential Health Care Facilities - Establish/Construct

Exhibit # 10

	<u>Number</u>	<u>Applicant/Facility</u>
1.	141190 E	HHH Acquisition, LLC d/b/a The Grove at Valhalla Rehabilitation and Healing Center (Westchester County)
2.	141128 E	Comprehensive at Orleans, LLC d/b/a the Villages of Orleans Health and Rehabilitation Center (Orleans County)
3.	141140 E	Cortland Acquisition LLC d/b/a Crown Center for Nursing and Rehabilitation (Cortland County)
4.	141212 E	CCRN Operator, LLC d/b/a Focus Rehabilitation and Nursing Center at Otsego (Otsego County)

Certified Home Health Agencies – Establish/Construct

Exhibit # 11

	<u>Number</u>	<u>Applicant/Facility</u>
1.	141174 E	Samaritan Home Health, Inc. (Jefferson County)

C. Certificates

Certificate of Dissolution

Exhibit # 12

Applicant

1. The Pluta Cancer Center, Inc.

Certificate of Amendment of the Certificate of Incorporation

Exhibit # 13

Applicant

1. Allegany/Western Steuben Rural Health Network, Inc.

D. Home Health Agency Licensures

Home Health Agency Licensures

Exhibit # 14

	<u>Number</u>	<u>Applicant/Facility</u>
	2151 L	7 Day Home Care, Ltd. (Nassau and Queens Counties)

- 2245 L Constellation Private Duty, LLC
(Nassau, Suffolk, Westchester, Queens, New York and Bronx Counties)
- 2199 L Cottrill's Pharmacy, Inc.
(Chautauqua, Erie, Niagara, Cattaraugus, Wyoming, Orleans, Allegany, Genesee and Monroe Counties)
- 1828 L Detty Home Care Service, LLC
(New York, Nassau, Bronx, Richmond, Queens and Kings Counties)
- 1574 L Good Help at Home, Inc.
Bronx, Westchester, New York, Dutchess, Rockland, Orange and Ulster Counties
- 2110 L High Standard Home Care, Inc.
(New York, Kings, Queens, Bronx, and Richmond Counties)
- 2124 L Joy & Angels Home Care Agency, Inc.
(Nassau, Suffolk and Queens Counties)
- 2102 L Lincolns Heart & Associates, Inc.
(Monroe County)
- 2458 L Westchester Family Care, Inc.
(Westchester, Rockland, Putnam, and Dutchess Counties)
- 2021 L Valley Residential Services, Inc. d/b/a Valley Home Care
(Monroe County)
- 2425 L Oceanview Manor Home for Adults, Inc.
(Kings County)
- 2310 L Sachem Adult Home and ALP, LLC d/b/a Sachem
Licensed Home Care Service Agency
(Nassau and Suffolk Counties)
- 2311 L South Bay Adult Home and ALP, LLC d/b/a South Bay
Licensed Home Care Services Agency
(Nassau and Suffolk Counties)
- 2385L InCare Home Health Care Group, LLC d/b/a InCare
Home Health Care
(Bronx, New York, Kings, Richmond, Queens, and Westchester Counties)

II. COMMITTEE ON CODES, REGULATIONS AND LEGISLATION

Angel Gutiérrez, M.D., Chair

Exhibit # 15

For Emergency Adoption

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

For Adoption

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

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

For Discussion

14-09 Amendment of Section 2.59 of Title 10 NYCRR
(Prevention of Influenza Transmission by Healthcare and Residential
Facility and Agency Personnel)

13-04 Addition of Part 300 to Title 10 NYCRR
(Statewide Health Information Network for New York (SHIN-NY))



Public Health and Health Planning Council

Project # 132378-C
Samaritan Hospital

Program: Hospital
Purpose: Construction

County: Rensselaer
Acknowledged: January 29, 2014

Executive Summary

Description

Samaritan Hospital of Troy, NY, Inc. d/b/a Samaritan Hospital, a 212-bed not-for-profit hospital located at 2215 Burdett Avenue, Troy (Rensselaer County), requests approval to construct a six story, 191,463 square foot pavilion and renovate 11,902 square feet of Samaritan Hospital. Additionally, 60 beds will be transferred from St. Mary's Hospital to Samaritan via an intra-network bed transfer and 15 chemical dependence detox beds will be decertified.

The proposal is intended to enable St. Peter's Health Partners to reallocate resources between Samaritan Hospital and St. Mary's Hospital, a 196-bed not-for-profit hospital. Both hospitals are members of St. Peter's Health Partners and are located less than a mile from each other. The general plan is to consolidate medical/surgical inpatient care at Samaritan Hospital, then to convert St. Mary's Hospital to an outpatient only facility, through a separate CON.

Upon completion of this project, Samaritan Hospital will have a total of 257 certified beds with the addition of 60 beds from St. Mary's, and the decertification of 15 Chemical Dependence-Detoxification beds that are currently on the operating certificate of Samaritan Hospital. The new beds are broken out as: 170 Medical/Surgical; 48 transferred from St. Mary's; 12 Coronary Care, 6 transferred from St. Mary's; 12 Intensive Care, 6 transferred from St. Mary's; 63 Psychiatric. It is expected that these changes will reduce duplication of services, increase efficiency, and lower costs, as well as improve the quality of care and the patient experience.

DOH Recommendation
Contingent Approval

Need Summary

Upon approval of this project and a to-be-submitted CON, all inpatient services will be consolidated at Samaritan Hospital. St. Mary's will subsequently submit a follow up CON to convert to an outpatient only facility. The bed change is via an intra-network change and the decertification and consolidation will allow the facilities to operate more effectively and raise occupancy rates to the appropriate levels.

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)(c) of the New York State Public Health Law.

Financial Summary

The total project costs is \$86,023,783 and will be funded as follows: \$7,290,780 in equity; \$10,000,000 in fund raising; and the balance of \$68,733,003 from a 25-year tax-exempt revenue bonds, at a 5.0% interest rate.

Incremental Budget

Revenues	\$43,276,340
Expenses	<u>29,729,833</u>
Gain (Loss)	\$13,546,507

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. Please mail the check to the Bureau of Project Management, Room 1842 Corning Tower, Empire State Plaza, Albany, New York 12237. Once mailed, please upload a copy of the check through the contingencies tab in NYSECON. [PMU]
2. Submission of a loan commitment acceptable to the Department of Health. [BFA]
3. Submission of documentation of fundraising to be used as a source of financing acceptable to the Department of Health. [BFA]
4. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-02, including satisfactory response to the 7/14/14 schematic design document review commentary sent via NYSeCON. [AER]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

August 7, 2014

Need Analysis

Background

Samaritan Hospital is seeking approval to consolidate beds and services with St. Mary's Hospital under St. Peter's Health Partners. St. Mary's is a 196 bed hospital located at 1300 Massachusetts Ave., Troy, New York 12180 and Samaritan Hospital is a 212 bed hospital located at 2215 Burdett Avenue, Troy, New York 12180. The two facilities have a total of 408 beds.

Bed Chart: Samaritan Hospital & St. Mary's Hospital				
Bed Type	Licensed Today	CON 132378	Upon Approval	
SAMARITAN				
Med/Surg	122	48	170	
CCU	6	6	12	
ICU	6	6	12	
Psychiatric	63	0	63	
Chem Dep Detox	15	-15	0	
Total	212	45	257	
ST. MARY'S				
	Licensed Today	CON 132378	Anticipated Future CON	Anticipated Future Configuration at St. Mary's Hospital
Med/Surg	133	-48	-85	0
Pediatric	13	0	-13	0
Maternity	8	0	-8	0
CCU	6	-6	0	0
ICU	6	-6	0	0
Chem Dep Rehab	20	0	-20	0
Chem Dep Detox	10	0	-10	0
Total	196	-60	-116	0
	Total Beds Licensed Today		Total Beds removed from Troy hospitals	Future Total of all beds in Troy Hospitals
Grand Total TROY	408	-15	-151	257

State designations for Samaritan Hospital:

SAFE Center
Stroke Center

State designations for St. Marys Hospital:

Stroke Center

Analysis/Discussion

Samaritan and St. Mary's Hospital

Samaritan Hospital	Discharges			
	2009	2010	2011	2012
Medical/Surgical	4,946	4,701	4,791	4,732
Pediatric	61	45	63	74
Obstetric	609	578	440	32
General Psychiatric	1,789	1,673	1,716	1,541
Chemical Dependency	64	110	76	63
High Risk Neonates	52	52	35	0
Total	7,521	7,159	7,121	6,442
	Average Length of Stay			
	2009	2010	2011	2012
Medical/Surgical	5.5	5.6	5.6	5.6
Pediatric	1.9	2.4	2.1	2.1
Obstetric	2.6	2.9	2.7	2.8
General Psychiatric	9.7	9.6	9.3	10.1
Chemical Dependency	7.1	7.2	5	5.5
High Risk Neonates	2.9	2.9	2.7	0
Avg. Total	6.3	6.3	6.3	6.6
	Occupancy			
	2009	2010	2011	2012
Medical/Surgical	58.3	52.1	47.1	41.5
Pediatric	6.9	4.6	3.8	0
Obstetric	61.3	66.3	48.8	2.5
General Psychiatric	0	0	0	0
Chemical Dependency	75.3	68	62.7	63.7
High Risk Neonates	0	0	0	0
Total	57.9	52.1	46.9	40.7
Avg. Total	58.3	52.1	47.1	41.5
St. Mary's Hospital	Discharges			
	2009	2010	2011	2012
Medical/Surgical	5,959	5,338	4,870	4,303
Pediatric	173	107	89	0
Obstetric	849	856	607	26
General Psychiatric	31	16	23	16
Chemical Dependency	1,171	965	823	739
High Risk Neonates	36	40	27	0
Total	8,219	7,322	6,439	5,084
	Average Length of Stay			
	2009	2010	2011	2012
Medical/Surgical	5.2	5.2	5.1	5.1
Pediatric	2	2	2.1	0
Obstetric	2.1	2.2	2.4	2.2

General Psychiatric	5.1	4.6	4.7	8.5
Chemical Dependency	7.1	7.7	8.3	9.4
High Risk Neonates	1.6	1.8	1.9	0
Avg. Total	5	5.1	5.2	5.7
	Occupancy			
	2009	2010	2011	2012
Medical/Surgical	56	53.6	55.3	54.2
Pediatric	0	0	0	0
Obstetric	0	0	0	0
General Psychiatric	75.2	70	69.4	67.5
Chemical Dependency	8	14.7	6.7	6.7
High Risk Neonates	0	0	0	0
Avg. Total	60.8	58.2	57.9	55

Both St. Mary's and Samaritan Hospitals have both seen a slight decline from 2009 to 2012. A consolidation of beds and services, along with decertification of some beds, will benefit the operations of both facilities.

Conclusion

The consolidation of inpatient care at Samaritan and outpatient care at St. Mary's will reduce duplication of services, increase efficiency, and reduce costs. It will also allow physicians to focus on specialty services instead of splitting time between the two facilities.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

Samaritan Hospital (Samaritan) requests approval to perform renovations, construct a new five-story addition and certify a 60 bed intra-network bed transfer from Seton St. Mary's Hospital (St. Mary's). Upon approval, there will be an additional 48 medical/surgical beds, six (6) coronary care and six (6) intensive care beds at Samaritan and 15 chemical dependence-detox beds will be decertified.

Samaritan (212 beds) and St. Mary's (196 beds) Hospitals provide a total of 408 beds in Troy, New York. St. Peter's Health Partners has proposed a \$99 million, multi-year infrastructure and facility improvement project designed to transition Samaritan into the sole medical/surgical inpatient care facility in Rensselaer County. By 2018, Samaritan will function as a 257-bed inpatient facility (a decline of 143 beds from the inpatient capacities of Samaritan and St. Mary's). Samaritan's resulting bed capacity breakdown will be as follows: 170 medical/surgical beds, 24 ICU/CCU beds, and 63 psychiatric beds.

During the transition, St. Mary's will remain an inpatient facility with a full emergency department. With a to-be-submitted CON, St. Mary's will decertify their remaining beds and will become an ambulatory care campus with a medical oncology program and school of nursing, both of which will have been transferred from Samaritan.

This project provides Rensselaer County with a more efficient and cost effective health care system by focusing inpatient services at one location (rather than sustaining two community hospitals within blocks of each other).

Compliance with Applicable Codes, Rules and Regulations

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total project cost for new construction, renovation and movable equipment is estimated at \$86,023,783, itemized as follows:

New Construction	\$57,558,889
Renovation & Demolition	1,223,061
Site Development	351,600
Asbestos Abatement and Removal	95,955
Design Contingency	5,746,293
Construction Contingency	2,873,147
Planning Consultants	346,564
Architect/Engineering Fees	4,979,400
Construction Manager Fees	1,137,522
Other Fees	551,015
Movable Equipment	5,580,854
Telecommunications	2,048,043
Interim Interest Expense	3,058,908
Con Application Fee	2,000
Additional CON Processing Fee	<u>470,532</u>
Total Project Cost	<u>\$86,023,783</u>

Total costs are based on a September 30, 2014 start date with a thirty-nine month construction period.

The applicant's financing plan appears as follows:

Equity, Accumulated Funds	\$7,290,780
Equity, Fund Raising (Pledged total is \$10 million)	10,000,000
Tax-exempt revenue bonds (25 year term @5.0%)	<u>68,733,003</u>
Total	\$86,023,783

A letter of interest has been provided by the Bank of America Merrill Lynch. It should be noted that the applicant has hired Ghirosi and Sorrenti to conduct a capital campaign feasibility study. While the applicant hasn't received the final results, they state that preliminary discussions with Ghirosi and Sorrenti suggest the capital campaign will probably be in range of \$25 -\$30 million, well in excess of the above equity. The capital campaign will be operated jointly by the Northeast Health Foundation and Seton Health Foundation. From 2005 through 2014, the above mentioned foundations, along with St. Peter's Hospital Foundation have raised \$59.5 million in contributions and have historically collected 98% of the pledged amount.

Operating Budget

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

	<u>First Year</u>	<u>Third Year</u>
Revenue- Inpatient	\$25,907,104	\$28,631,831
Revenues-Outpatient:	<u>12,575,002</u>	<u>14,644,509</u>
Total Revenues	\$38,482,106	\$43,276,340
Expenses:		
Operating	\$21,349,081	\$23,644,995
Capital	<u>6,516,230</u>	<u>6,084,838</u>
Total Expenses	\$27,865,311	\$29,729,833
Excess Revenue over Expenses	<u>\$10,616,795</u>	<u>\$ 13,546,507</u>
Utilization: - Inpatient discharges	3,193	3,530
- Outpatient Visits	<u>20,229</u>	<u>25,117</u>

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

	<u>Inpatient</u>	<u>Outpatient</u>
Medicaid Fee-For-Service	8.02%	5.37%
Medicaid Managed Care	12.90%	12.22%
Medicare Fee-for-Service	35.78%	22.24%
Medicare Managed Care	18.76%	12.87%
Commercial Fee-For-Service	10.76%	18.58%
Commercial Manage Care	10.70%	23.50%
Private & All Other	2.21%	3.40%
Charity	.87%	1.82%

Incremental inpatient volume reflects transition of inpatient acute care services from St. Mary's Hospital to Samaritan Hospital's campus. Incremental outpatient volume includes an expected shift of some Emergency Department (ED) visits from St. Mary's Hospital to Samaritan Hospital's campus along with several other outpatient service lines reflecting growth from 1% to 4%. Utilization by payor source was arrived at by utilizing existing payor mix, with revenues being calculated using current revenue models. Reimbursements by payor were estimated utilizing current reimbursement rates.

Expenses are based upon historical experience after adjusting for volume and investment. Operational efficiencies are anticipated to occur with the consolidation of various services between Samaritan and St. Mary's campuses. The consolidation into modern facilities will allow centralizing "like" services, improving workflow, and optimizing the use of support staff, thus improving productivity. The applicant expects 2% improvement in productivity from the current levels. In addition, the inpatient service consolidation is expected to reduce dependence on outside professional agency usage, resulting in annualized savings of approximately \$700,000.

The applicant notes additional savings are expected to occur at the St. Mary's campus as a result of the consolidation of services. The transition of inpatient services and leveraging other opportunities will significantly reduce the twenty-four hour operational demands and are expected to reduce St. Mary's annual operating costs by \$6.7 million.

Capability and Feasibility

The total project costs of \$86,023,783 will be funded as follows: \$7,290,780 from equity; \$10,000,000 in fund raising (of which \$10.0 million has been pledged), and the remaining balance of \$68,733,003 coming from tax-exempt revenue bonds, at the above stated terms. BFA Attachment A is the June 30, 2013 consolidated certified financial summary for St. Peter's Health Partners, which indicates the availability of sufficient resources for this project.

Working capital requirements are estimated at \$4,954,972, which appear reasonable based on two months of third year budgeted expenses. Review of BFA Attachment A, the June 30, 2013 consolidated certified financial summary for St. Peter's Health Partners, indicates working capital requirements can be met from accumulated funds.

The incremental budget for the first and third years' of operations projects an operational surplus of \$10,616,795 and \$13,546,507, respectively. Revenues were based on current revenue models, and reimbursements by payor were estimated utilizing the current (2012) reimbursement rates. The budget appears reasonable.

BFA Attachments A and B are the Financial Summaries for June 30, 2013 and December 31, 2012, for St. Peter's Health Partners, respectively. Review of these attachments shows that St. Peter's Health Partners had an average positive working capital and average positive net asset position during the period 1/1/2012-6/30/2013; St. Peter's also achieved an average excess of revenues over expenses of \$51,526,000 during this same time period.

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 June 30, 2013, St. Peter's Health Partners
BFA Attachment B	Financial Summary for December 31, 2012, St. Peter's Health Partners
BFA Attachment C	Detail Budget



Public Health and Health Planning Council

Project # 141159-C
St. Mary's Healthcare - Amsterdam Memorial Campus

Program: Hospital
Purpose: Construction

County: Montgomery
Acknowledged: April 22, 2014

Executive Summary

Description

St. Mary's Healthcare, a 120-bed not-for-profit teaching hospital located at 427 Guy Park Avenue, Amsterdam, NY (Montgomery County), is requesting approval to construct a 40,073 square foot outpatient pavilion at its Amsterdam Memorial Campus.

The new building will support St. Mary's Healthcare ongoing programs, which include a Health Home, Community-based Care Transitions Program (CCTP), and allow certain outpatient services to be decanted from the main site. St. Mary's Healthcare is a member of Ascension Health, a subsidiary of Ascension.

DOH Recommendation
Contingent Approval

Need Summary

St. Mary's Healthcare – Amsterdam Memorial Campus requests approval for the construction of a new outpatient pavilion on its site; it will support ongoing programs of St. Mary's Healthcare including a Health Home and a Community-based Care Transitions Program to provide integrated, comprehensive care to patients. The pavilion, which will contain only Article 28 services, will allow the transferring of certain outpatient services from the main campus and will also enable ambulatory care services to be provided in the new building.

The proposed services to be added to the operating certificate are CT scanner, Linear Accelerator, MRI, Radiology – Therapeutic, Radiology – Diagnostic O/P,

and Clinical Laboratory Service. The proposed project will add one (1) linear accelerator unit, one (1) MRI unit, and one (1) CT scan unit at the SMH-Amsterdam Pavilion.

The number of projected visits is as follows:

Year 1 Increment: 3,312
Year 3 Increment: 6,337

The proposed project will improve delivery of diagnosis and treatment services for cancer and other patients.

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 of \$17,343,114 will be provided from St. Mary's Healthcare investments, which can be seen on their 2013 certified financial statement under the heading "Interest in Investments held by Ascension".

Incremental Budget:

Revenues:	\$7,790,304
Expenses:	<u>\$6,075,884</u>
Gain/ (Loss)	\$1,714,420

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. Please mail the check to the Bureau of Project Management, Room 1842 Corning Tower, Empire State Plaza, Albany, New York 12237. Once mailed, please upload a copy of the check through the contingencies tab in NYSECON. [PMU]
2. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. All devices producing ionizing radiation must be licensed by the New York State Department of Health -- Bureau of Environmental Radiation Protection. [HSP]
3. To provide Clinical Laboratory Services, licensure by the New York State Department of Health - Wadsworth Center is required. [HSP]
4. 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]
5. The applicant shall complete construction by August 1, 2015. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

August 7, 2014

Need Analysis

Background

St. Mary's Healthcare – Amsterdam Memorial Campus (SMH – Amsterdam) requests approval for the construction of a new outpatient pavilion on its site. The new building will support ongoing programs of St. Mary's Healthcare that include a Health Home and a Community-based Care Transitions Program (CCTP) to provide integrated, comprehensive care to patients. The pavilion will contain only Article 28 services and will be located at 4988 State Hwy 30, Amsterdam, 12010, in Montgomery County. The main site of St. Mary's Healthcare is located at 427 Guy Park Avenue, Amsterdam, 12010, approximately 3 miles from the SMH-Amsterdam campus.

Analysis

St. Mary's Healthcare – Amsterdam Memorial Campus is a 21-bed hospital located at 4988 State Hwy 30, Amsterdam, 12010, in Montgomery County.

The chart below presents information on current services provided at the SMH-Amsterdam site:

SMH-Amsterdam: Certified Services	Current Services Per Op. Cert
Medical Social Services	Y
Nutritional	Y
Pediatric O/P	Y
Physical Medical Rehabilitation	Y
Primary Medical Care O/P*	Y
Radiology-Diagnostic	Y
Therapy-Occupational O/P	Y
Therapy-Physical O/P	Y
Therapy-Speech Language Pathology	Y
Therapy-Speech Language Pathology O/P	Y
Transitional Care Demonstration	Y

*In the proposed project, medical oncology, urgent care, infusion, and electrocardiogram services will be provided under primary medical care O/P services.

The applicant proposes to add the following services at the SMH-Amsterdam site:

CT Scanner (CT Scanner, CT Simulator and PET/CT)	Add
Linear Accelerator	Add
Magnetic Resonance Imaging	Add
Radiology – Therapeutic	Add
Radiology – Diagnostic O/P (General, Rad/Fluroscopy, Ultrasound, DEXA, Mammography)	Add
Clinical Laboratory Service	Add

The primary service area includes Montgomery County, Fulton County, and surrounding areas.

The chart below presents data on current utilization of primary medical care and imaging services at SMH for 2010 - 2013. It also presents data on projections for primary care visits and imaging services at the proposed SMH-Amsterdam site.

Current Utilization: St. Mary's Healthcare	2010	2011	2012	2013
CT Scans	19,822	19,531	19,081	18,794
MRI Scans	2,229	2,391	2,309	2,661
Linear Accelerator (Not Certified).	N/A	N/A	N/A	N/A
Clinical Lab	N/A	N/A	N/A	N/A
Primary Medical Care: Urgent Care	8,600	9,416	10,089	10,072
Radiology-Diagnostic	9,121	9,328	9,294	9,177
Total	39,772	40,666	40,773	40,704
Projected Utilization @ SMH-Amsterdam				
	Current	Year 1	Year 3	
CT Scans	4,201	4,201	4,201	
MRI Scans	2,661	2,661	2,661	
Linear Accelerator	0	3,060	4,845	
Clinical Lab	293,883	293,883	293,883	
Prim Medical Care: Urgent Care and Chemo/Infusion	10,959	11,211	12,451	
Radiology-Diagnostic	23,322	23,322	23,322	
Total	335,026	338,338	341,363	

SMH utilization from 2010 to 2013 indicates that there was an increase in the use of MRI, primary medical care, and Radiology-Diagnostic services, but the number of CT Scans decreased slightly. The applicant reports that this decline is attributed primarily to increased ED volume that reduced the capability of the Hospital to serve referred O/P with its current capacity.

The applicant reports that St. Mary's Healthcare-Main Campus currently has one (1) MRI unit and two (2) CT Scan units. The proposed project will add one (1) MRI unit, one (1) CT scan unit, and one (1) linear accelerator unit at the SMH-Amsterdam Pavilion.

CON 141159-Equipments	MRI	CT	Linear Accelerator	PET (Mobile Unit)
SMH-Current	1	2	0	0
SMH-Amsterdam-Add	1	1	1	1

Based on 709.12, an MRI is expected to perform 3,200 scans per year; the applicant projects 2,661 scans per year at SMH-Amsterdam. The normative use rate of a CT scanner is 8,000 CT scans per machine per year. The applicant projects 4,201 CT scans per year. These additions will allow for the future growth.

Based on 709.16, the public need for linear accelerators in Montgomery County is one (1) unit as explained below:

1	Number of Cancer Cases per Year (Avg. Annual 2007-2011)	327.8
2	60% will be Candidates for Radiation Therapy	196.7
3	50% of (2) will be Curative Patients	98.4
4	50% of (2) will be Palliative Patients	98.4
5	Course of Treatment for Curative Patients is 35 Treatments	3,444
6	Course of Treatment for Palliative patients is 15 Treatments	1,476
7	The Total Number of Treatments [(5)+(6)]	4,920
8	Need for MEV Machines in Montgomery County (Each MEV Machine has Capacity for 6,500 Treatments)	0.75 (or 1)
9	Existing/Approved Resources	0
10	Remaining Need for MEV Machines	1

SMH-Amsterdam will work collaboratively with Ellis Medicine to develop and maintain a radiation oncology program. SMH – Amsterdam will also have an agreement to have mobile PET/CT Scanner on-site at the building generally one (1) day per week. For cancer patients, the PET/CT scanner allows for early detection and diagnosis, accurate staging of tumors, and precise treatment planning.

Conclusion

The outpatient pavilion aims to provide leading-edge technologies in a patient-centered ambulatory environment. A number of services/functions will be housed in the new pavilion, including outpatient and women's imaging services, pre-admission testing, lab draw, urgent care, electrocardiogram, cancer services (including medical oncology, radiation therapy/linear accelerator, CT simulator and infusion services) and building support. Imaging modalities include general radiography (x-ray), radiology/fluoroscopy, CT scanner, open MRI, ultrasound, mammography, stereotactic biopsy and bone densitometry.

The proposed outpatient pavilion will improve delivery of imaging services and allow for future growth of imaging services and therapeutic radiology services in the hospital's service area.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

St. Mary's Healthcare – Amsterdam Memorial Campus (SMH – Amsterdam) requests approval for the construction of a new, 40,073-square foot ambulatory care outpatient pavilion on its site. The new building will support ongoing programs of St. Mary's Healthcare that include a Health Home and a Community-based Care Transitions Program to provide integrated, comprehensive care to patients. The pavilion, which will contain only Article 28 services, will allow the decanting of certain outpatient services from the main SMH campus and will also enable ambulatory care services to be provided in a new, patient-friendly and operationally efficient building.

The outpatient pavilion aims to provide leading-edge technologies in a patient-centered ambulatory environment. SMH – Amsterdam plans to work collaboratively with Ellis Medicine to develop and maintain a successful radiation oncology program. A number of services/functions will be housed in the new pavilion, to include: outpatient and women's imaging services, pre-admission testing, lab draw, urgent care, electrocardiogram, cancer services (including medical oncology, radiation therapy/linear accelerator, CT simulator and infusion services) and building support. Imaging modalities include general radiography (x-ray), radiology/fluoroscopy, CT scanner, open MRI, ultrasound, mammography, stereotactic biopsy and bone densitometry. SMH – Amsterdam will also have an agreement to have mobile PET/CT Scanner on-site at the building generally one (1) day per week.

SMH- Amsterdam seeks to add the following services to the operating certificate:

Site	PFI	Services to be Approved
St. Mary's Healthcare - Amsterdam Memorial Campus 4988 State Highway 30 Amsterdam, NY 12010	482	CT Scanner Linear Accelerator Magnetic Resonance Imaging Radiology – Therapeutic Radiology – Diagnostic O/P Clinical Laboratory Service

It is anticipated that the project will result in an additional 11.40 FTEs in the first year and to 18.60 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

Financial Analysis

Total project costs for new construction and acquisition of moveable equipment is estimated at \$17,343,114, which is broken down as follows:

New Construction	\$8,416,310
Site Development	42,945
Design Contingency	841,631
Construction Contingency	420,816
Architect/Engineering Fees	673,305
Other Fees	196,253
Movable Equipment	6,655,000
CON Application Fee	2,000
CON Processing Fee	<u>94,854</u>
Total Project Cost	\$17,343,114

Total project costs are based on a November 1, 2014 start date with a nine month construction period.

The total project costs of \$17,343,114 will be provided from St. Mary's Healthcare investments, which can be seen on their 2013 certified financial statement under the heading "Interest in Investments held by Ascension".

Operating Budget

The applicant has submitted first and third years operating budgets, in 2013 dollars, as summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$2,230,683	\$7,790,304
Expenses:		
Operating	\$2,458,034	\$5,205,502
Capital	<u>870,382</u>	<u>870,382</u>
Total Expenses	\$3,328,416	\$6,075,884
Net Income or (Loss)	<u>(\$1,097,733)</u>	<u>\$1,714,420</u>
Utilization: (visits)	3,312	6,337
Cost Per Visit	\$1,004.96	\$958.80

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

Medicaid Fee-For-Service	3.45%
Medicaid Managed Care	19.15%
Medicare Fee-For-Service	18.14%
Medicare Managed Care	9.41%
Commercial Fee-For-Service	18.48%
Commercial Manage Care	17.46%
Private Pay & All Other	13.91%

Utilization and expense assumptions were developed using St. Mary's Healthcare historical experience in serving its oncology patients, the growth of chemotherapy / infusion services at the Hospital and discussion with Ellis Medicine. The first year is expected to show a loss.

The applicant stated they used a conservative volume estimate of 3,312 visits for the first year, which consisted of 252 chemotherapy administrations and 3,060 radiation oncology treatments. They projected that to break even in the first year, they would need an additional 436 chemotherapy administrations, bringing the total visits to 3,748 visits.

Capability and Feasibility

St. Mary's Healthcare will satisfy the \$17,343,114 in total project cost from investments held by Ascension as shown on BFA Attachment A, St. Mary's Healthcare 2013 certified financial summary.

Working capital requirement is estimated at \$1,012,647 and will be provided from operations. Review of BFA Attachment A indicates working capital requirements can be met through operations.

The incremental budget projects a first year loss of \$1,097,733 and third year surplus of \$1,714,420. A review of BFA Attachment A, St Mary's Healthcare 2013 certified financial statement, shows the facility has resources to fund the first year lost. Revenues are based on prevailing reimbursement methodologies, while commercial payers are based on experience and discussions. The budget appears reasonable.

As shown on BFA Attachment A, St. Mary's Healthcare has maintained an average working capital position of \$9,608,500, average net asset position of \$121,870,000, and for 2012 through 2013, generated an average excess of revenues over expenses of \$10,801,000.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A Financial Summary for 2012 and 2013, St. Mary's Healthcare



Public Health and Health Planning Council

Project # 132296-C
University Hospital

Program: Hospital
Purpose: Construction

County: Suffolk
Acknowledged: November 29, 2013

Executive Summary

Description

Stony Brook University Hospital (SBUH) a 597-bed public hospital located at 101 Nicolls Road, Stony Brook, NY (Suffolk County), which is part of the State University of New York System, is seeking to construct a jointly licensed PCI-capable cardiac catheterization laboratory (cath) lab to be located at John T. Mather Memorial Hospital. The reason for the joint venture is due to Stony Brook reaffirming their commitment to serving as the tertiary hub for cardiac services within the community, which requires SBUH to have space within the hospital's Heart Center in order to support the implementation of new, tertiary offerings unique to the region, such as Hybrid OR. Due to the fact that Stony Brook's Heart Center has very limited space for expansion, SBUH is partnering with John T. Mather in order to house some of Stony Brook's lower acuity cardiac services, which include outpatient cardiac catheterization. This will free up the space needed for the planned tertiary service expansions within SBUH's Heart Center.

SBUH is requesting approval to build a previously approved fourth (4th) cardiac catheterization laboratory (AEP 6631) at John T. Mather, rather than at the SBUH site. This project is being done concurrently with CON #132296 for the SBUH portion of the joint certification.

SBUH will provide clinical support, on call and administrative services at the lab.

The lab will include:

- One PCI-Capable cath lab with a single plane
- Interventional staff coverage 24/7-SBUH full time faculty and community physicians
- Recovery capabilities provided by Mather

- Onsite Medical Director provided by SBUH
- ICU Coverage Provided by Mather
- Surgical back-up provided by SBUH

The construction cost for this project will be borne by Mather, while the equipment cost will be borne by SBUH.

DOH Recommendation
Contingent Approval

Need Summary

SBUH requests approval for the joint certification with Mather of an adult cardiac catheterization laboratory at Mather. Due to limited space at SBUH for expansion, SBUH sought a partner that could house some of their lower acuity cardiac services, thereby maintaining space for planned tertiary service expansion within SBUH's Heart Center. Mather shares many of the same community cardiology physicians and a very similar service area as SBUH and is located only five miles away.

Program Summary

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

Financial Summary

Project costs of \$3,005,113 will be funded through equity.

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.

Budget:

Revenues	\$4,845,924
Expenses	<u>4,376,795</u>
Excess of Revenues over Expenses	\$469,129

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. The check must be mailed to the Bureau of Project Management, Room 1842, Corning Tower, Empire State Plaza, Albany, New York, 12237. Once mailed, please upload a copy of the check through the contingencies tab in NYSE-CON. [PMU]
2. Submission of an executed Comprehensive Cardiac Center Affiliation Operating Agreement that is acceptable to the Department of Health. [BFA]
3. Submission of an executed Employee Leasing Agreement that is acceptable to the Department of Health. [BFA]
4. Submission of an executed Occupancy License Agreement that is acceptable to the Department of Health. [BFA]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

August 7, 2014

Need Analysis

Background

Stony Brook University Hospital is an existing voluntary and not-for-profit, 597-bed teaching hospital located at 101 Nichols Road, Stony Brook, 11794, in Suffolk County. Stony Brook University Hospital (SBUH) proposes the creation of a joint licensed PCI-capable cardiac catheterization lab with John T. Mather Memorial Hospital (Mather) and requests approval to build a previously approved fourth cardiac catheterization laboratory (AEP6631) at Mather, rather than at SBUH.

Stony Brook University Hospital has the following certified beds and services:

Table 1: Stony Brook University Hospital: Certified Beds

Source: HFIS, 2014

<u>Bed Category</u>	<u>Certified Capacity</u>
Bone Marrow Transplant	10
Burns Care	6
Coronary Care	10
Intensive Care	50
Maternity	36
Medical / Surgical	355
Neonatal Continuing Care	8
Neonatal Intensive Care	18
Neonatal Intermediate Care	14
Pediatric	38
Pediatric ICU	12
Psychiatric	40
Total	597

Table 2: Stony Brook University Hospital: Certified Services

Source: HFIS, 2014

Ambulance	Ambulatory Surgery – Multi Specialty
Audiology O/P	Burn Center
Burns Care	CT Scanner
Cardiac Catheterization – Adult Diagnostic	Cardiac Catheterization – Electrophysiology (EP)
Cardiac Catheterization - PCI	Cardiac Surgery – Adult
Certified Mental Health Services O/P	Clinical Laboratory Service
Comprehensive Psychiatric Emergency Program	Coronary Care
Emergency Department	Intensive Care
Linear Accelerator	Lithotripsy
Magnetic Resonance Imaging	Maternity
Medical Social Services	Medical/Surgical
Neonatal Continuing Care	Neonatal Intensive Care
Neonatal Intermediate Care	Nuclear Medicine – Diagnostic
Nuclear Medicine – Therapeutic	Pediatric
Pediatric Intensive Care	Pharmaceutical Service
Primary Medical Care O/P	Psychiatric
Radiology – Diagnostic	Renal Dialysis – Acute
Therapy – Occupational O/P	Therapy – Physical O/P
Therapy – Speech Language Pathology	Transplant – Bone Marrow
Transplant – Kidney	

State designations:

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

Analysis

Stony Brook University Hospital seeks approval for the joint certification with John T. Mather Memorial Hospital of an adult cardiac catheterization laboratory at Mather. John T. Mather Memorial Hospital will add the following certified services to its operating certificate:

- Cardiac catheterization – adult diagnostic;
- Cardiac catheterization – adult intervention elective; and
- Cardiac catheterization – adult intervention emergency.

The proposal for this program assumes that inpatients from Mather's service area that are currently being served by St. Francis Hospital in Roslyn, Winthrop-University Hospital in Mineola, and North Shore University Hospital in Manhasset will be served at the new site. Mather's nurses and other non-physician staff will provide cardiac catheterization services in connection with the lab.

The Quality Assurance (QA) Program for the proposed PCI-capable cardiac catheterization laboratory center will be under the medical leadership of Dr. Luis Gruberg, Director, Research and Education/Invasive Cardiology, Division of Cardiovascular Medicine from SBUH, who will serve as the Medical Director.

Services will be provided regardless of a patient's ability to pay and in accordance with John T. Mather Memorial Hospital and Stony Brook University Hospital Financial Assistance programs. All services will be offered to those in need of care regardless of age, sex, sexual orientation, race, creed, religion, disability, source of payment or any other personal characteristic.

Utilization of the Joint Cardiac Catheterization Laboratory

The applicant provided the following background to support the projected utilization of the proposed lab:

Letters were submitted from three EMS departments in favor of this application.

<u>John T. Mather Memorial Hospital</u>	
<u>Projected PCI Utilization</u>	
<u>Year One</u>	<u>Year Three</u>
258	284

- Volume Requirements:
 - Section 709.14(d)(ii)(c): All PCI capable cardiac catheterization laboratory centers must yield 36 emergency PCI procedures per year within the first year of operation and at least 200 total PCI cases per year within two years of start-up.
 - The standard will be met:
 - The table below shows the emergency PCI cases transferred from Mather and St. Charles Hospital, which is also located in Port Jefferson, to Stony Brook University Hospital. Mather has transferred more than 36 emergency PCI cases to SBUH in each of the past three years. It is anticipated that the emergency PCI cases from St. Charles Hospital will be transferred to Mather when the joint cardiac catheterization laboratory is opened.

	2011	2012	2013
John T. Mather Memorial Hospital	45	57	65
St. Charles Hospital	10	15	12
Total	55	72	77

- The table indicates the projected volume of total PCI cases and is based on the 2013 volume of PCI cases performed at SBUH by cardiologists who have medical staff privileges at both Mather and SBUH. These cardiologists performed 664 PCI cases in 2013; the standard will be met assuming that 20% of Dr. Gruberg's volume, as medical director of the joint cardiac catheterization laboratory, and 40% of the other voluntary cardiologists' volumes move to Mather.

Table 4: Projection of Total PCI Cases

Cardiologists	2013 Volume at SBUH	Possible Volume at Mather	% of Total Annual Volume
Dr. Bhargava Pulipati	5	2	40%
Dr. Giridhar Korlipara	61	24	40%
Dr. John P. Dervan	56	22	40%
Dr. Jonathan Weinstein	119	48	40%
Dr. Luis Gruberg	215	43	20%
Dr. Michael Rosenband	39	16	40%
Dr. Neal Patel	99	40	40%
Dr. Shamim Khan	50	20	40%
Total Interventions	644	215	

The distance and travel time between John T. Mather Memorial Hospital and Stony Brook University Hospital is:

Distance	Time
5.3 miles	12 minutes

Source: Google Maps

In Suffolk County, there are a total of 13 cardiac catheterization laboratories that perform an average of 1,318 cardiac catheterizations in 2012. The Cardiac Advisory Committee guideline for cardiac catheterization laboratory capacity is 1,200 catheterizations per year.

Table 5: Suffolk County: Adult Cardiac Catheterization Programs
Source: Cardiac Services Reporting System, 2012

Hospital	Cath Labs	Diag Caths (A)	PCI Volume* (B)	Total Volume (A+2B)	Volume per Lab
Brookhaven	1	291	0	291	291
Good Samaritan Hosp-West Islip	2	2,638	616	3,870	1,935
Huntington Hospital	2	1,251	306	1,863	932
Southside Hospital	2	1,724	615	2,954	1,477
St. Catherine of Siena Medical Center	3	1,053	256	1,565	522
Stony Brook University Hospital	3	3,780	1,407	6,594	2,198
Suffolk County	13	10,737	3,200	17,137	7,355

*Value of "0" indicates that the facility was not authorized to perform those procedures in 2012.

The overall trend in PCI utilization for Suffolk residents has increased between 2008 and 2012, with the highest utilization occurring during 2009 and 2010.

Table 6: Suffolk County Hospitals: PCI Utilization Statistics

Source: Cardiac Services Program 2008-2012

Hospital	2008	2009	2010	2011	2012
Good Samaritan Hosp-West Islip	467	716	714	700	616
Huntington Hospital	79	69	119	257	306
Southside Hospital	645	567	519	572	615
St. Catherine of Siena Medical Center	36	48	240	268	256
Stony Brook University Hospital	1,831	1,980	1,855	1,543	1,407
Suffolk County	3,058	3,380	3,447	3,340	3,200

The population is currently receiving care primarily at facilities in Nassau and Suffolk Counties. 18.6% of the residents from Suffolk County are leaving the county to receive inpatient cardiology services.

Table 7: Suffolk County Residents: PCI Utilization Statistics by Place of Procedure

Source: Cardiac Services Program 2008-2012

County Hospitals	2008	2009	2010	2011	2012
Nassau County	1,923	1,769	1,640	1,355	1,143
New York County	254	248	232	232	196
Queens County	149	205	207	162	126
Other New York State Counties	10	6	15	7	14
Counties Subtotal	2,336	2,228	2,094	1,756	1,479
Suffolk County Hospitals					
Good Samaritan Hosp – West Islip	459	682	686	678	608
Huntington Hospital	72	67	116	242	277
Southside Hospital	630	547	504	558	602
St. Catherine of Siena Medical Center	36	47	236	263	247
Stony Brook University Hospital	1,803	1,920	1,818	1,506	1,369
Suffolk County	3,000	3,263	3,360	3,247	3,103
Total All Counties	5,336	5,491	5,454	5,003	4,582
Percent Distribution					
Nassau County	36.0	32.2	30.1	27.1	24.9
New York County	4.8	4.5	4.3	4.6	4.3
Queens County	2.8	3.7	3.8	3.2	2.7
Other New York State Counties	0.2	0.1	0.3	0.1	0.3
Percentage Subtotal	43.8	40.6	38.4	35.1	32.3
Suffolk County Hospitals					
Good Samaritan Hospital – West Islip	8.6	12.4	12.6	13.6	13.3
Huntington Hospital	1.3	1.2	2.1	4.8	6.0
Southside Hospital	11.8	10.0	9.2	11.2	13.1
St. Catherine of Siena Medical Center	0.7	0.9	4.3	5.3	5.4
Stony Brook University Hospital	33.8	35.0	33.3	30.1	29.9
Suffolk County	56.2	59.4	61.6	64.9	67.7
Percentage Total	100.0	100.0	100.0	100.0	100.0

Conclusion

As stated in 10 NYCRR 709.14 9(d)(1), the factors and methodology for determining the public need for PCI Capable Cardiac Laboratory Centers shall include, but not be limited to, the following:

- a) The planning area for PCI capable catheterization laboratories is one hour average surface travel time.
- b) Evidence that existing PCI capable catheterization laboratories within the planning area cannot adequately meet the needs of patients in need of emergency PCIs due to conditions such as capacity, geography, and/or EMS limitations.
- c) Documentation by the applicant must demonstrate the hospital's ability to provide high quality appropriate care that would yield a minimum of 36 emergency PCI procedures per year within the first year of operation and would yield a minimum of 200 total PCI cases per year within two years of start-up.

- d) Existing referral patterns indicate that approval of an additional service will not jeopardize the minimum volume required at other existing PCI capable cardiac catheterization laboratories.

Since the planning area for PCI capable cardiac catheterization laboratories is one hour, there are five PCI programs in this county that are less than one hour travel time from Mather.

The applicant states that the existing cardiac catheterization services in Suffolk County do not adequately meet the needs of its residents and causes outmigration from Suffolk County.

Nassau County, with a total population of 1,339,532 has 20 cardiac catheterization labs (1 lab to 66,977 residents) while Suffolk County, with a total population of 1,499,273¹ has 15 (1 lab to 96,618 residents). According to 2011 SPARCS data, 18.6% or (4,391 discharges) of Suffolk County cardiology inpatients received care outside of Suffolk County; 30% of this outmigration (1,331 discharges) received care at St. Francis Hospital in Roslyn; 13.6% (596 discharges) received care at Winthrop-University Hospital in Mineola; and 13.4% (588 discharges) received care at North Shore University Hospital in Manhasset.

The applicant noted that the emergency PCI cases from St. Charles Hospital will be transferred to Mather when the joint cardiac catheterization laboratory is opened, which exceeds the minimum standard set. The projected volume of total PCI cases, based on the 2013 volume of PCI cases performed at SBUH by cardiologists who have medical staff privileges at both Mather and SBUH will also exceed the minimum standard set.

All existing PCI capable cardiac catheterization laboratories are expected to maintain a volume of 300 PCI procedures per year and this volume level will be maintained following the approval.

The proposed relocation of an existing PCI capable cardiac catheterization laboratory from Stony Brook University Hospital to John T. Mather Memorial Hospital will improve access to emergency PCI services for this service area.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

Stony Brook University Hospital (SBUH), a 597-bed teaching hospital and full-service cardiac surgery provider that had previous approval (under AEP6631) to add a fourth (4th) cardiac catheterization lab, seeks approval for the joint certification of an adult cardiac catheterization laboratory to be located at John T. Mather Memorial Hospital (Mather), a 248-bed, not-for-profit hospital located approximately five miles from SBUH. Due to limited space at SBUH for expansion, SBUH proposes to build a percutaneous coronary intervention (PCI) capable cardiac catheterization lab at Mather and house some of its lower acuity cardiac services. Mather was chosen as a partner for this collaboration because it shares many of the same community cardiology physicians and a very similar service area as SBUH and its close proximity (5 miles) to SBUH. Both Mather and SBUH believe that locating the proposed PCI-capable lab at Mather will enhance access to high quality cardiac care for the residents of Suffolk County.

Stony Brook University Hospital will facilitate integration of expertise and resources for the cardiac catheterization laboratory located at the Mather site. Clinical leadership, day-to-day supervision and quality oversight will be provided by SBUH. Further, all existing policies and procedures currently in place at Mather and SBUH will be incorporated into the operation of the proposed joint lab and patients who require surgery will be transferred to SBUH.

¹ Estimated 2012 – Source U.S. Census Bureau.

The lab would include:

- One PCI-capable cardiac catheterization lab with a single plane – all new equipment.
- Interventional staff coverage 24 hours per day, 7 days per week. Staff will be Stony Brook University Hospital full-time faculty and community physicians.
- Recovery capabilities provided by Mather.
- Onsite Medical Director provided by Stony Brook University Hospital.
- ICU coverage provided by Mather.
- Surgical back-up provided by Stony Brook University Hospital.

Currently, among other services, Stony Brook University Hospital is certified (at its main campus, at 101 Nicolls Road, Stony Brook) for:

- Cardiac Catheterization – Adult Diagnostic
- Cardiac Catheterization – Electrophysiology (EP)
- Cardiac Catheterization – Percutaneous Coronary Intervention (PCI)
- Cardiac Surgery – Adult

Approval of this project would authorize Stony Brook University Hospital to provide the following services at Mather, located at 75 North Country Road, Port Jefferson:

- Cardiac Catheterization – Adult Diagnostic
- Cardiac Catheterization – Electrophysiology (EP)
- Cardiac Catheterization – Percutaneous Coronary Intervention (PCI)

A concurrent CON (#132297) has been submitted by John T. Mather Memorial Hospital. Upon approval, Mather will have the services below added to their operating certificate.

- Cardiac Catheterization – Adult Diagnostic
- Cardiac Catheterization – Adult Intervention Elective
- Cardiac Catheterization – Adult Intervention Emergency
- Cardiac Catheterization – Percutaneous Coronary Intervention (PCI)

The Applicant has submitted a written plan that demonstrates their ability to comply with all of the standards for PCI Capable Cardiac Catheterization Laboratories and they have assured the Department that their program will meet all of the requirements of 409.29(e)(1) and 409.29(e)(2).

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.

Stony Brook University Hospital was fined \$77,000 pursuant to a Stipulation and Order dated November 14, 2006 based on a complaint of inadequate care in pediatric cardiology which led to a focused survey of the entire program. The enforcement was preceded by a cease and desist order for the service and the Stipulation as signed by the facility required the employment of a full-time pediatric cardiac surgeon and the employment of consultants to revamp credentialing, pediatrics, ER and pharmacy.

John T. Mather Memorial Hospital was fined \$6,000 pursuant to a Stipulation and Order dated December 21, 2006 based on the investigation of an event where a patient with an ectopic pregnancy involving her right fallopian tube had her left fallopian tube operated on by mistake. The patient was readmitted and a second operation performed.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Comprehensive Cardiac Center Affiliation Operating Agreement

The applicant has submitted a draft comprehensive cardiac center affiliation agreement and operating agreement, which is summarized below:

Parties:	Stony Brook University Hospital and John T. Mather Memorial Hospital
Purpose:	The parties have applied for two separate certificate of need applications to jointly operate an Article 28 diagnostic cardiac catheterization and PCI capable cardiac catheterization program.
Duties of SBUH:	SBUH will provide the Medical director, oversee the procurement, storage and distribution of medical supplies for the Cath Lab, Developing and implementing a scheduling system to ensure access to the Cath lab, implementing and maintaining a quality assurance and performance improvement plan and establishing systems, procedures and reports to assess the clinical activity relating to the Cath lab services.
Duties of John T. Mather Memorial Hospital:	Provide nursing and other non-physician staff, with the exception of the data manager, to the Cath Lab pursuant to "Leased employee" arrangements. All such leased employees shall be under the direct management and supervision of the SBUH-employed Medical director with respect to their activities and functions at the Cath Lab, Mather shall provide the space for the Cath Lab, as well as housekeeping, maintenance, utilities and related services pursuant to a lease and services agreement.
Term:	No Less than 5 years unless sooner terminated due to cause in accordance with the provisions of this Agreement.
Compensation:	John T. Mather Memorial Hospital shall pay SBUH a fee for each cardiac catheterization procedure performed on an Inpatient basis. The estimated fee paid to SBUH during the first and third year is \$1,429,644 and \$1,673,919, respectively.

Employee Leasing Agreement

The applicant has submitted a draft employee leasing agreement, which is summarized below:

Parties:	John T. Mather Memorial Hospital (Lessor) and Stony Brook University Hospital(SBUH) (Lessee)
Purpose:	John T. Mather has agreed to lease to SBUH certain of its respective employees to provide services in connection with the operation of the Cath Lab.
Leased Employees:	John T. Mather shall lease to SBUH certain non-physician John T. Mather employees to provide services in the Cath Lab on either a full time or part time basis. During the term of this Agreement, each Leased Employee shall be and shall remain an employee of John T. Mather and while performing Services as the Cath Lab will be managed and receive direction from SBUH medical director and whose duty it is to oversee the operation of the Cath Lab.
Lease Employee Status:	Each Leased Employee shall remain an employee of John T. Mather not SBUH. At such time as a leased Employee is providing Services at the Cath Lab pursuant to this Agreement, SBUH managers and supervisors shall have authority and responsibility for supervisors and directing such Leased Employee, determining the means and methods by which such Leased Employee provide Services hereunder and confirming that Leased Employee performs Services to appropriate professional standards and in conformance with Law.
Responsibilities and Authority of SBUH:	SBUH shall have and exercise all authority and power to direct the activities and duties of the Leased Employees; SBUH will cooperate with John T. Mather so that John T. Mather is able to

Responsibilities and Authority of John T. Mather: comply with the collective bargaining agreements applicable to the Leased Employees and labor laws and laws regarding equal opportunities, whether federal, state or local; SBUH shall provide all equipment and materials reasonably necessary for the Leased Employees to provide Services pursuant to this Agreement and SBUH may at its sole option, require John T. Mather to immediately remove from the Cath Lab and leased employee. John T. Mather shall have the sole and exclusive responsibility for determining, paying and providing the wages, salaries and fringe benefits and other compensation of all the Leased Employees and John T. Mather will comply with all applicable collective bargaining agreements applicable to the Leased Employees and labor laws and laws regarding equal employment opportunities, whether federal, State or local.

Term: No Less than 5 years unless sooner terminated due to cause in accordance with the provisions of this Agreement.

Compensation: SBUH agrees to pay John T. Mather a fee for the Leasing of the Employees.

The estimated fee paid to John T. Mather during the first and third year is estimated at \$1,567,841 for both the first and third year.

Occupancy License Agreement

The applicant has submitted a draft occupancy license agreement for the space that SBUH will lease from John T. Mather, which is summarized below:

Premises: 4,234 sq. ft. located on the first floor of the building located at 75 North Country Road, Port Jefferson, NY Suffolk County

Lessor: John T. Mather Memorial Hospital

Lessee: Stony Brook University Hospital

Term: No Less than 5 years unless sooner terminated due to cause in accordance with the provisions of this Agreement.

Rental: The annual rent shall be \$118,000 (\$24.00 per sq.ft.)

Total Project Cost and Financing

Total project cost, which is for the acquisition of moveable equipment, is estimated at \$3,005,113, further broken down as follows:

Moveable Equipment	2,772,286
Telecommunications	214,400
CON Fee	2,000
Additional Processing Fee	<u>16,427</u>
Total Project Cost	\$3,005,113

Project costs are based on a July 1, 2014 construction start date and a six month construction period.

The applicant's financing plan appears as follows:

Equity	\$3,005,113
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Operating Budget

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

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Outpatient	\$1,267,504	\$1,394,173
Inpatient Revenue Transfer	1,429,644	1,673,919
Funds Transfer (Post Y/E Reconciliation)	1,474,944	1,415,932
Transfer for Physician Expenses	305,500	305,500
Transfer for Data Manager Expenses	<u>56,400</u>	<u>56,400</u>
Total Revenues	\$4,533,992	\$4,845,924
Expenses:		
Operating	\$2,012,103	\$2,144,154
Capital	<u>2,194,127</u>	<u>2,232,641</u>
Total Expenses	\$4,206,230	\$4,376,795
Excess of Revenues over Expenses	\$327,762	\$469,129
Outpatient: (Cases)	258	284
Cost Per Case	\$16,303.22	\$15,411.25

Incremental utilization, broken down by payor source, for the first and third years of Stony Brook University Hospital outpatient services is as follows:

	<u>Year One</u>	<u>Year Three</u>
Medicaid Managed Care	6.20%	6.34%
Medicaid Fee For Service	1.55%	1.41%
Medicare Managed Care	8.91%	8.80%
Medicare Fee For Service	37.60%	37.68%
Commercial Managed Care	44.96%	44.72%
Private Pay	.78%	1.05%

Expense assumptions are based on the standard SBUH cardiac catheterization staffing model, and were jointly determined by SBUH and John T Mather. Utilization assumptions are based on actual Stony Brook University cardiac catheterization laboratory volume at the Stony Brook University Hospital site.

Capability and Feasibility

Project cost of \$3,005,113 will be met through equity from the applicant. BFA Attachment A are the 2011 and 2012 certified financial statements of Stony Brook University Hospital, which indicates the availability of sufficient funds for the equity contribution.

The submitted incremental budget for The Stony Brook University Hospital projects an excess of revenues over expenses of \$327,762 and \$469,129 for the first and third year of operation, respectively. Revenues are based on current reimbursement rates of outpatient cardiac catheterization services. The submitted budget appears reasonable.

As shown on BFA Attachment A, the 2011-2012 certified financial statements of Stony Brook University Hospital, the facility has maintained an average positive working capital position and average positive net asset position. Also, the facility has achieved an average excess of revenues over expenses of \$8,772,000 in 2011 and 2012, respectively.

BFA Attachment B is the internal financial statements of Stony Brook University Hospital for the period 1/1/2-013-11/30/2013. As shown, the facility had a positive working capital position and a positive net asset position through 11/30/2013. Also, the facility achieved a positive net income of \$3,539,000 through 11/30/2013.

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, approval is recommended.

Attachments

BFA Attachment A	Financial Summary- 2011 and 2012 certified financial statements of Stony Brook University Hospital
BFA Attachment B	Internal financial statements of Stony Brook University Hospital for the period 1/1/2013-11/30/2013



Public Health and Health Planning Council

Project # 132297-C
John T. Mather Memorial Hospital of Port Jefferson
New York Inc.

Program: Hospital
Purpose: Construction

County: Suffolk
Acknowledged: November 29, 2013

Executive Summary

Description

John T. Mather Memorial Hospital (Mather), a 248-bed voluntary not-for-profit hospital located at 75 North Country Road, Port Jefferson, Suffolk County, is seeking approval for the joint certification (with Stony Brook University Hospital) of an adult cardiac catheterization laboratory. SBUH, as part of this proposal is proposing to build a previously approved fourth cardiac catheterization laboratory at Mather, rather than at SBUH. This project is being reviewed concurrently with CON #132296, which is for the SBUH portion of the joint certification. Both John T. Mather and SBUH are seeking to amend their operating certificates, requesting joint certification through CON #132296 (SBUH) and #132297 (John T. Mather) to operate the new cardiac cath laboratory to be located at John T. Mather Memorial Hospital.

The reason for the joint venture is due to Stony Brook reaffirming their commitment to serving as the tertiary hub for cardiac services within the community, which requires SBUH to have space within the hospital's Heart Center in order to support the implementation of new, tertiary offerings unique to the region, such as Hybrid OR. Due to the fact that Stony Brook's Heart Center has very limited space for expansion, SBUH is partnering with John T. Mather in order to house some of Stony Brook's lower acuity cardiac services. This will free up the space needed for the planned tertiary service expansions within SBUH's Heart Center. There is no change to bed capacity.

SBUH will provide clinical support, on call and administrative services at the lab.

The lab will include:

- One PCI-Capable cath lab with a single plane
- Interventional staff coverage 24/7-SBUH full time faculty and community physicians
- Recovery capabilities provided by Mather
- Onsite Medical Director provided by SBUH
- ICU Coverage Provided by Mather
- Surgical back-up provided by SBUH

The construction cost for this project will be borne by Mather, while the equipment cost will be borne by SBUH.

DOH Recommendation
Contingent Approval

Need Summary

Mather requests approval for the joint certification with SBUH of an adult cardiac catheterization laboratory at Mather. Due to limited space at SBUH for expansion, SBUH sought a partner that could house some of their lower acuity cardiac services. Mather shares many of the same community cardiology physicians and a very similar service area as SBUH and is located only five miles away.

Program Summary

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

Financial Summary

Project costs of \$2,616,300 will be met through equity.

Incremental Budget:

Revenues	\$5,898,972
Expenses	<u>5,442,151</u>
Excess of Revenues over Expenses	\$456,821

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. Please mail the check to the Bureau of Project Management, Room 1842 Corning Tower, Empire State Plaza, Albany, New York 12237. Once mailed, please upload a copy of the check through the contingencies tab in NYSECON. [PMU]
2. Submission of an executed Comprehensive Cardiac Center Affiliation Operating Agreement that is acceptable to the Department of Health. [BFA]
3. Submission of an executed Employee Leasing Agreement that is acceptable to the Department of Health. [BFA]
4. 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 date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
3. The applicant shall complete construction by 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 shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

August 7, 2014

Need Analysis

Background

John T. Mather Memorial Hospital (Mather) is an existing voluntary and not-for-profit, 248-bed acute care hospital located at 75 North Country Road, Port Jefferson, 11777, in Suffolk County. The facility seeks approval for the joint certification with Stony Brook University Hospital of an adult cardiac catheterization laboratory. As part of this proposal, Stony Brook University is proposing to build a previously approved (AEP6631) fourth cardiac catheterization laboratory at the Mather location, rather than at Stony Brook University (SBUH).

John T. Mather has the following certified beds and services:

Table 1: John T. Mather Memorial Hospital: Certified Beds
Source: HFIS, 2014

<u>Bed Category</u>	<u>Certified Capacity</u>
Coronary Care	8
Intensive Care	12
Medical / Surgical	175
Psychiatric	37
Transitional Care	16
Total	248

Table 2: John T. Mather Memorial Hospital: Certified Services
Source: HFIS, 2013

Ambulatory Surgery – Multi Specialty	Audiology O/P
CT Scanner	Chemical Dependence – Withdrawal O/P
Clinical Laboratory Service	Coronary Care
Emergency Department	Health Fairs O/P
Intensive Care	Lithotripsy
Magnetic Resonance Imaging	Medical Social Services
Medical/Surgical	Nuclear Medicine – Diagnostic
Pharmaceutical Service	Primary Medical Care O/P
Psychiatric	Radiology – Diagnostic
Radiology – Therapeutic	Renal Dialysis – Acute
Therapy – Occupational O/P	Therapy – Physical O/P
Therapy – Speech Language Pathology	

State designation:

- Stroke Center

Analysis

John T. Mather Memorial Hospital seeks approval for the joint certification with Stony Brook University Hospital of an adult cardiac catheterization laboratory at Mather. John T. Mather Memorial Hospital will add the following certified services to its operating certificate:

- Cardiac catheterization – adult diagnostic;
- Cardiac catheterization – adult intervention elective; and
- Cardiac catheterization – adult intervention emergency.

The proposal for this program assumes that inpatients from Mather's service area that are currently being served by St. Francis Hospital in Roslyn, Winthrop-University Hospital in Mineola, and North Shore University Hospital in Manhasset will be served at the new site. Mather's nurses and other non-physician staff will provide cardiac catheterization services in connection with the lab.

The Quality Assurance (QA) Program for the proposed PCI-capable cardiac catheterization laboratory center will be under the medical leadership of Dr. Luis Gruberg, Director, Research and Education/Invasive Cardiology, Division of Cardiovascular Medicine from SBUH, who will serve as the Medical Director.

Services will be provided regardless of a patient's ability to pay and in accordance with John T. Mather Memorial Hospital and Stony Brook University Hospital Financial Assistance programs. All services will be offered to those in need of care regardless of age, sex, sexual orientation, race, creed, religion, disability, source of payment or any other personal characteristic.

Utilization of the Joint Cardiac Catheterization Laboratory

The applicant provided the following background information to support the projected utilization of the proposed lab:

Letters were submitted from three EMS departments in favor of this application.

<u>John T. Mather Memorial Hospital</u> <u>Projected PCI Utilization</u>	
Year One	Year Three
258	284

- Volume Requirements:
 - Section 709.14(d)(ii)(c): All PCI capable cardiac catheterization laboratory centers must yield 36 emergency PCI procedures per year within the first year of operation and at least 200 total PCI cases per year within two years of start-up.
 - The standard will be met:
 - The table below shows the emergency PCI cases transferred from Mather and St. Charles Hospital, which is also located in Port Jefferson, to Stony Brook University Hospital. Mather has transferred more than 36 emergency PCI cases to SBUH in each of the past three years. It is anticipated that the emergency PCI cases from St. Charles Hospital will be transferred to Mather when the joint cardiac catheterization laboratory is opened.

	2011	2012	2013
John T. Mather Memorial Hospital	45	57	65
St. Charles Hospital	10	15	12
Total	55	72	77

- The table indicates the projected volume of total PCI cases and is based on the 2013 volume of PCI cases performed at SBUH by cardiologists who have medical staff privileges at both Mather and SBUH. These cardiologists performed 664 PCI cases in 2013; the standard will be met assuming that 20% of Dr. Gruberg's volume, as medical director of the joint cardiac catheterization laboratory, and 40% of the other voluntary cardiologists' volumes move to Mather.

Table 4: Projection of Total PCI Cases

Cardiologists	2013 Volume at SBUH	Possible Volume at Mather	% of Total Annual Volume
Dr. Bhargava Pulipati	5	2	40%
Dr. Giridhar Korlipara	61	24	40%
Dr. John P. Dervan	56	22	40%
Dr. Jonathan Weinstein	119	48	40%
Dr. Luis Gruberg	215	43	20%
Dr. Michael Rosenband	39	16	40%
Dr. Neal Patel	99	40	40%

Table 4: Projection of Total PCI Cases

Cardiologists	2013 Volume at SBUH	Possible Volume at Mather	% of Total Annual Volume
Dr. Shamim Khan	50	20	40%
Total Interventions	644	215	

The distance and travel time between John T. Mather Memorial Hospital and Stony Brook University Hospital is:

Distance	Time
5.3 miles	12 minutes

Source: Google Maps

In Suffolk County, there are a total of 13 cardiac catheterization laboratories that perform an average of 1,318 cardiac catheterizations in 2012. The Cardiac Advisory Committee guideline for cardiac catheterization laboratory capacity is 1,200 catheterizations per year.

Table 5: Suffolk County: Adult Cardiac Catheterization Programs
Source: Cardiac Services Reporting System, 2012

Hospital	Cath Labs	Diag Caths (A)	PCI Volume* (B)	Total Volume (A+2B)	Volume per Lab
Brookhaven	1	291	0	291	291
Good Samaritan Hosp-West Islip	2	2,638	616	3,870	1,935
Huntington Hospital	2	1,251	306	1,863	932
Southside Hospital	2	1,724	615	2,954	1,477
St. Catherine of Siena Medical Center	3	1,053	256	1,565	522
Stony Brook University Hospital	3	3,780	1,407	6,594	2,198
Suffolk County	13	10,737	3,200	17,137	7,355

*Value of "0" indicates that the facility was not authorized to perform those procedures in 2012.

The overall trend in PCI utilization for Suffolk residents has increased between 2008 and 2012, with the highest utilization occurring during 2009 and 2010.

Table 6: Suffolk County Hospitals: PCI Utilization Statistics
Source: Cardiac Services Program 2008-2012

Hospital	2008	2009	2010	2011	2012
Good Samaritan Hosp-West Islip	467	716	714	700	616
Huntington Hospital	79	69	119	257	306
Southside Hospital	645	567	519	572	615
St. Catherine of Siena Medical Center	36	48	240	268	256
Stony Brook University Hospital	1,831	1,980	1,855	1,543	1,407
Suffolk County	3,058	3,380	3,447	3,340	3,200

The population is currently receiving care primarily at facilities in Nassau and Suffolk Counties. 18.6% of the residents from Suffolk County are leaving the county to receive inpatient cardiology services.

Table 7: Suffolk County Residents: PCI Utilization Statistics by Place of Procedure
Source: Cardiac Services Program 2008-2012

County Hospitals	2008	2009	2010	2011	2012
Nassau County	1,923	1,769	1,640	1,355	1,143
New York County	254	248	232	232	196
Queens County	149	205	207	162	126
Other New York State Counties	10	6	15	7	14
Counties Subtotal	2,336	2,228	2,094	1,756	1,479

Table 7: Suffolk County Residents: PCI Utilization Statistics by Place of Procedure

Source: Cardiac Services Program 2008-2012

County Hospitals	2008	2009	2010	2011	2012
Suffolk County Hospitals					
Good Samaritan Hospital – West Islip	459	682	686	678	608
Huntington Hospital	72	67	116	242	277
Southside Hospital	630	547	504	558	602
St. Catherine of Siena Medical Center	36	47	236	263	247
Stony Brook University Hospital	1,803	1,920	1,818	1,506	1,369
Suffolk County	3,000	3,263	3,360	3,247	3,103
Total All Counties	5,336	5,491	5,454	5,003	4,582
Percent Distribution					
Nassau County	36.0	32.2	30.1	27.1	24.9
New York County	4.8	4.5	4.3	4.6	4.3
Queens County	2.8	3.7	3.8	3.2	2.7
Other New York State Counties	0.2	0.1	0.3	0.1	0.3
Percentage Subtotal	43.8	40.6	38.4	35.1	32.3
Suffolk County Hospitals					
Good Samaritan Hospital – West Islip	8.6	12.4	12.6	13.6	13.3
Huntington Hospital	1.3	1.2	2.1	4.8	6.0
Southside Hospital	11.8	10.0	9.2	11.2	13.1
St. Catherine of Siena Medical Center	0.7	0.9	4.3	5.3	5.4
Stony Brook University Hospital	33.8	35.0	33.3	30.1	29.9
Suffolk County	56.2	59.4	61.6	64.9	67.7
Percentage Total	100.0	100.0	100.0	100.0	100.0

Conclusion

As stated in 10 NYCRR 709.14 9(d)(1), the factors and methodology for determining the public need for PCI Capable Cardiac Laboratory Centers shall include, but not be limited to, the following:

- a) The planning area for PCI capable catheterization laboratories is one hour average surface travel time.
- b) Evidence that existing PCI capable catheterization laboratories within the planning area cannot adequately meet the needs of patients in need of emergency PCIs due to conditions such as capacity, geography, and/or EMS limitations.
- c) Documentation by the applicant must demonstrate the hospital's ability to provide high quality appropriate care that would yield a minimum of 36 emergency PCI procedures per year within the first year of operation and would yield a minimum of 200 total PCI cases per year within two years of start-up.
- d) Existing referral patterns indicate that approval of an additional service will not jeopardize the minimum volume required at other existing PCI capable cardiac catheterization laboratories.

Since the planning area for PCI capable cardiac catheterization laboratories is one hour, there are five PCI programs in this county that are less than one hour travel time from Mather.

The applicant states that the existing cardiac catheterization services in Suffolk County do not adequately meet the needs of its residents and causes outmigration from Suffolk County. Nassau County, with a total population of 1,339,532 has 20 cardiac catheterization labs (1 lab to 66,977 residents) while Suffolk County, with a total population of 1,499,273¹ has 15 (1 lab to 96,618 residents). According to 2011 SPARCS data, 18.6% or (4,391 discharges) of Suffolk County cardiology inpatients received care outside of Suffolk County; 30% of this outmigration (1,331 discharges) received care at St. Francis Hospital in Roslyn; 13.6% (596 discharges) received care at Winthrop-University Hospital in Mineola; and 13.4% (588 discharges) received care at North Shore University Hospital in Manhasset.

¹ Estimated 2012 – Source U.S. Census Bureau.

The applicant noted that the emergency PCI cases from St. Charles Hospital will be transferred to Mather when the joint cardiac catheterization laboratory is opened, which exceeds the minimum standard set. The projected volume of total PCI cases, based on the 2013 volume of PCI cases performed at SBUH by cardiologists who have medical staff privileges at both Mather and SBUH will also exceed the minimum standard set.

All existing PCI capable cardiac catheterization laboratories are expected to maintain a volume of 300 PCI procedures per year and this volume level will be maintained following the approval.

The proposed relocation of an existing PCI capable cardiac catheterization laboratory from Stony Brook University Hospital to John T. Mather Memorial Hospital will improve access to emergency PCI services for this service area.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

Stony Brook University Hospital (SBUH), a 597-bed teaching hospital and full-service cardiac surgery provider that had previous approval (under AEP6631) to add a fourth (4th) cardiac catheterization lab, seeks approval for the joint certification of an adult cardiac catheterization laboratory to be located at John T. Mather Memorial Hospital (Mather), a 248-bed, not-for-profit hospital located approximately five miles from SBUH. Due to limited space at SBUH for expansion, SBUH proposes to build a percutaneous coronary intervention (PCI) capable cardiac catheterization lab at Mather and house some of its lower acuity cardiac services. Mather was chosen as a partner for this collaboration because it shares many of the same community cardiology physicians and a very similar service area as SBUH and its close proximity (5 miles) to SBUH. Both Mather and SBUH believe that locating the proposed PCI-capable lab at Mather will enhance access to high quality cardiac care for the residents of Suffolk County.

Stony Brook University Hospital will facilitate integration of expertise and resources for the cardiac catheterization laboratory located at the Mather site. Clinical leadership, day-to-day supervision and quality oversight will be provided by SBUH. Further, all existing policies and procedures currently in place at Mather and SBUH will be incorporated into the operation of the proposed joint lab and patients who require surgery will be transferred to SBUH.

The lab would include:

- One PCI-capable cardiac catheterization lab with a single plane – all new equipment.
- Interventional staff coverage 24 hours per day, 7 days per week. Staff will be Stony Brook University Hospital full-time faculty and community physicians.
- Recovery capabilities provided by Mather.
- Onsite Medical Director provided by Stony Brook University Hospital.
- ICU coverage provided by Mather.
- Surgical back-up provided by Stony Brook University Hospital.

Currently, among other services, Stony Brook University Hospital is certified (at its main campus, at 101 Nicolls Road, Stony Brook) for:

- Cardiac Catheterization – Adult Diagnostic
- Cardiac Catheterization – Electrophysiology (EP)
- Cardiac Catheterization – Percutaneous Coronary Intervention (PCI)
- Cardiac Surgery – Adult

Upon approval, Mather will have the services below added to their operating certificate.

- Cardiac Catheterization – Adult Diagnostic
- Cardiac Catheterization – Adult Intervention Elective
- Cardiac Catheterization – Adult Intervention Emergency
- Cardiac Catheterization – Percutaneous Coronary Intervention (PCI)

A concurrent CON (#132296) has been submitted by Stony Brook University Hospital. Approval of Project #132296 would authorize SBUH to provide the following services at Mather, located at 75 North Country Road, Port Jefferson:

- Cardiac Catheterization – Adult Diagnostic
- Cardiac Catheterization – Electrophysiology (EP)
- Cardiac Catheterization – Percutaneous Coronary Intervention (PCI)

The Applicant has submitted a written plan that demonstrates their ability to comply with all of the standards for PCI Capable Cardiac Catheterization Laboratories and they have assured the Department that their program will meet all of the requirements of 409.29(e)(1) and 409.29(e)(2).

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.

Stony Brook University Hospital was fined \$77,000 pursuant to a Stipulation and Order dated November 14, 2006 based on a complaint of inadequate care in pediatric cardiology which led to a focused survey of the entire program. The enforcement was preceded by a cease and desist order for the service and the Stipulation as signed by the facility required the employment of a full-time pediatric cardiac surgeon and the employment of consultants to revamp credentialing, pediatrics, ER and pharmacy.

John T. Mather Memorial Hospital was fined \$6,000 pursuant to a Stipulation and Order dated December 21, 2006 based on the investigation of an event where a patient with an ectopic pregnancy involving her right fallopian tube had her left fallopian tube operated on by mistake. The patient was readmitted and a second operation performed.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Comprehensive Cardiac Center Affiliation Operating Agreement

The applicant has submitted a draft comprehensive cardiac center affiliation agreement and operating agreement, which is summarized below:

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Purpose:	The parties have applied for two separate certificate of need applications to jointly operate an Article 28 diagnostic cardiac catheterization and PCI capable cardiac catheterization program.
Duties of SBUH:	SBUH will provide the Medical director, oversee the procurement, storage and distribution of medical supplies for the Cath Lab, Developing and implementing a scheduling system to ensure access to the Cath lab, implementing and maintaining a quality assurance and performance improvement plan and establishing systems, procedures and reports to assess the clinical activity relating to the Cath lab services.
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Parties:	John T. Mather Memorial Hospital (Lessor) and Stony Brook University Hospital(SBUH) (Lessee)
Purpose:	John T. Mather has agreed to lease to SBUH certain of its respective employees to provide services in connection with the operation of the Cath Lab.
Leased Employees:	John T. Mather shall lease to SBUH certain non-physician John T. Mather employees to provide services in the Cath Lab on either a full time or part time basis. During the term of this Agreement, each Leased Employee shall be and shall remain an employee of John T. Mather and while performing Services as the Cath Lab will be managed and receive direction from SBUH medical director and whose duty it is to oversee the operation of the Cath Lab.
Lease Employee Status:	Each Leased Employee shall remain an employee of John T. Mather not SBUH. At such time as a leased Employee is providing Services at the Cath Lab pursuant to this Agreement, SBUH managers and supervisors shall have authority and responsibility for supervisors and directing such Leased Employee, determining the means and methods by which such Leased Employee provide Services hereunder and confirming that Leased Employee performs Services to appropriate professional standards and in conformance with Law.
Responsibilities and	SBUH shall have and exercise all authority and power to direct the

Authority of SBUH: activities and duties of the Leased Employees; SBUH will cooperate with John T. Mather so that John T. Mather is able to comply with the collective bargaining agreements applicable to the Leased Employees and labor laws and laws regarding equal opportunities, whether federal, state or local; SBUH shall provide all equipment and materials reasonably necessary for the Leased Employees to provide Services pursuant to this Agreement and SBUH may at its sole option, require John T. Mather to immediately remove from the Cath Lab and leased employee.

Responsibilities and Authority of John T. Mather: John T. Mather shall have the sole and exclusive responsibility for determining, paying and providing the wages, salaries and fringe benefits and other compensation of all the Leased Employees and John T. Mather will comply with all applicable collective bargaining agreements applicable to the Leased Employees and labor laws and laws regarding equal employment opportunities, whether federal, State or local.

Term: No Less than 5 years unless sooner terminated due to cause in accordance with the provisions of this Agreement.

Compensation: SBUH agrees to pay John T. Mather a fee for the Leasing of the Employees. The estimated fee paid to John T. Mather during the first and third year is estimated at \$1,567,841 for both the first and third year.

Total Project Cost and Financing

Total project cost which is for renovation and demolition, is estimated at \$2,616,300, further broken down as follows:

Renovation and Demolition	\$1,869,437
Design Contingency	186,944
Construction Contingency	186,944
Architect/Engineering Fees	355,195
Consultant Fees	1,480
CON Fee	2,000
Additional Processing Fee	<u>14,300</u>
Total Project Cost	\$2,616,300

Project costs are based on a July 1, 2014 construction start date and a six month construction period.

The applicant's financing plan appears as follows:

Equity	\$2,616,300
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Operating Budget

The applicant has submitted an incremental operating budget, in 2014 dollars for John T. Mather Memorial Hospital for the first and third years, summarized below:

John T. Mather Memorial Hospital (Inpatient)

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Inpatient	\$3,825,043	\$4,213,131
Leased Employee Revenue	1,567,841	1,567,841
Space Lease Revenue	<u>118,000</u>	<u>118,000</u>
Total Revenues	\$5,510,884	\$5,898,972
Expenses:		
Operating	\$5,114,743	\$5,312,151
Capital	<u>65,000</u>	<u>130,000</u>
Total Expenses	\$5,179,743	\$5,442,151

Excess of Revenues over Expenses	\$331,141	\$456,821
Total Discharges	219	241
Cost Per Discharge	\$23,651.79	\$22,581.54

Incremental utilization, broken down by payor source, for the first and third years of John T. Mather Memorial Hospital inpatient services is as follows:

	<u>Year One</u>	<u>Year Three</u>
Medicaid Managed Care	3.20%	3.32%
Medicaid Fee For Service	2.74%	2.49%
Medicare Fee For Service	39.27%	39.42%
Medicare Managed Care	8.68%	8.71%
Commercial Fee For Service	26.48%	26.14%
Commercial Managed Care	16.89%	17.01%
Private Pay	1.83%	2.08%
Charity Care	.91%	.83%

Expense assumptions are based on the standard SBUH cardiac catheterization staffing model and were jointly determined by SBUH and John T. Mather. Utilization assumptions are based on actual Stony Brook University cardiac catheterization laboratory volume at the Stony Brook University Hospital site.

Capability and Feasibility

Project cost of \$2,616,300 will be met through equity from the applicant. BFA Attachment A are the 2011 and 2012 certified financial statements of John T. Mather Memorial Hospital, which indicates the availability of sufficient funds for the equity contribution.

The incremental submitted budget for John T. Mather Memorial Hospital projects an excess of revenues over expenses of \$331,141 and \$456,821 for the first and third year of operation, respectively. Revenues are based on current reimbursement rates of John T. Mather Memorial Hospital Inpatient Cardiac catheterization services. The budget appears reasonable.

BFA Attachment A, the 2011-2012 certified financial statements of John T. Mather Memorial Hospital, shows the facility has maintained an average positive working capital position and an average positive net asset position from 2011 through 2012. Also, John T. Mather Memorial Hospital has achieved an operating income of \$1,423,131 and an operating loss of \$1,926,082 in 2011 and 2012, respectively, for an average operating loss of \$251,476. The loss in 2012 was due to the hospital's defined benefit pension plan. The expenses for the plan have risen from \$5,500,000 in 2007, to \$14,800,000 in 2012, an increase of \$9,300,000 in five years' time. In order to resolve the issue, the hospital instituted a permanent freeze on this at the beginning of 2013, which reduced pension expenses to under \$500,000 for the 11 months of 2013, as well as generating a positive net operating income of \$5,109,006 for the 11 months of 2013, which is shown as BFA Attachment B. In 2014, the hospital plans to implement a new defined contribution plan in place of the Defined Benefit plan.

BFA Attachment B are the November 30, 2013 internal financial statements of John T. Mather Memorial Hospital. As shown, the facility had a positive working capital position and a positive net asset position through November 30, 2013. Also, the facility achieved an operating income of \$5,109,006 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	Financial Summary- 2011 and 2012 certified financial statements of John T. Mather Memorial Hospital
BFA Attachment B	Financial Summary- November 30, 2013 internal financial statements of John T. Mather Memorial Hospital



Public Health and Health Planning Council

Project # 132257-C
Sunshine Children's Home and Rehab Center

Program: Residential Health Care Facility
Purpose: Construction

County: Westchester
Acknowledged: November 7, 2013

Executive Summary

Description

MSAF Group, LLC, doing business as Sunshine Children's Home and Rehab Center, requests approval to increase the certified bed capacity of the Sunshine Center from 54 to 122 pediatric nursing facility beds, a net increase of 68 beds, by constructing an addition to the existing facility. The Sunshine Center is an existing pediatric nursing facility that specializes in the care and treatment of medically complex children ages birth to 18, who require post-acute medical and rehabilitative services. The Sunshine Center is located at 15 Spring Valley Road, Ossining, New York.

The members of MSAF Group, LLC are Ari Friedman (50%) and Moshe Scheiner (50%). MSAF Group, LLC is in a lease agreement with Spring Valley Road, LLC for the rental of the facility. It is proposed that Spring Valley Road, LLC, an unrelated party, will construct and finance the addition to the existing facility. As such, a new lease agreement will be submitted as part of this application.

DOH Recommendation Contingent Approval

Need Summary

There will be a change in the number of beds to this facility as a result of this application. Sunshine Children's Home and Rehabilitation Center's utilization

from 2010-2012 was 92.2%, 99.3%, and 99.9%, respectively. Current utilization for this facility is 100%

Program Summary

The expansion of Sunshine will help meet the demand for pediatric nursing home placement, and address the State priority of repatriating children residing in out of state facilities. The design of the addition is innovative, and reflects sensitivity to the needs of the children.

Financial Summary

Total project cost of \$30,063,922 will be met as follows: Equity of \$7,515,980 and a bank loan of \$22,547,942 at an interest rate of 5% for a 20 year term.

Incremental Budget:

Revenues	\$28,304,986
Expenses	<u>28,289,312</u>
Net Income	\$15,674

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. Please mail the check to the Bureau of Project Management, Room 1842 Corning Tower, Empire State Plaza, Albany, New York 12237. Once mailed, please upload a copy of the check through the contingencies tab in NYSECON. [PMU]
2. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
3. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
 - Submit an annual report for two years to the DOH, which demonstrates substantial progress with the implement of the plan. The plan should include but not be limited to:
 - Information on activities relating to a-c above;
 - 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 and programmatic review and approval of the final floor plans. [LTC]
5. Submission and Departmental approval of the program to serve ventilator dependent children in the proposed beds. [LTC]
6. 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. 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 sources and uses statement and a debt amortization schedule, for both new and refinanced debt. [BFA]
7. Submission of a working capital loan commitment that is acceptable to the Department of Health. [BFA]
8. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-04. [AER]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Submission of the revised agreement between Sunshine and Northern Westchester BOCES governing the provision of educational services to the children. [LTC]
3. Adherence to standards put forth by the Department regarding services to ventilator dependent children. [LTC]
4. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction. [AER]
5. The applicant shall complete construction by June 30, 2016. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

August 7, 2014

Need Analysis

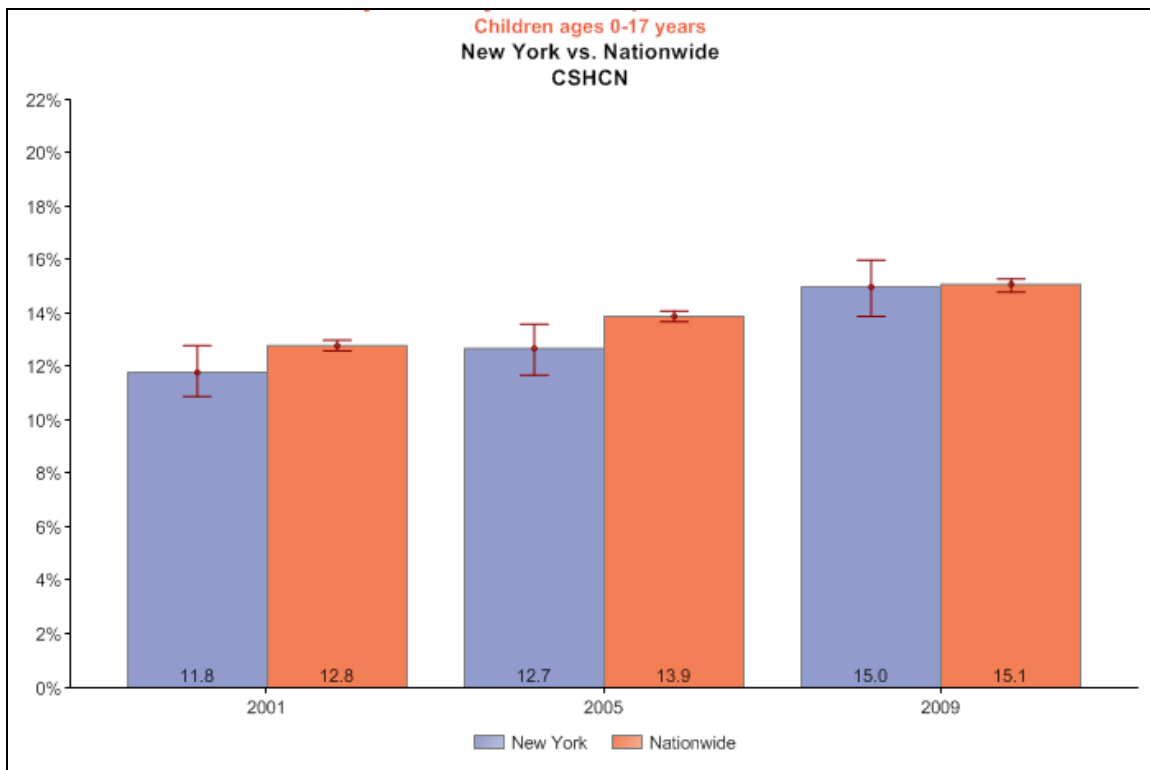
Background

Sunshine Children's Home and Rehabilitation Center is an existing 54-bed Article 28 residential health care facility, located at 15 Spring Valley Road, Ossining, 105652, in Westchester County. Sunshine Children's Home and Rehabilitation Center seeks approval to add 68 net new pediatric residential health care facility beds (RHCF) and to construct an addition to their facility to accommodate the additional beds. Upon completion, the facility's total bed capacity will increase from 54 to 122.

Analysis

Sunshine Children's Home's request for additional pediatric RHCF beds is submitted in the context of an overall increase in the number of children with special health care needs, in New York State and nationwide.

The chart below shows a comparison between New York State and the rest of the country, which reflects an overall increase in the number of children with special care needs (CSHCN).¹



Special care needs children are children that have or are at increased risk for a chronic, physical, developmental, behavioral, or emotional condition and who also require health and related services of a type of amount beyond that normally and routinely required by children.

As a result of increases in the number of children with special care needs, several trends are also becoming apparent in this specific population. Research articles show that advances in medical therapies, technologies, and the expansion of supportive care options have contributed to the survival of children with highly complex medical conditions.²

¹ Source: National Survey of Children with Special Health Care Needs. NS-CSHCN 2009/10.

² Benneyworth, B. D., Gebremariam, A., Clark, S. J., & Davis, M. M. (2011). Inpatient Health Care Utilization for Children Dependent on Long-term Mechanical Ventilation. *Pediatrics*, 127(6), e1533-e1541.

Dumas, H. M. (2012). Rehabilitation Considerations for Children Dependent on Long-Term Mechanical Ventilation. *ISRN Rehabilitation*, 1-15.

Since 2011, Sunshine Children's Home and Rehabilitation Center's pediatric RHCF occupancy rates have exceeded 99%, with an average length of stay of 3.1 years per patient. The facility currently has a wait list of approximately 60 children seeking admission. The wait list does not include children that may also appear on other pediatric facilities existing wait lists. There are existing wait lists not only due to lack of pediatric beds, but also due to a lack of other long-term pediatric care and services in the area. These conditions result in children being discharged from acute care hospitals to inappropriate settings. This ultimately leads to re-hospitalizations and unnecessary expenses. Since these children cannot be placed in appropriate care settings, many seek placement in out-of-state facilities. There are currently 72 pediatric patients receiving long term care and services, including ventilator-dependent care and services, in pediatric nursing home facilities outside of New York State.

Approval of these additional pediatric beds will allow Sunshine to admit all the children currently on its wait list. In addition, this proposal also supports the efforts of the Medicaid Redesign Team (MRT#68) which calls for the repatriation of children currently in out-of-state nursing facilities.

It should be noted that because pediatric beds are not covered by the RHCF bed need methodology set forth in 10 NYCRR Section 709.3, approval of the requested pediatric RHCF beds will have no effect on the current RHCF bed need. While the facility is not specifically requesting certified pediatric ventilator beds, it should also be noted that all beds will be equipped and capable of providing ventilator-dependent care, which keeps with the existing capacity of the facility, which typically has 20-22% of its children requiring a ventilator. Shown in the table below is a bed need chart reflecting the proposed changes to this facility:

<u>Sunshine Children's Home and Rehabilitation Center</u>	<u>Current</u>	<u>Proposed Action</u>	<u>Upon Completion</u>
RHCF Pediatric Beds	54	68	122
Total	54	68	122

There are nine residential health care facilities offering pediatric services throughout New York State. Of these, only five are dedicated solely to pediatric care. Two of these are in Westchester County - Sunshine Children's Home and Rehabilitation Center and Elizabeth Seton Pediatric Center (also operating at close to 100% occupancy).

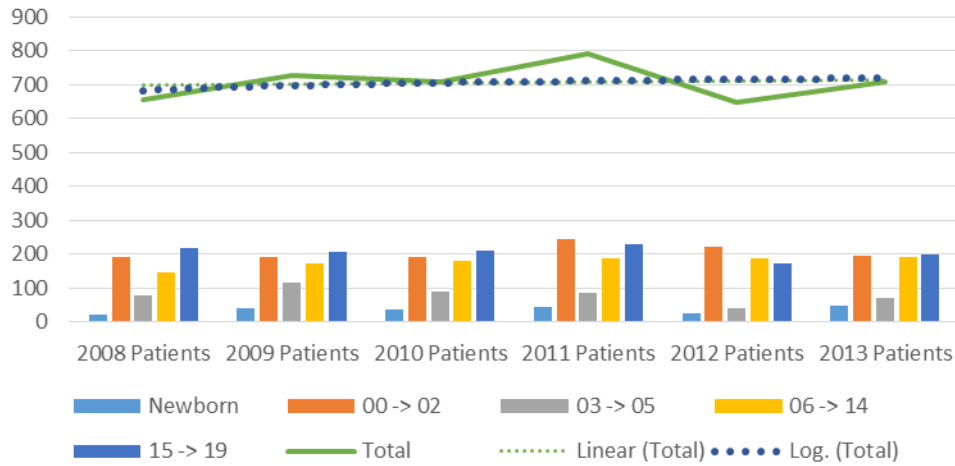
Below is a table showing the number of children discharged from all New York State hospitals to skilled nursing facilities between 2008 and 2013. The accompanying chart shows a nominal upward trend over that time period.

Age Group	2008 Patients	2009 Patients	2010 Patients	2011 Patients	2012 Patients	2013 Patients
Newborn	20	41	36	43	27	47
00 -> 02	191	191	190	243	221	195
03 -> 05	80	115	90	86	42	72
06 -> 14	147	174	182	189	187	193
15 -> 19	217	205	209	229	172	200
Total	655	726	707	790	649	707

Haffner, J. C., & Schurman, S. J. (2001). The technology-dependent child. *Pediatric Clinics of North America*, 48, 751-764.

Newacheck, P. W., Strickland, B., Shonkoff, J. P., Perrin, J. M., McPherson, M., McManus, M., . . . Arango, P. (1998). An epidemiologic profile of children with special health care needs. *Pediatrics*, 102, 117-123.

Discharge Disposition to SNF 2008-2013



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 of Medicaid admissions, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or Health Systems Agency percentage, whichever is applicable.

Sunshine Children's Home and Rehabilitation Center's Medicaid admissions of 61.54% in 2010 and 93.33% in 2011 far exceeded the Westchester County 75% rates of 21.42% in 2010 and 23.82% in 2011.

Conclusion

The proposal to add 68 net new pediatric RHCf beds in the facility would enhance the ability to appropriately place the current wait list of children seeking skilled nursing facility care. Based on the facility's current utilization and the proposal to add 60 residents upon project completion, the applicant's revised occupancy rate would be 93.4%. This reduction in occupancy would allow the facility to repatriate some of the out-of-state pediatric residents. It would also help accommodate the growth in the population of children with special health care needs that is occurring because of advances in neonatal and other medical care, in medical technologies, and through the expansion of supportive care options.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Sunshine Children's Home and Rehab Facility	Same
Address	15 Spring Valley Road Ossining, NY 10562	Same
RHCF Capacity	54	122
ADHCP Capacity	N/A	N/A
Type Of Operator	Proprietary	Same
Class Of Operator	Limited Liability Company	Same
Operator	MASF Group, LLC	Same

Program Review:

Sunshine Children's Home and Rehab Facility (Sunshine), a 54 bed children's nursing home, proposes to add 68 beds to meet the need for pediatric bed placements in-state, and repatriate children residing in out of state pediatric nursing homes. Sunshine is currently fully occupied and is unable to meet the demand of parents and discharge planners seeking a caring environment for these medically complicated children. The nursing home also suffers from insufficient space to meet the needs of the children, with the expansion affording Sunshine the opportunity to offer a broader and richer educational and rehabilitation program.

Currently Sunshine's care units are grouped by developmental status and gender. The governing philosophy of the nursing home is to provide the necessary program support within the age related units rather than restricting services to discrete ventilator or specialty units. The facility provides respiratory support throughout the building, including piped-in oxygen in the dining room and activity areas. Educational services are also integrated into the care plan, with each child attending school in three classrooms located on-site. The Putnam/Northern Westchester BOCES operates the Pines Bridge School at Sunshine, and manages the IEP's for each child, integrating the child's physical, sensory and rehabilitative needs into the residential setting. The new Sunshine program will introduce a new educational concept, the "Kid's Clubhouse", a hybrid educational/socialization area addressing the developmental needs of the children. The Kids Clubhouse will be incorporated into the residential areas, and function as the teaching center during school hours, and a socialization and activities resource during the rest of the day.

The innovative design of the new construction will permit the integrative model to culminate in four neighborhoods, with the children grouped by age. Three of the neighborhoods will be located in the new construction: nursery and toddler, birth to age 3; preschool, ages 3 to 6; and teenager ages 13-18. Two adolescent neighborhoods will be located in the existing building, which will undergo some renovation to provide an equivalent residential environment to the new construction.

Physical Environment

The existing Sunshine building is a one story structure with basement, located on a wooded and hilly parcel covering 33 acres with walking trails, a fish-filled pond, water fountains and a log cabin. Additional buildings are also located on the site including a central administrative building and family resource room. The current structure was constructed in 1969, and renovated significantly over the past three years, including the addition of an activities dayroom. The existing building area totals 18,916 square feet, and the new wing will add 73,147 feet of space. Access to the nursing home will be made through a new entrance situated on the south end of the property. A new access road will be constructed with an enlarged parking lot and drop-off area.

The new entrance leads into a lobby and waiting area, which opens into a center core area for the nursing home. Administrative offices and conference rooms are clustered in this area, including staff dining and lockers. Two large rooms account for the greatest amount of space in the central area: a large great room/gym rehab room, with movable partition, and a 10' by 16" "endless" therapy pool with changing area. A ring corridor frames the center core connecting the new neighborhoods and the existing Sunshine building. Two central courtyards are located adjacent to the center ring providing additional outdoor space and a source of natural light for the interior of the building. The eastern courtyard includes covered porches extending from the neighborhood country kitchen dining room into the outdoor area, with a sitting area flanking the side abutting the ring corridor.

Each neighborhood is clustered by age, with Neighborhood 1 a 28 bed infant and toddler unit, Neighborhood 2 a 28 bed preschool area, and Neighborhood 3 a 26 bed teenager unit. The neighborhoods are arrayed around the perimeter of the addition, with all resident rooms facing the outside or courtyard. Each neighborhood has a country kitchen dining area and adjacent play and therapy area. The three neighborhoods of the new addition are comprised primarily of unique three-bedded suites, with each bed configured to form a personal area with a curtain providing privacy. The beds are all oriented to provide visual contact between the beds and direct sightline to the window, and surround a central socialization area. An angled bathroom includes a roll-in shower enclosure for a shower trolley. Neighborhood 1 also features four nursery rooms with four cribs each. The nursery rooms are designed with an infant bathing compartment, a caregiver station, and ample space for family and support staff needs.

The remaining nursing unit will be devoted to adolescents, and be located in the existing building. The unit will undergo renovation which will reduce the bed count from 54 to 40 beds. The unit will employ a traditional unit design with thirteen three-bedded rooms and one single bedroom. All the rooms will have individual 6 foot by 6 foot showers, and a new dining room and central tub room will be constructed on the floor. The unit will also include a large, dedicated therapy room, and a recently completed sunroom with patio on the northern end adds activity and socialization space in an aesthetically striking addition.

After a recent design revision, Sunshine will comply with 713-4.4(c). Four single bedrooms will be located in Neighborhood 2, five in Neighborhood 3, one in Neighborhood One, and a newly created single in the adolescent unit for a total of eleven single bedrooms.

One of the most innovative aspects of the design is the co-location of the educational program into the residential units. The previously mentioned "Kid's Clubhouse" will be located in a suite of rooms off Neighborhood 2, and another suite between the teen and adolescent units. The classrooms will also function as arts and crafts, music and sensory rooms, and will even include a performance theater. The teen center will be located on the southeast end of the new addition off a corridor connecting the center ring to the existing building, adjacent to the new dining room for the adolescent unit.

A second floor will situate clinical and resident services, accessed via an elevator adjacent to the new staff dining area, just off the ring corridor. The second floor will locate a Clinic and Family Respite Center offering dentistry, neurology, pediatric, podiatry, behavioral and X-ray and lab services in five treatment rooms. Adjacent to the clinical area a "relaxation therapy" center will provide residents and their families a beauty salon, nail salon and massage rooms. The Family Respite Center will provide a setting for parents to come and stay at Sunshine to interact with their children. The center will include six hotel-like suites with king or double beds, each with full bath and kitchenette. A large family lounge and library, and a special events room, will offer socialization opportunities for visiting families.

Compliance

Sunshine Children's Home and Rehab Facility is currently in substantial compliance with all applicable codes, rules and regulations.

Conclusion

The expansion of Sunshine will help meet the demand for pediatric nursing home placement, and address the State priority of repatriating children residing in out of state facilities. The design of the addition is innovative, and reflects sensitivity to the needs of the children. The renovation and reorientation of the existing nursing space will create a "one class" nursing home with similar accommodations for all age groups. The seamless integration of the educational, medical and social program will produce state of the art, high quality care environment for the children.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Lease Rental Agreement

The applicant has submitted an executed lease rental agreement for the site after the addition of the 68 beds, which is summarized below:

Date	October 15,2013
Lessor	Spring Valley Road, LLC
Lessee	MSAF Group, LLC
Term	The term of the lease extends through August 31, 2033.
Rental	The annual rent will be \$3,416,229.

Total Project Cost and Financing

Total project cost, which is for new construction and the acquisition of moveable equipment, is estimated at \$30,063,922, further broken down as follows:

New Construction	\$20,099,217
Site Development	2,278,640
Design Contingency	1,118,841
Construction Contingency	1,118,841
Planning Consultant Fees	78,000
Architect/Engineering Fees	1,301,815
Other Fees (Consultant)	244,400
Moveable Equipment	1,755,350
Financing Costs	918,391
Interim Interest Expense	983,991
CON Fee	2,000
Additional Processing Fee	<u>164,436</u>
Total Project Cost	\$30,063,922

Project costs are based on a September 1, 2014 construction start date and a sixteen month construction period.

The applicant's financing plan appears as follows:

Equity	\$7,515,980
Bank Loan (5.0% interest rate for 20 years)	22,547,942

Operating Budget

The applicant has submitted an incremental operating budget, in 2014 dollars, during the first and third years after project completion, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Medicaid Fee For Service	\$20,457,731	\$26,689,431
Commercial Fee For Service	<u>1,253,455</u>	<u>1,615,555</u>
Total Revenues	\$21,711,186	\$28,304,986
Expenses:		
Operating	\$18,791,265	\$24,311,665
Capital	<u>3,778,747</u>	<u>3,977,647</u>
Total Expenses	\$22,570,012	\$28,289,312
Net Income	(\$858,826)	\$15,674
Utilization: (patient days)	18,752	24,676
Occupancy	75.55%	99.41%

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

	<u>Year One</u>	<u>Year Three</u>
Medicaid Fee For Service	95.89%	95.92%
Commercial Fee For Service	4.11%	4.08%

Expense and utilization assumptions are based on the applicant's historical experience. The applicant has indicated that current occupancy at Sunshine Children's Home was 100% in 2013. The applicant provided documentation of the 100% occupancy. On virtually all days since the Home was certified for its 10 additional beds, bringing the current capacity to 54 beds, the Home is 100% occupied. The only time that it is not 100% occupied is when a child must be transferred out to a hospital for an event such as a medical procedure. In most cases, the bed is held for the child, though Sunshine Children's Home has a significant waiting list and the bed could always be filled. The waiting list is documented in the project narrative of the CON application. With respect to projecting 99.41% utilization, in addition to accommodating children currently on the facility's waiting list, the project is aimed at repatriating the substantial number of children currently placed out of state for these services and to prevent children from being placed out of state in the future.

Capability and Feasibility

The applicant will finance \$22,547,942 at an interest rate of 5% for a twenty year term. The remainder, \$7,515,980, will be met via equity from Ari Friedman of MSMF Group, LLC d/b/a/ Sunshine Children's Home and Rehab Center and from the operations of Sunshine Children's Home and Rehab Center.

Working capital requirements are estimated at \$5,254,468, which is equivalent to two months of incremental third year expenses. The applicant will finance \$2,627,234 at an interest rate of 5% for a five year term. The remainder, \$2,627,234, will be provided as equity from Ari Friedman of MSMF Group, LLC d/b/a Sunshine Children's Home and Rehab Center. BFA Attachment A and BFA Attachment B are the personal net worth statements of the members of MSMF Group, LLC, and the December 31, 2013 internal financial statements of Sunshine Children's Home and Rehab Center, which indicates the availability of sufficient funds for the equity contribution. The applicant submitted an affidavit indicating that equity will be provided disproportionate ownership percentages.

The submitted budget indicates an incremental net income of (\$858,826) and \$15,674 during the first and third years, respectively. The first year loss will be offset via operations and from working capital proceeds. The submitted budget appears reasonable.

BFA Attachment B is the financial summary of Sunshine Children's Home and Rehab Center from 2010 through 2012. As shown, the facility had an average negative working capital position and an average positive net asset position. The applicant has indicated that the reason for the average negative working capital position is that the facility's rate did not adequately address its costs. Also, the facility incurred an average net income of \$1,761,234 from 2010 through 2012. The applicant has indicated that the reason for the 2010 losses is the result of the following: the facility's rate did not adequately address its costs. The applicant has indicated that they implemented the following steps to improve operations: the facility received a rate increase that reflected its actual costs; the facility increased occupancy from 2010, and the facility increased certified bed capacity from 44 to 54 beds.

BFA Attachment C is the December 31, 2013 internal financial statements of Sunshine Children's Home and Rehab Center. As shown, the facility had a positive working capital position and a positive net asset position through September 30, 2013. Also, the facility achieved a net income of \$3,162,808 through December 31, 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	Personal Net Worth Statement- Members
BFA Attachment B	Financial Summary- Sunshine Children's
BFA Attachment C	December 31, 2013 internal financial statements of Sunshine Children's Home and Rehabilitation Center



Public Health and Health Planning Council

Project # 132369-C
Elizabeth Seton Pediatric Center

Program: Residential Health Care Facility
Purpose: Construction

County: Westchester
Acknowledged: January 17, 2014

Executive Summary

Description

New York Founding Hospital Center for Pediatric Medical and Rehabilitative Care, Inc. d/b/a Elizabeth Seton Pediatric Center (Elizabeth Seton Pediatric Center), a 137-bed not-for-profit corporation located at 300 Corporate Boulevard South, Yonkers, New York (Westchester), requests approval to add 32 pediatric ventilator-dependent beds, bringing the total bed count for the facility to 169 certified beds. The facility will add 26,006 gross square feet and renovate 8,589 gross square feet in order to accommodate the 32 bed expansion.

DOH Recommendation
Contingent Approval

Need Summary

There will be a change in the number of beds to this facility as a result of this application. Elizabeth Seton Pediatric Center's utilization from 2010-2012 was 99.1%, 99.1%, and 99.2%, respectively. Current utilization for this facility, as of June 11, 2014 is 99.3%.

Program Summary

The 32-bed expansion of Elizabeth Seton Pediatric Center will help meet the demand for pediatric nursing home placement, and address the State priority of repatriating children currently residing in out of state facilities. The design of the addition is innovative, and reflects sensitivity to the needs of the children.

Financial Summary

The total project costs of \$23,341,265 will be funded as follows: \$5,932,564 in fund raising and \$17,408,701 taxable FHA-insured mortgage under section 241a, with a 25 year term at a 5.22% interest rate.

Budget	Revenues	\$71,812,945
	Expenses	<u>71,634,762</u>
	Gain (Loss)	\$178,183

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. Please mail the check to the Bureau of Project Management, Room 1842 Corning Tower, Empire State Plaza, Albany, New York 12237. Once mailed, please upload a copy of the check through the contingencies tab in NYSECON. [PMU]
2. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
3. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily 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 and Department of Health approval of the program to serve ventilator dependent children in the proposed beds. [LTC]
5. Submission of and programmatic review and approval of the final floor plans. [LTC]
6. 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. 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 sources and uses statement and a debt amortization schedule, for both new and refinanced debt. [BFA]
7. Submission of documentation of contributions to be used as the source of financing that is acceptable to the Department of Health. [BFA]
8. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-04. [AER]

Approval conditional upon:

1. The project must be completed within five years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Adherence to standards put forth by the Department regarding services to ventilator dependent children. [LTC]
3. The effective date for the certification of the additional beds will be determined by the Metropolitan Area Regional Office – New Rochelle. [LTC]
4. Justification and programmatic approval for the introduction of four bedded rooms into the nursing home, prior to the submission of final plans. [LTC]
5. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction. [AER]
6. The applicant shall complete construction by June 15, 2017. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date
August 7, 2014

Need Analysis

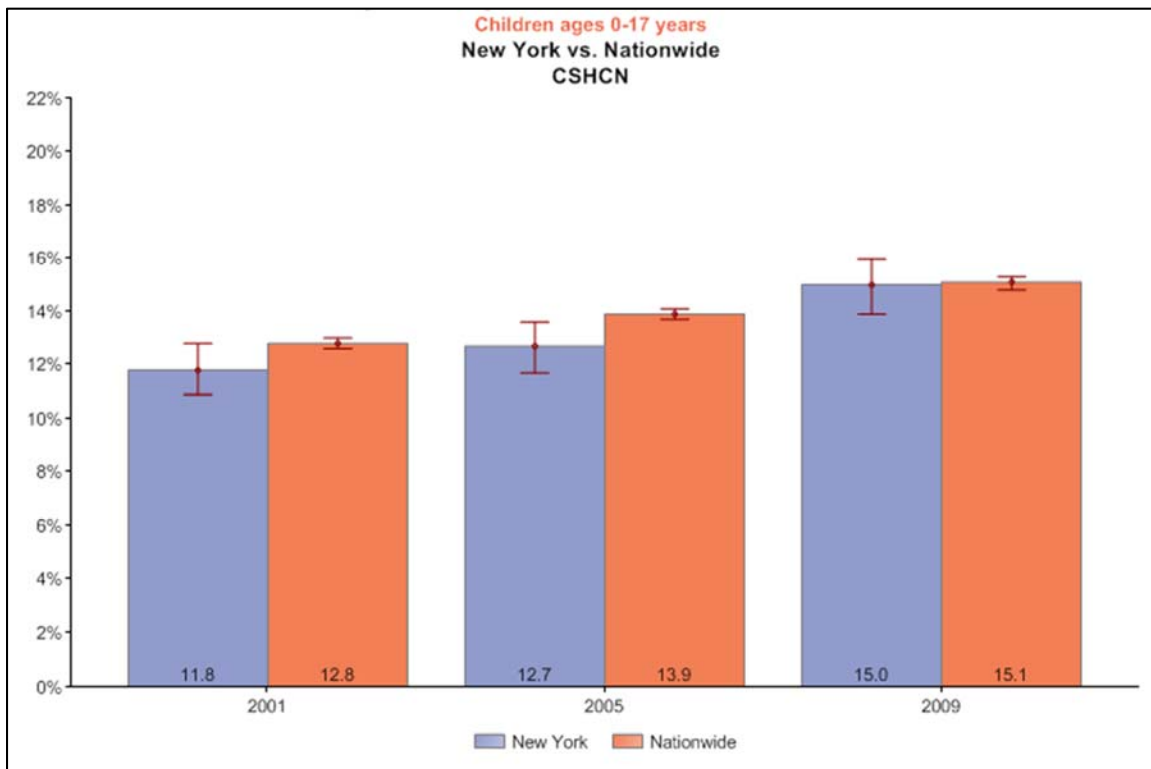
Project Description

Elizabeth Seton Pediatric Center is an existing 137-bed Article 28 residential health care facility, located at 300 Corporate Boulevard South, Yonkers, 10701, in Westchester County. Elizabeth Seton Pediatric Center seeks approval to add 32 net new pediatric residential health care facility (RHCF) ventilator-dependent beds and to construct a 3-story addition to their facility to accommodate the additional beds. Upon completion, the facility's total bed capacity will increase from 137 to 169.

Analysis

Elizabeth Seton Pediatric Center's request for additional RHCF pediatric beds is submitted in the context of an overall increase in the number of children with special health care needs in New York State and nationwide.

The chart below shows a comparison between New York State and the rest of the country, which reflects an overall increase in the number of children with special health care needs (CSHCN).¹



Special care needs children are children that have or are at increased risk for a chronic, physical, developmental, behavioral, or emotional condition and who also require health and related services of a type of amount beyond that normally and routinely required by children.

As a result of increases in the number of children with special health care needs, several trends are also becoming apparent in this specific population. Research articles show that advances in medical therapies, technologies, and the expansion of supportive care options have contributed to the survival of children with highly complex medical conditions.²

¹ National Survey of Children with Special Health Care Needs. NS-CSHCN 2009/10.

² Benneyworth, B. D., Gebremariam, A., Clark, S. J., & Davis, M. M. (2011). Inpatient Health Care Utilization for Children Dependent on Long-term Mechanical Ventilation. *Pediatrics*, 127(6), e1533-e1541.

Dumas, H. M. (2012). Rehabilitation Considerations for Children Dependent on Long-Term Mechanical Ventilation. *ISRN Rehabilitation*, 1-15.
Haffner, J. C., & Schurman, S. J. (2001). The technology-dependent child. *Pediatric Clinics of North America*, 48, 751-764.

Since 2010, Elizabeth Seton Pediatric Center's pediatric RHCF occupancy rate has exceeded 99%, with an average length of stay of 3.1 years per patient. The facility currently has two wait lists, with a combined total of 29 children; one list for ventilator-dependent children (general referral/immediate admission) and one for non ventilator-dependent children (active list). These totals do not include children that may also appear on other pediatric facilities current wait lists. These wait lists exist not only due to the lack of pediatric beds, but also due to the lack of long-term pediatric care and services in the area. These conditions result in children being discharged from acute care hospitals to inappropriate settings. This ultimately leads to re-hospitalizations and unnecessary expenses. Since these children cannot be placed in the appropriate care settings, many seek placement in out-of-state facilities. There are 72 pediatric patients receiving long term care and services, including ventilator-dependent care and services in pediatric nursing home facilities outside of New York State.

Approval of these additional pediatric beds will allow Elizabeth Seton to admit all the children currently on its wait lists. In addition, this proposal also supports the efforts of the Medicaid Redesign Team (MRT#68) which allows for repatriation of children currently in out-of-state nursing facilities.

Because pediatric beds are not covered by the RHCF bed need methodology set forth in 10 NYCRR Section 709.3, the requested increase in pediatric ventilator-dependent RHCF beds will have no effect on the current RHCF bed need.

Shown in the table below is a bed need chart reflecting the proposed changes to this facility:

Elizabeth Seton Pediatric Center	Current	Proposed Action	Upon Completion
RHCF Pediatric Vent Beds	137	32	169
Total	137	32	169

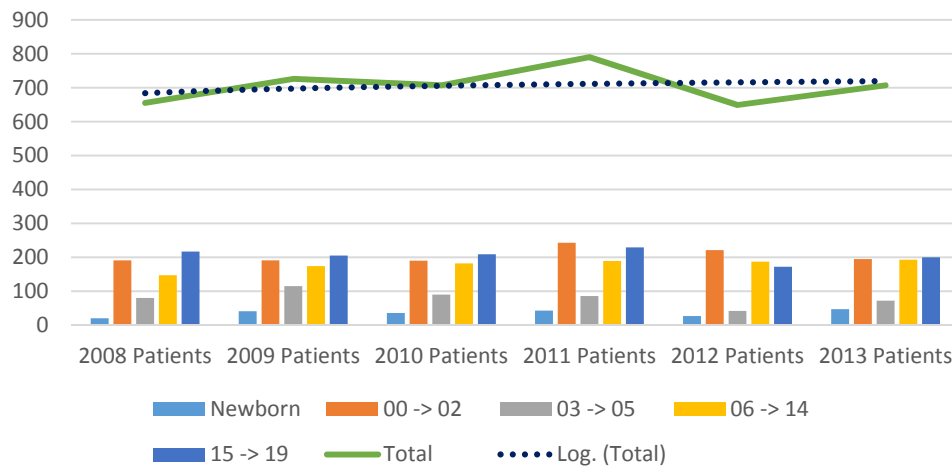
There are nine residential health care facilities offering in pediatric services throughout New York State. Of these, only five operate solely specific to pediatric care. Two of these are in Westchester County - Elizabeth Seton Pediatric Center and Sunshine Children's Home and Rehabilitation Center (also operating at close to 100% occupancy).

Below is a table and chart showing the number of children discharged from all New York State hospitals to skilled nursing facilities between 2008 and 2013. The accompanying chart shows a nominal upward trend over that time period.

Age Group	2008 Patients	2009 Patients	2010 Patients	2011 Patients	2012 Patients	2013 Patients
Newborn	20	41	36	43	27	47
00 -> 02	191	191	190	243	221	195
03 -> 05	80	115	90	86	42	72
06 -> 14	147	174	182	189	187	193
15 -> 19	217	205	209	229	172	200
Total	655	726	707	790	649	707

Newacheck, P. W., Strickland, B., Shonkoff, J. P., Perrin, J. M., McPherson, M., McManus, M., . . . Arango, P. (1998). An epidemiologic profile of children with special health care needs. *Pediatrics*, 102, 117-123.

Discharge Disposition to SNF 2008-2013



Source: SPARCS

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 of Medicaid admissions, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or Health Systems Agency percentage, whichever is applicable.

Elizabeth Seton Pediatric Center's Medicaid admissions of 96.2% in 2010 and 91.2% in 2011 far exceeded the Westchester County 75% rates of 21.42% in 2010 and 23.82% in 2011.

Conclusion

The proposal to add 32 net new pediatric ventilator-dependent RHCF beds in the facility would enhance the ability to appropriately place the current wait list of children seeking skilled nursing facility care. Based on the facility's current utilization and the proposal to immediately add 32 residents upon project completion, the applicant's revised occupancy rate would be 97.6%. The reduction in occupancy would also allow the facility to repatriate some of the out-of-state pediatric residents.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	EXISTING	PROPOSED
FACILITY NAME	Elizabeth Seton Pediatric Center	Same
ADDRESS	300 Corporate Boulevard South Yonkers, NY 10701	Same
RHCF CAPACITY	137	169
ADHC PROGRAM CAPACITY	N/A	Same
TYPE OF OPERATOR	Voluntary / Non-profit	Same
CLASS OF OPERATOR	Corporation	Same
OPERATOR	New York Foundling Hospital Center for Pediatric, Medical and Rehabilitative Care, Inc.	Same

Construction Application Review

Elizabeth Seton Pediatric Center (Elizabeth Seton), a 137-bed pediatric nursing home located in Westchester County proposes to add thirty two (32) ventilator dependent beds through renovation and expansion to meet the increasing demand for pediatric placements in-state, and repatriate children currently residing in out of state pediatric nursing homes. Upon completion, Elizabeth Seton will operate 169 pediatric nursing home beds, with 48 beds certified as ventilator dependent. The facility consistently operates at nearly 100 percent occupancy, including the 16 existing certified ventilator beds.

Elizabeth Seton serves children with a range of medical complexities as well as a primarily low income, Medicaid population. The facility provides a wide variety of medical care services, including long term ventilator dependent care, chronic respiratory management, short-term rehabilitation, palliative care, preventative and curative skin care, genetic evaluation, and comprehensive feeding therapy. The Pediatric Center currently has 6 Neighborhoods of care, two of which are dedicated to serve children requiring ventilator care. Children are admitted to any one of the 4 double bedrooms based on age, gender, and an assessment of their health conditions, medical, and psychosocial needs. The facility has been designed to supply piped-in oxygen in virtually the entire building, including all resident bedrooms, 6 family dining rooms, 14 school age and preschool classrooms, and the specialty rooms for early intervention, child life, music, art and sensory therapy.

Educational services are provided by the John A. Coleman School, an on-site, non-public, special education school. The Coleman School provides preschool instruction for children ages 3-5, school age instruction for children ages 5 to 21, and an early intervention special instruction (providing specialized education and rehabilitation therapy in a family room located in a residential neighborhood) for children ages birth to 3. Each child participates in a structured learning environment, geared to their medical acuity and his/her health needs. The educational services are integrated with the socialization and therapeutic needs of the child to present a seamless pediatric program. All of the children attend school each day with their nurses and respiratory therapists accompanying them. Currently, the facility clusters 14 classrooms on the first floor, with access to outside areas, including a secured walking path and two playgrounds. With the proposed addition, two additional classrooms will be created for a total of 16 classrooms. The proposal includes creating one enlarged playground of approximately 40' by 120' as well as a new, covered play area adjacent to the two new classrooms.

Physical Environment

In March 2012, New York Foundling Hospital relocated its facility from Manhattan to Yonkers, and adopted the name Elizabeth Seton Pediatric Center. The current facility on Corporate Boulevard South in Yonkers sits on an approximate 6.5 acre parcel and is located within the South Westchester Executive Park. The structure consists of 4 stories plus a basement and penthouse for mechanical equipment, and totals approximately 166,146 square feet. Access to the nursing home site will remain unchanged with three separate vehicular access points, and sufficient parking exists to serve the expanded facility. The

site also includes secure outdoor playing areas for the children and their families as well as a staff and visitor outdoor area.

Elizabeth Seton is proposing to construct three story addition totaling 26,000 square feet on the southeast end of the existing building. The project will also renovate approximately 8,500 square feet mostly located in the southeast end of the facility. Two new classrooms will be created through renovated space in the northwestern end of the facility.

Entrance into the facility is made at grade level (Level 1), which contains the reception area and lobby, school classrooms, gym, therapy pool, café, multipurpose room, and Board Room. The physical therapy area will be relocated to the first floor of the addition from its current location on Level to enable the construction of the new resident neighborhoods. Level 2 also includes areas for music and art therapy, dental exams, sound-wave audiology, a snoezelen room for multi-sensory therapy, library/care planning, and a medical and clinical office suite. Level 3 currently locates the occupational therapy area with activities of daily living (ADL) kitchen, music therapy room, a library/care planning room, and an executive administrative office suite. Level 4 contains the speech therapy room, two infant play areas, a pharmacy, library/care planning area, and a family overnight (visit) suite.

The proposed expansion for the new units will take place on Levels 2 and 3 of the facility. Each level will add one neighborhood, comprised of two households each with two 4-bedded rooms for a total of 16 children per neighborhood. The four bedroom layout resembles a four leaf clover, with a centralized nurse's station situated in the center allowing for close monitoring and supervision, with individualized space and privacy still maintained. The applicant has suggested that even though the rooms are of different configuration than the existing nursing units, the design will result in increased access to natural light. The new building expansion will utilize the same bedroom layout as the existing facility. Each eight bed household is in close proximity to a neighborhood family dining room and play space. The applicant states that attention will be paid during construction to ensure it does not affect operations in other residential neighborhoods.

Oxygen, vacuum, and medical air will be provided for each bed in a vertical headwall within the overall millwork in order to minimize the institutional appearance of the medical support devices. Custom designed cabinetry modules including shelf and drawer space for each child's personal items as well as storage space for staff and caregivers will be provided. Each bedroom will have a bathroom/personal care area that includes a toilet, hand washing sink, bathing station and grooming area for both infants and larger children. As mentioned earlier, bedrooms will be equipped with a centralized nurse's station, also referred to as a "touchdown station," which is used as a charting desk, medication cart, and observation area to provide monitoring for all of the children in the room.

The existing building's services are sized to accommodate the planned expansion, including staff support and lockers, mechanical equipment areas, storage areas and boiler. Additional air handlers will be required and will be located on the roof of the new expansion, and additional suction capacity will be required for the ventilators.

Compliance

Elizabeth Seton Pediatric Center is currently in substantial compliance with all applicable codes, rules and regulations.

Conclusion

The addition of thirty two (32) pediatric nursing home beds at Elizabeth Seton Pediatric Center will accommodate the increase in demand for pediatric care in New York State and will not have an adverse impact on the existing services at the pediatric center. The proposed design is nearly identical to the existing nursing units, which has been shown to be effective for the care of the children. The inclusion of four bedded rooms in the new construction, which is contrary to the existing design, will require additional discussion prior to the submission of final plans.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total project costs for new construction, renovation and movable equipment is estimated at \$23,341,265, broken down as follows:

New Construction	\$12,618,967
Renovation & Demolition	2,294,981
Site Development	325,984
Design Contingency	1,523,993
Construction Contingency	876,745
Planning Consultant Fees	329,190
Architect/Engineering Fees	1,111,552
Other Fees	348,188
Movable Equipment	2,091,912
Financing Costs	971,980
Interim Interest Expense	718,109
CON Application Fee	2,000
CON Processing Fee	<u>127,664</u>
Total Project Cost	\$23,341,265

Total costs are based on a February 17, 2016 start date with a sixteen month construction period.

The applicant's financing plan appears as follows:

Equity: Fund Raising	\$5,932,564
Taxable FHA-Insured Mortgage (25 year terms @5.22%)	<u>17,408,701</u>
Total	\$23,341,265

A letter of interest has been provided by Cain Brothers Funding LLC, for the FHA-insured mortgage. During 2014, Elizabeth Seton Pediatric Center expects to raise \$2,500,000 toward its fund raising goal of \$5,932,564. The applicant states annually, they raise over \$665,000 per year from fundraising and annual events. Their first capital campaign named "Let us Build a House" successfully raised \$10,000,000 in which all pledges were collected on time.

DOH does not utilize residential health care (RHCH) bed caps for pediatric beds.

Operating Budget

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

	<u>PER DIEM</u>	<u>FIRST YEAR TOTAL</u>	<u>PER DIEM</u>	<u>THIRD YEAR TOTAL</u>
Revenues:				
	\$1,187.25	\$71,291,989	\$1,189.00	\$71,421,314
Medicaid				
Private Pay	662.00	241,629	662.00	241,631
Other Operating*		<u>150,000</u>		<u>150,000</u>
Total Revenues:		\$71,683,618		\$71,812,945
Expenses:				
Operating		\$60,381,841		\$60,390,162
Capital		<u>11,402,917</u>		<u>11,244,600</u>
Total Expenses:		\$71,784,758		\$71,634,762
Net Income (Loss):		<u>\$(101,140)</u>		<u>\$178,183</u>

Utilization (resident days)	60,413	60,760
Occupancy	97.94%	98.5%
*Contributions		

The following is noted with respect to the submitted operating budget:

- Medicaid revenues are based on the current rates.
- Private revenues are based on the current rates.
- Overall utilization is projected at 98.5%. Utilization for the years from 2006 through 2013 averaged 98.92% and on April 30, 2014 the facility reported on the DOH's Nursing Home Profile a 99.3% occupancy rate.
- Utilization by payer source for the first and third years is expected to average as follows:

Medicaid	99.4%
Private/Other	.6%
- Breakeven point is estimated at 98.2% in the third year

Capability and Feasibility

The total project costs of \$23,341,265 will be funded as follows: \$5,932,564 from fund raising with the remaining balance of \$17,408,701 coming from taxable FHA - insured mortgage under section 241a, at the above stated terms. The applicant has recently completed a successful capital campaign to build its current facility, which opened in 2012. As mentioned above, applicant's first capital campaign raised \$10,000,000. Each year the organization has been successful in raising over \$500,000 from fundraising and another \$165,000 from annual events and appeals. The applicant points out that the board of trustees has a proven record of raising funds, delivering projects on time and under budget, and expects to raise \$2,500,000 in 2014 for this project.

Working capital requirements are estimated at \$2,456,986, which appear reasonable based on two months of third year incremental budgeted expenses. BFA Attachment A are the December 31, 2012 and December 31, 2013 certified financial summary for New York Founding Hospital Center for Pediatric Medical and Rehabilitative Care, Inc. d/b/a Elizabeth Seton Pediatric Center, which indicates working capital requirements can be met from accumulated funds and operations.

The budget projects a \$101,140 operating loss in the first year and \$178,183 operating surplus in the third year. Revenues and expense assumptions are based upon historical experience in operating eight pediatric ventilator dependent beds after adjusting for volume and investment. Reimbursements by payor are based on current reimbursement models. The budget appears reasonable.

Review of BFA Attachment A shows the New York Founding Hospital Center for Pediatric Medical and Rehabilitative Care, Inc. d/b/a Elizabeth Seton Pediatric Center certified financial summary for 2012 and 2013, which had an average positive working capital position. For periods 2012 and 2013, the facility maintained an average positive net assets position and had an average positive \$354,970 in excess of revenues over expenses. The applicant notes that in 2012, the facility incurred a negative rate adjustment of \$800,000 (that covers the periods July 1, 2010 to December 31, 2011). Also in March of 2012, the facility incurred a one-time charge of \$1,418,069 to move its operations from the outdated facility located in Manhattan, into their newly constructed building in Yonkers, New York. These additional (one-time items) caused an operating loss in 2012, which was offset by \$519,997 in other non-operating revenues.

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.

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 2012 and 2013, New York Founding Hospital
Center for Pediatric Medical and Rehabilitative Care, Inc. d/b/a
Elizabeth Seton Pediatric Center



Public Health and Health Planning Council

Project # 141137-B
Blythedale Children's Hospital

Program: Residential Health Care Facility
Purpose: Establishment and Construction

County: Westchester
Acknowledged: April 2, 2014

Executive Summary

Description

Blythedale Children's Hospital, an 86-bed not-for-profit hospital in Westchester County, is requesting approval for the establishment and construction of a 24-bed pediatric ventilator dependent nursing home. In 2012 Blythedale opened their new inpatient wing, vacating space on the hospital campus previously used for inpatient services. This proposal is seeking to renovate a portion of the vacated hospital to create a pediatric residential health care facility (RHCF) to serve long term ventilator discharges from Blythedale's hospital. The 24-bed RHCF unit will include 11 double bedded rooms and two private rooms, as well as appropriate ancillary and support space.

DOH Recommendation
Contingent Approval

Program Summary

Establish and construct a 24 bed pediatric ventilator dependent residential health care facility by using existing vacated space at the site of Blythedale Children's Hospital. This project will add capacity for pediatric ventilator care and deter pediatric ventilator

admissions to out-of-state residential health care facilities.

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

Financial Summary

Total project cost of \$12,584,132, will be by equity from operations.

Incremental Budget:

Revenues	\$9,598,131
Expenses	<u>9,350,503</u>
Excess of Revenues over Expenses	\$ 247,628

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Health Systems Management

Approval contingent upon:

1. 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. Please mail the check to the Bureau of Project Management, Room 1842 Corning Tower, Empire State Plaza, Albany, New York 12237. Once mailed, please upload a copy of the check through the contingencies tab in NYSECON. [PMU]
2. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
3. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily 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 and programmatic review and approval of the final floor plans. [LTC]
5. Submission and Departmental approval of the program to serve ventilator dependent children in the proposed beds. [LTC]
6. Submission of a plan which commits Blythedale Children's Hospital to restrict discharges to New York State pediatric nursing homes, consistent with the medical evaluation and care plan for each child, and the availability of an appropriate bed. Blythedale will work with the Department and other New York State pediatric nursing facilities to ensure the proper placement of all children prior to and following completion of the CON project. [LTC]
7. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-04. [AER]
8. Submission of evidence of site control, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Adherence to standards put forth by the Department regarding services to ventilator dependent children. [LTC]
3. An on-site walk through and inspection by Regional Office/Central office staff of the proposed space and supporting services to assess if it will independently meet the Article 28 requirements for RHCFs and adheres to the Centers for Medicare and Medicaid Services restrictions on shared space and services, prior to the submission of final drawings. [LTC]
4. 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]
5. The applicant shall complete construction by January 4, 2016. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

August 7, 2014

Need Analysis

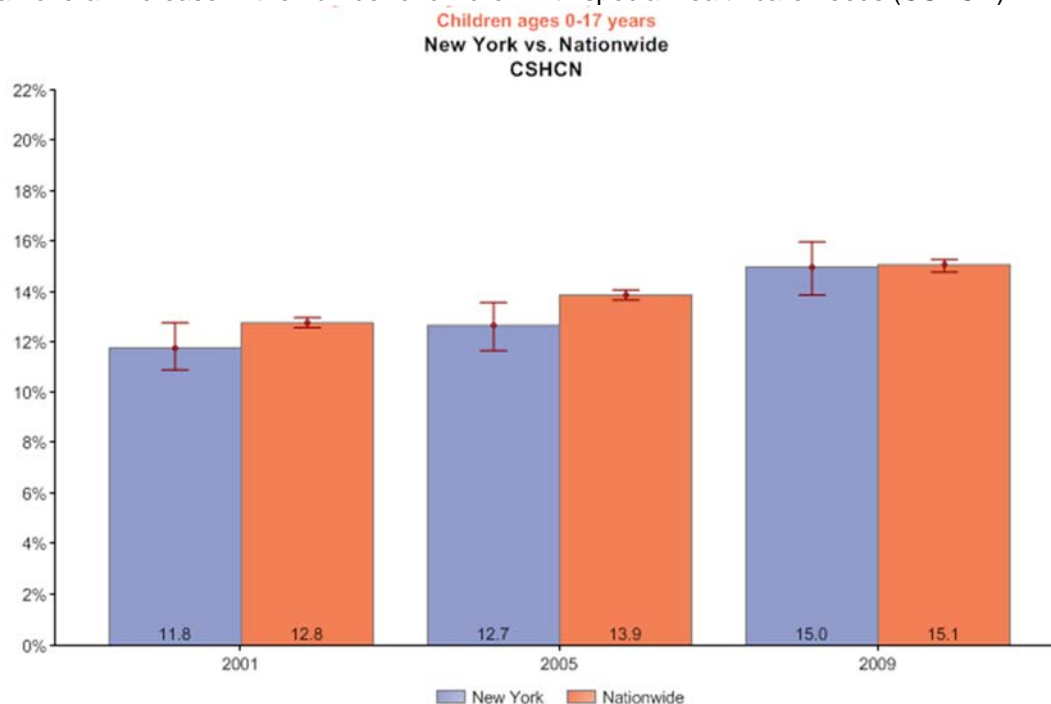
Project Description

Blythedale Children's Hospital is an existing 86-bed Article 28 voluntary, not-for-profit hospital, located at 95 Bradhurst Avenue, Valhalla, 10595, in Westchester County. Blythedale Children's Hospital seeks approval to establish and construct a 24-bed pediatric ventilator-dependent residential health care facility (RHCF).

Analysis

Blythedale's request for pediatric ventilator beds is submitted in the context of an overall increase in the number of children with special health needs, in New York State and nationwide.

The chart below shows a comparison between New York State and the rest of the country, which reflects an overall increase in the number of children with special health care needs (CSHCN).¹



Special care needs children are children that have or are at increased risk for a chronic, physical, developmental, behavioral, or emotional condition and who also require health and related services of a type of amount beyond that normally and routinely required by children.

Research articles show that advances in medical therapies, technologies, and the expansion of supportive care options have contributed to the survival of children with highly complex medical conditions.² This has led to a greater need for nursing home care and other long-term care services in the pediatric population.

¹ Source: National Survey of Children with Special Health Care Needs. NS-CSHCN 2009/10.

² Benneyworth, B. D., Gebremariam, A., Clark, S. J., & Davis, M. M. (2011). Inpatient Health Care Utilization for Children Dependent on Long-term Mechanical Ventilation. *Pediatrics*, 127(6), e1533-e1541.

Dumas, H. M. (2012). Rehabilitation Considerations for Children Dependent on Long-Term Mechanical Ventilation. *ISRN Rehabilitation*, 1-15.

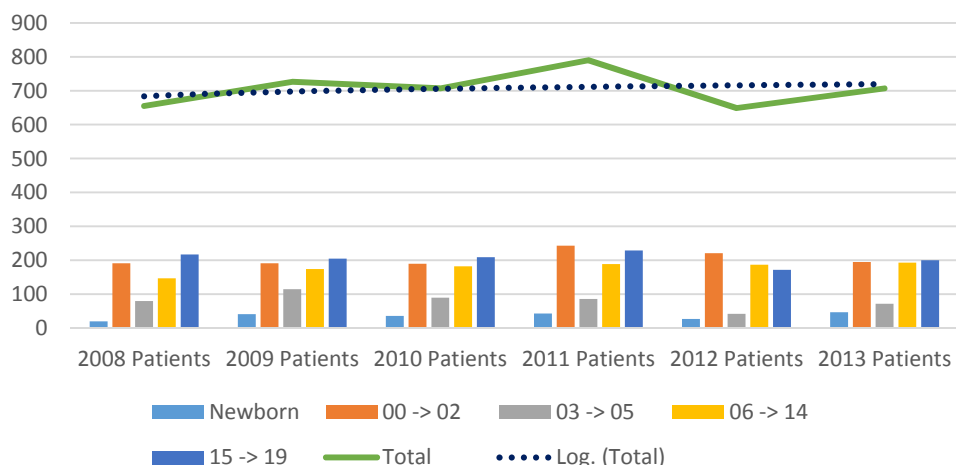
Haffner, J. C., & Schurman, S. J. (2001). The technology-dependent child. *Pediatric Clinics of North America*, 48, 751-764.

Newacheck, P. W., Strickland, B., Shonkoff, J. P., Perrin, J. M., McPherson, M., McManus, M., . . . Arango, P. (1998). An epidemiologic profile of children with special health care needs. *Pediatrics*, 102, 117-123.

The following table shows the number of children discharged from all New York State hospitals to skilled nursing facilities between 2008 and 2013. The accompanying chart shows a nominal upward trend over that time period.

Age Group	2008 Patients	2009 Patients	2010 Patients	2011 Patients	2012 Patients	2013 Patients
Newborn	20	41	36	43	27	47
00 -> 02	191	191	190	243	221	195
03 -> 05	80	115	90	86	42	72
06 -> 14	147	174	182	189	187	193
15 -> 19	217	205	209	229	172	200
Total	655	726	707	790	649	707

Discharge Disposition to SNF 2008-2013



Source: SPARCS

Blythedale Children's Hospital (Blythedale) was the first hospital in New York State to develop a pediatric ventilator-dependent unit to train parents in the care of their children so they can return home. For over 25 years, Blythedale has specialized in providing short term ventilator-dependent care for children who have a variety of diagnoses.

Table 1: Blythedale Children's Hospital Services

Audiology O/P	Primary Medical O/P
Clinical Laboratory Service	Radiology – Diagnostic
Coma Recovery	Renal Dialysis – Acute
Medical Social Services	Respiratory Care
Medical / Surgical	Therapy – Occupational O/P
Pediatric O/P	Therapy – Physical O/P
Pharmaceutical Service	Therapy – Speech Language Pathology
Physical Medical Rehabilitation	Traumatic Brain Injury Program
Physical Medicine and Rehabilitation O/P	

Source: HFIS, 2014.

Table 2: Blythedale Children's Hospital Beds by Service

Service Type	Number of Beds
Coma Recovery	3
Medical / Surgical	46
Physical Medicine and Rehabilitation	30
Traumatic Brain Injury	7
Total	86

Source: HFIS, 2014.

Blythedale is one of only 19 pediatric specialty hospitals in the United States and has the largest pediatric therapy department in New York State. Blythedale is also the only children's hospital in New York State with its own K-12 public school district on site. According to the applicant, through its inpatient, day hospital and outpatient programs, Blythedale treats approximately 300 children daily (from birth through age 19) who have high medical acuity.

There are nine residential health care facilities offering pediatric services throughout New York State. Of these, only five are dedicated solely to pediatric care. Two of these RHCF's are in Westchester County - Sunshine Children's Home and Rehabilitation Center and Elizabeth Seton Pediatric Center (both operating at close to 100% occupancy).

Referrals

Inpatient referrals to Blythedale come from all major teaching hospitals in the New York Metropolitan Area, the majority directly from pediatric and neonatal intensive care units. According to the applicant, while 85% of children discharged from Blythedale return home, each year some 50-60 children are unable to go home due to their medical condition, the sustainability of their home environment, and/or other factors.

Discharges

Nearly 70% of the patients Blythedale refers to nursing homes are residents of New York City. More than half of the children discharged from Blythedale to an RHCF are two years of age or younger, as shown in Table 3.

Table 3: Discharged to Skilled Nursing Facility

Age Group	2008 Patients	2009 Patients	2010 Patients	2011 Patients	2012 Patients	2013 Patients
00 -> 02	30	32	16	28	40	39
03 -> 05	5	4	5	7	1	2
06 -> 14	7	7	2	14	9	12
15 -> 19	2	3	5	3	7	6
Total	44	46	28	52	57	59

Source: SPARCS

Blythedale's request for beds is based on the special difficulty the facility has experienced in placing ventilator-dependent children. Because of the lack of resources and services for ventilator-dependent pediatric patients in Westchester County and surrounding areas, Blythedale discharges approximately 84 percent of its ventilator-dependent patients to nursing homes in either New Jersey or Upstate New York, the latter principally in the Albany area. These out-of-State and out-of-area placements compound the difficulties faced by these children and their families in bearing the burden of severe respiratory problems and ventilator dependence.

Table 4: Blythedale Discharges by Patient County of Origin

Patient County	2008		2009		2010		2011		2012		2013	
Bronx	8	18.2%	8	17.4%	7	25.0%	8	15.4%	11	19.3%	12	20.3%
Dutchess	9	20.5%	9	19.6%	0	0%	1	1.9%	1	1.8%	1	1.7%
Kings	0	0%	1	2.2%	8	28.6%	7	13.5%	18	31.6%	15	25.4%
Nassau	0	0%	4	8.7%	1	3.6%	4	7.7%	3	5.3%	4	6.8%
New York	4	9.1%	4	8.7%	0	0%	11	21.2%	10	17.5%	6	10.2%
Non-NYS	1	2.3%	0	0%	0	0%	2	3.8%	2	3.5%	2	3.4%
Orange	2	4.5%	0	0%	0	0%	0	0%	0	0%	1	1.7%
Putnam	2	4.5%	0	0%	0	0%	0	0%	0	0%	1	1.7%
Queens	9	20.5%	11	23.9%	7	25.0%	5	9.6%	6	10.5%	6	10%
Richmond	0	0%	0	0%	1	3.6%	0	0%	0	0%	0	0%
Rockland	1	2.3%	3	6.5%	2	7.1%	2	3.8%	1	1.8%	3	5.1%
Schenectady	0	0%	0	0%	0	0%	1	1.9%	0	0%	0	0%
Suffolk	6	13.6%	3	6.5%	0	0%	6	11.5%	1	1.8%	2	3.4%
Sullivan	0	0%	0	0%	1	3.6%	1	1.9%	0	0%	0	0%
Tompkins	0	0%	0	0%	0	0%	1	1.9%	0	0%	0	0%
Westchester	2	4.5%	3	6.5%	1	3.6%	3	5.8%	4	7.0%	6	10.2%
Total	44	100%	46	100%	28	100%	52	100%	57	100%	59	100%

Source: SPARCS Data, 2014.

The proposal to add a new RHCF unit to Blythedale's campus would serve patients 19 years and younger, across a broad spectrum of diagnoses. According to the applicant, the majority of children will be under the age of 3 when admitted and will include a cross-section of patients, some of whom will continue on a ventilator weaning program or parent training program and be discharged home. Others will be longer term patients, and some will be part of a palliative care program.

Conclusion

While Blythedale has a commendable record in weaning children from ventilator care for discharge home or to community settings, there remain 50 or more children annually whose medical condition, sustainability of their home environment, or other factors precludes their discharge to a less restrictive setting. The requested 24-bed RHCF would help to accommodate these children and result in fewer discharges to RHCFs in other states and to Upstate areas outside the Westchester and greater New York metropolitan areas.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	none	Blythedale Children's Hospital Pediatric Vent RHCF
Address	none	95 Bradhurst Avenue Valhalla, NY 10595
RHCF Capacity	none	24
ADHC Program Capacity	none	none
Type of Operator	none	Not for Profit Corporation
Class of Operator	none	Voluntary

Operator		Blythedale Childrens Hospital Inc. Board Members (voting rights): Howard Adler John Barker Thomas W Brock Jon M. Burnham William Cahn Laurence W. Cohen Edward M. Davidowitz Peggy Epstein Tanner Tim Evnin Darren M. Fogel John L. Furth Alan Gerstein Judith R. Wiener Goodhue Owen Gutfreund Terri Herenstein Jordana Holovach Scott R. Levy William g. Levy Michael Margulies Andrew Morrison David R. Pedowitz Abby Popper Peter D. Rittmaster Jeanne Savitt Lucy Schmolka Heidi Schwartz Steven Solomon Patricia B. Stanley Farrel Starker Frank A. Stern Lance Wachenheim Leslie Weissman
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Character and Competence - Background

Facilities Reviewed

Blythedale Children's Hospital	04/2004 to present
White Plains Hospital Center	01/2007 to present
The Guidance Center (Diagnostic and Treatment Center)	11/2009 to present

Individual Background Review

Howard Adler is president of Kurt Adler, Inc, an importer of holiday decorations, based in New York, NY.

Mr. Adler discloses the following health facility interests:

- Blythedale Children's Hospital
Board of Directors; Committees: Finance, Investment 01/2007 to present

John Barker is employed in portfolio management, since 1994, at Neuberger Berman, an investment firm in New York City. Mr. Barker discloses the following health facility interests:

- Blythedale Children's Hospital
Board of Directors; Committees: Finance 01/2000 to present

Thomas Brock retired in 2012 as CEO at Stone Harbor Investment Partners LP, in New York City. Mr. Brock discloses the following health facility interests:

- Blythedale Children's Hospital 01/1999 to present
Board of Directors; Committees: Finance, Investment, Strategic Planning

Jon M. Burnham is chairman and CEO at Burnham Financial Group, located in New York City, since 1991. Mr. Burnham discloses the following health facility interests:

- Blythedale Children's Hospital 01/1990 to present
Board of Directors; Committees: Investment, Nominating

William Cahn retired in 2009 as co-director of education at the Holocaust and Human Rights Education Center, in White Plains, NY. Mr. Cahn discloses the following health facility interests:

- Blythedale Children's Hospital 01/1992 to present
Board of Directors; Committees: Quality of Care

Laurence W. Cohen is currently employed as CEO at Seven Bridges Advisors, LLC. Mr. Cohen's prior employment, from 1990 to 2011, was as managing partner at Ehrenkranz and Ehrenkranz, LLP. Mr. Cohen discloses the following health facility interests:

- Blythedale Children's Hospital 01/1992 to present
Board of Directors; Committees: Nominating, Investment, Fundraising

Edward M. Davidowitz retired in 2008 as a NYS Supreme Court Justice. Mr. Davidowitz discloses the following health facility interests:

- Blythedale Children's Hospital 01/1983 to present
Board of Directors; Committees: Nominating, Quality of Care

Peggy Epstein Tanner retired in 1990. Ms. Tanner discloses the following health facility interests:

- Blythedale Children's Hospital 01/2004 to present
Board of Directors; Committees: Fundraising

Timothy W. Evnin is a partner and portfolio manager at Evercore Wealth Management, LLC, an investment management firm in New York City. Mr. Evnin discloses the following health facility interests:

- Blythedale Children's Hospital 01/2006 to present
Board of Directors, Treasurer; Committees: Executive, Finance, Investment, Compensation, Strategic Planning

Darren M. Fogel holds a Series 7 and 63 Securities License in good standing in New York. Mr. Fogel is employed as a portfolio manager at Neuberger Berman, LLC in New York City. Mr. Fogel discloses the following health facility interests:

- Blythedale Children's Hospital 01/2007 to present
Board of Directors; Committees: Finance, Fundraising, Nominating, Strategic Planning

John L. Furth is employed as vice chairman at Peter B. Cannell & Co, Inc., since January 2014. Prior employment was as vice chairman at Klingenstein, Fields & Co., also in the investment management industry. Mr. Furth discloses the following health facility interests:

- Blythedale Children's Hospital 01/2007 to present
Board of Directors; Past Board Chair; Committees: Executive, Investment, Finance, Nominating, Fundraising, Compensation

Alan J. Gerstein is a managing partner and senior portfolio manager, since 2004, at Blue Mountain Capital Management, LLC. Mr. Gerstein discloses the following health facility interests:

- Blythedale Children's Hospital 01/2013 to present
Board of Directors; Committees: Investment, Finance

Judith (Relles) Wiener Goodhue is a legislative director, since 1987, at Lower Hudson Education Coalition in Harrison, NY. Ms. Wiener Goodhue discloses the following health facility interests:

- Blythedale Children's Hospital 01/1987 to present
Board of Directors, Vice-Chairman; Committees: Executive, Quality of Care

Owen Gutfreund is an associate professor in urban affairs and planning at Hunter College since 2009. Mr. Gutfreund discloses the following health facility interests:

- Blythedale Children's Hospital 01/1991 to present
Board of Directors, Chairman; Committees: Executive, Strategic Planning, Fundraising, Nominating, Investment, Compensation, Finance

Terri (Kirshner) Herenstein is employed, since January 2013, in residential and commercial design at TK Interiors, LLC. Ms. Herenstein is an active volunteer at Chai Lifeline, a non-profit organization dedicated to meeting the non-medical needs of seriously ill children, their families and communities. Ms. Herenstein discloses the following health facility interests:

- Blythedale Children's Hospital 01/2007 to present
Board of Directors; Committees: Quality of Care

Jordana (Rothschild, Sontag) Holovach is the founder of Jacob's Cure, a non-profit foundation dedicated to raising funds to find a cure for Canavan's disease. Ms. Holovach discloses the following health facility interests:

- Blythedale Children's Hospital 01/2012 to present
Board of Directors; Committees: Fundraising, Marketing/Communications

Scott R. Levy was a managing director, from 2001 to January 2014, at Barclays PLC, an investment banking firm in New York City. Mr. Scott Levy discloses the following health facility interests:

- Blythedale Children's Hospital 01/2013 to present
Board of Directors; Committees: Finance, Investment

William G. Levy is a senior advisor at Capital Counsel LLC, a registered investment adviser. Mr. Levy discloses the following health facility interests:

- Blythedale Children's Hospital 01/1996 to present
Board of Directors; Committees: Finance, Investment

Michael L. Margulies is employed in real estate sales, acquisitions and analyses, since 2007, at The NJ Group LLC. Mr. Margulies discloses the following health facility interests:

- Blythedale Children's Hospital 01/1990 to present
Board of Directors; Committees: Strategic Planning, Quality of Care

Andrew Morrison is the CEO/Founder of Small Business Camp, a business development company. He is also currently vice president of Mentoring in Medicine, a non-profit organization that encourages low income students to pursue a career in medicine. Mr. Morrison discloses the following health facility interests:

- Blythedale Children's Hospital 01/2013 to present
Board of Directors; Committees: Marketing/Communications

David R. Pedowitz is a managing director at Neuberger Berman, an investment management firm in New York City. Mr. Pedowitz discloses the following health facility interests:

- Blythedale Children's Hospital 01/2008 to present
Board of Directors, Vice-Chairman; Committees: Executive, Strategic Planning, Finance, Nominating, Compensation

Abby Popper is employed, since 2001, in public relations/marketing at Jacob Burns Film Center, Inc, in Pleasantville, NY. Ms. Popper discloses the following health facility interests:

- Blythedale Children's Hospital 01/1986 to present
Member of Board of Directors; Committees: Marketing/Communications

Peter D. Rittmaster is a managing director, since 2012, at the private equity firm ParkStone Capital; and from 2004 to 2012 as managing director at RBC Capital Markets. Mr. Rittmaster discloses the following health facility interests:

- Blythedale Children's Hospital 01/1997 to present
Vice Chair of Board of Directors; Committees: Investment, Nominating

Jeanne Savitt is a licensed real estate salesperson in good standing in Connecticut. Ms. Savitt discloses the following health facility interests:

- Blythedale Children's Hospital 01/2008 to present
Member of Board of Directors; Committees: Marketing/Communications, Nominating

Lucille J. Schmolka has been retired since 2001. Ms. Schmolka discloses the following health facility interests:

- White Plains Hospital Center, Trustee 01/2007 to present
- Blythedale Children's Hospital 01/1990 to present
Board of Directors, Secretary; Committees: Executive, Quality of Care, Strategic Planning, Nominating, Compensation, Marketing/Communication

Heidi M. Schwartz has been retired since 1993. Ms. Schwartz discloses the following health facility interests:

- Blythedale Children's Hospital 01/2009 to present
Board of Directors; Committees: Quality of Care, Marketing/Communication

Steven A. Solomon is a director of business development at Tech Scholar LLC since 2009. His prior employment was as senior vice-president and general manager, recording media division, at Fuji Photo Film USA Inc. Mr. Solomon discloses the following health facility interests:

- Blythedale Children's Hospital 01/2003 to present
Board of Directors; Committees: Quality of Care, Marketing/Communication

Patricia Brennan Stanley was a faculty member and clinical coordinator at Columbia University from 2008 to 2012. Ms. Stanley discloses the following health facility interests:

- Blythedale Children's Hospital 01/1995 to present
Board of Directors; Committees: Marketing/Communication

Farrel Starker is the owner/co-founder of Designs That Donate LLC, an online retailer, established in 2013. She is an active volunteer with the Starlight Children's Foundation and Jacob's Cure. Ms. Starker discloses the following health facility interests:

- Blythedale Children's Hospital 01/2012 to present
Board of Directors; Committees: Fundraising, Marketing/Communication

Frank A. Stern retired in 2007 as president of Interocean, Inc., an importer of seafood. Mr. Stern discloses the following health facility interests:

- Blythedale Children's Hospital 01/1995 to present
Board of Directors; Committees: Finance, Investment, Quality of Care

Lance R. Wachenheim retired in 2000. Mr. Wachenheim discloses the following health facility interests:

- The Guidance Center, DTC (Secretary of Board) 11/2009 to present
- Blythedale Children's Hospital 01/2012 to present
Board of Directors; Committees: Quality of Care

Leslie Weissman is co-owner of Presents for Purpose, LLC. Ms. Weissman discloses the following health facility interests:

- Blythedale Children's Hospital 01/2012 to present
Board of Directors; Committees: Marketing/Communications, Fundraising

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of Blythedale Children's Hospital, White Plains Hospital Center, and The Guidance Center for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

Project Review

Blythedale Children's Hospital (Blythedale) currently operates an 86 bed pediatric inpatient facility in Westchester County. In 2012 Blythedale opened their new inpatient wing, vacating space on the hospital campus previously used for inpatient services. This proposal is seeking to renovate a portion of the vacated hospital to create a pediatric residential health care facility (RHCF) to serve long term ventilator discharges from Blythedale's hospital.

Blythedale has specialized in providing short term ventilator dependent services for over 25 years. Inpatient referrals come from the major teaching hospitals in the greater New York metropolitan area. The hospital discharges ten to twelve ventilator dependent children per year to skilled nursing facilities. Due to the lack of in-state pediatric long term care ventilator beds in the NYC area, most of these children are discharged to Wanaque Center for Nursing and Rehabilitation in New Jersey. Approximately fifty of the children currently residing in out-of-state nursing homes have been referred by Blythedale. Blythedale now proposes to retain these out-of-state discharges as a source of referrals for the new RHCF.

Blythedale will draw upon its experience in operating a successful inpatient ventilator program, including pediatric pulmonary oversight and 24/7 pulmonary and respiratory support by pediatric respiratory therapists. The hospital has significant experience in caring for children dependent on newer modalities (BiPAP, CPAP, and high nasal cannula) and complex medication protocols. The proposed RHCF will draw upon the hospital's existing weaning protocols which have resulted in 50% of the hospital's ventilator patients being successfully weaned during their stay, with 75% of its discharges able to breathe on their own for twelve hours or more. The hospital operates its own separate special act public school district and building, the Mount Pleasant Blythedale School. This on-site 34,000 square foot school is attached to and serves the patients of the hospital exclusively, and will have sufficient surplus capacity to serve the proposed RHCF. This proposal would give Blythedale the ability to offer long term vent children a continuum of care and education as they transition from the hospital to the RHCF.

Physical Environment

The proposal is to renovate the space previously used by Blythedale Children's Hospital to create a twenty four (24) bed pediatric nursing home in space currently housing the outpatient, pharmacy, materials management, and administration departments. The RHCF will be located at the end of a corridor on the second floor of the building. Although the space is located on the second floor the topography of the site will allow the proposed facility to be accessed from the outside without the need to traverse through hospital space. Visitors and family will be able to enter the RHCF directly from the outside, and the site layout also permits the RHCF to have its own parking and dedicated secure outside recreational space.

The design of the nursing unit forms an oval with resident rooms along the exterior walls and support services located in the interior hub. The central hub will house resident services, including a separate infant playroom and personal care area. Dining, recreation and therapy rooms are located at midway points along the central corridor acting as destination points, encouraging interaction in large or small social groups. The corridor through the unit also widens out naturally to create rest stops which encourage residents to socialize with staff, family and other residents. Therapy space is limited to physical and occupational therapy, and speech and audiology. Additional therapeutic resources, such as art and music therapy rooms, and sensory stimulation should be addressed as the program is further developed. The floor also has a centrally located tub/shower room to provide for the bathing needs of the residents.

The floor will consist of eleven (11) double bedded rooms and two (2) single rooms and will comply with 10NYCRR 713-4.4(c). The layout of the floor will result in a number of resident rooms having an angular design instead of the traditional square or rectangular resident room. Every room will have ventilator capability with piped-in medical gases and suction. State-of-the-art medical technology and monitoring equipment will be used to enable staff to respond to patients with rapidly changing conditions. The proposed rooms will contain ADA compliant bathrooms and have adequate space to allow for the additional equipment that may be required in the care of ventilator residents. The size of the double rooms allows the placement of furniture to meet the needs of the each resident and his/her family.

Other support services are located away from the proposed nursing facility, including the Mount Pleasant Blythedale School and therapy pool, and are accessed through connecting hallways. The location of these services has been selected to avoid transit through the inpatient hospital units. All non-resident space will also be designed to support children on ventilators. Medical gases are available in the school, with portable oxygen tanks and respiratory equipment utilized while the child is being transported. Emergency electrical power is available in all areas and medical equipment used for transportation will have battery backup capability. The building's electrical system is currently certified as Type 1 compliant. Family of the RHCF residents will have access to the family resources provided within the core of the hospital campus. Since the RHCF will be adjacent to and dependent upon the hospital for some functions, additional measures will be required to ensure that the proposed facility will operate as a freestanding RHCF, and adhere to all Centers for Medicare and Medicaid Services regulations regarding the use of shared space and services.

Conclusion

Since the RHCF will be located in existing space, the proposal presents a relatively quick and cost effective solution for the the current demand for pediatric ventilator beds. Blythedale also has existing ventilator programs and resources which can be used to ramp-up RHCF operations. Due to the proposed layout of the RHCF in relation to the hospital, measures will need to be undertaken to ensure that the nursing home will function as an independent facility and adhere to the Centers for Medicare and Medicaid Services restrictions on shared space and services.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$12,584,132, further broken down as follows:

Renovation and Demolition	\$7,945,572
Site Development	50,000
Asbestos Abatement or Removal	310,325
Design Contingency	794,557
Construction Contingency	910,045
Architect/Engineering Fees	714,800
Construction Manager Fees	239,100
Other Fees (Consultant)	178,700
Moveable Equipment	1,370,210
CON Fee	2,000
Additional Processing Fee	<u>68,823</u>
Total Project Cost	<u>\$12,584,132</u>

Project costs are based on a September 2, 2014 construction start date and an eight month construction period. The applicant will provide equity from operations to meet the total project cost.

Operating Budget

The applicant has submitted an incremental operating budget, in 2014 dollars, during the third year after project completion, summarized below:

	<u>PER DIEM</u>	<u>TOTAL</u>
Revenues:		
Medicaid Managed Care	\$1,107.83	\$9,034,340
Commercial Managed Care	1,349.61	<u>580,332</u>
Revenues		\$9,614,672
Other Operating Revenue		<u>188,199</u>
Total Gross Revenues		\$9,802,871
Less Bad Debt		<u>204,740</u>
Total Revenues		\$9,598,131
Expenses:		
Operating		\$8,556,949
Capital		<u>793,554</u>
Total Expenses		\$9,350,503
Excess of Revenues over Expenses		\$247,628
Utilization: (patient days)		8,585
Occupancy		98.00%

Utilization, broken down by payor source during the first and third years for the 24 beds is as follows:

	<u>Year One</u>	<u>Year Three</u>
Medicaid Managed Care	95.00%	95.00%
Commercial Managed Care	5.00%	5.00%

Expense assumptions are based upon the staffing complement for this unit based upon RHCF regulations, and Blythedale's clinical experience in providing care for children who are ventilator dependent, as are projections of non-salary expenses. Utilization assumptions are based on Blythedale's experience in providing care to children who are ventilator dependent.

Capability and Feasibility

Project costs of \$12,584,132 will be met via operations of Blythedale Children's Hospital.

Working capital requirements are estimated at \$1,558,417, which is equivalent to two months of third year expenses. The applicant will provide equity from operations to meet the working capital requirement. BFA Attachment A are the 2012 certified financial statements and the 2013 draft certified financial statements of Blythedale Children's Hospital, which indicates the availability of sufficient funds to meet the total project cost and the working capital requirements.

The submitted budget indicates an incremental excess of revenues over expenses of \$247,628 during the third year after project completion. Revenues are based upon the cost of services and are comparable to published rates for other pediatric RHCF service providers. 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 with a cost based capital component payment methodology to a negotiated reimbursement methodology. Facility payments will be the result of negotiations between the managed long term care plans and the facility. At this point in time, it cannot be determined what financial impact this change in reimbursement methodology will have on this project.

As shown on BFA Attachment A, the facility had an average positive working capital position and an average positive net asset position from 2012 through 2013. Also, the facility incurred average losses of \$1,236,281 from 2012 through 2013. The applicant has indicated that the reason for the 2013 loss was the result of the facility having a dramatic and sudden decrease in the hospital's census related to length of stay (LOS). While the hospital had 20% more admissions, the LOS decrease reduced the census. The hospital took corrective action and reduced both its payroll and non-salary budget by 9% to bring expenses in line with revenues.

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 2012 Certified Financial Statements and 2013 Draft Certified Financial Statements of Blythedale Children's Hospital.



Public Health and Health Planning Council

Project # 141168-E
Cayuga Health System

Program: Hospital
Purpose: Establishment

County: Tompkins
Acknowledged: April 23, 2014

Executive Summary

Description

Cayuga Health System, Inc. a proposed New York not-for-profit corporation, is seeking approval to become the active parent and co-operator of Cayuga Medical Center (CMC), a 204-bed facility in Ithaca and Schuyler Hospital (SH), a 25-bed critical access Hospital in Montour Falls. The hospitals have been working together since 2011, through collaborative service agreements, to improve the quality and access to care in their respective service areas. Various clinical services such as cardiology, orthopedic surgery, general surgery, anesthesia, pathology, and wound care, have been shared. In 2013, SH designated CMC as its Designated Transfer Hospital, as submitted to NYSDOH.

The vision of the Cayuga Health System is to further the ability for both organizations to meet their missions and realize their visions to improve the overall health care of their communities through the following stated goals:

- To improve quality, safety and access to care in the hospitals', service areas,
- To improve the health of the communities to be served,
- To establish a model of governance and control to ensure local community focus, and
- To ensure that the hospitals remain financially viable.

DOH Recommendation

Contingent Approval

Need Summary

Cayuga Health System is seeking approval to be established as the active parent of both Cayuga Medical Center and Schuyler Hospital. There will be no change in beds or services for either hospital. The applicant has set goals to improve quality and access to care while improving overall community health. It is the Department's hope that the continued collaboration between these two hospitals and county health departments will help the applicant reach these goals.

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 capital costs associated with this project.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Health Systems Management

Approval contingent upon:

1. Submission of evidence of approval by the Office of Mental Health, acceptable to the Department. [PMU]
2. Submission of an executed consent for the proposed changes from necessary lenders, insurers and trustees acceptable to the Department of Health. [BFA]
3. Submission of evidence of the adoption of the bylaws of Cayuga Health System, Inc., acceptable to the Department. [CSL]
4. Submission of evidence of the adoption of the restated bylaws of Cayuga Medical Center at Ithaca, Inc., acceptable to the Department. [CSL]
5. Submission of evidence of the adoption of the restated bylaws of Schuyler Hospital, Inc., acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

August 7, 2014

Need Analysis

Background

Cayuga Health System is seeking approval to be established as the active parent of Cayuga Medical Center (CMC) located at 101 Dates Drive, Ithaca, NY 14850, and of Schuyler Hospital, a critical access hospital located at 220 Steuben St, Montour Falls, NY 14865.

Bed Type	Cayuga Hospital Beds	Schuyler Hospital Beds
Coronary Care	8	
Intensive Care	8	
Maternity	20	
Medical / Surgical	127	
Physical Medicine and Rehabilitation	15	
Psychiatric	26	
Specialty Beds	0	25
Total Beds	204	25

State designations for Cayuga Hospital:

- Level 2 Perinatal Center
- Stroke Center

Schuyler Hospital has no State designations.

There will be no addition of beds or services through this project.

Analysis

	Discharges			
	2009	2010	2011	2012
Cayuga Hospital				
Medical/Surgical	4,219	3,978	4,189	4,043
Pediatric	221	186	196	140
Obstetric	901	820	869	917
General Psychiatric	786	769	754	824
Chemical Dependency	208	137	107	184
High Risk Neonates	53	55	52	58
Total	6,388	5,945	6,167	6,166
Schuyler Hospital				
Medical/Surgical	835	819	869	832
Pediatric	50	75	41	25
Obstetric	215	205	113	0
General Psychiatric	5	11	4	9
Chemical Dependency	4	3	1	2
Total	9	4	3	0

	Occupancy Based on Current Beds			
	2009	2010	2011	2012
Cayuga Hospital				
Medical/Surgical	38.4	33.5	33.7	32.3
Pediatric	0	0	0	0
Obstetric	31.5	28	30	31.5
General Psychiatric	50.8	54.6	58.1	60
Chemical Dependency	0	0	0	0
High Risk Neonates	0	0	0	0
Overall Average	41.5	37.5	38.1	37.9

Schuyler Hospital	2009	2010	2011	2012
Medical/Surgical	37.2	36.4	37.6	31.6
Pediatric	0	0	0	0
Obstetric	0	0	0	0
General Psychiatric	0	0	0	0
Chemical Dependency	0	0	0	0
Overall Average	43.6	44	42	32.8

Both facilities are necessary resources for rural communities. Through this project the applicant would like to improve quality, access, and safety of care. In addition, they seek to improve overall community health and to ensure community focus while keeping the Schuyler Hospital financially viable.

Conclusion

There will be no change in beds or services through this project. Both hospitals are necessary community resources that the applicant plans to improve over time.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

Cayuga Health System, Inc. seeks approval to be established as the active parent of Cayuga Medical Center (CMC) and Schuyler Hospital (SH). The hospitals have been working together since 2011, through collaborative service agreements, to improve the quality and access to care in their respective service areas. Various clinical services, cardiology, orthopedic surgery, general surgery, anesthesia, pathology and wound care, have been shared. Upon approval, Cayuga Health System will apply for 501(C) (3) status.

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.

Character and Competence

The proposed directors of Cayuga Health System are:

Fred Tenneberger	Noel Desch
Ben Saks, DO	Tom LiVigne
Rick Weakland	John Neuman
Suzanne Blowers	Gary Ferguson
Kyle Tuttle	Paula Younger
Larry Baum	Sam Hussein, MD
Greg Hartz	Peter Bardaglio
Jean McPheeters	John Rudd
James Brown	

All proposed board members 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.

In a Stipulation and Order dated 10/27/10, Cayuga Medical Center at Ithaca (CMC) was fined \$8,000 related to wrong sided surgery when a patient received a right sided laminotomy and disc excision when the patient required and consented to a left sided procedure.

In January 2012, Cayuga Medical Center at Ithaca entered into a settlement agreement with the Department of Health and Human Services Office of Inspector General, the United States Department of Justice and the New York Attorney General's Office under which CMC agreed to pay \$3,576,056 to resolve potential liabilities related to six non-compliant physician recruitment agreements. Under the physician recruitment agreements at issue, CMC provided certain loans to physicians joining existing group practices, however, the loans at issue failed to comply with all applicable regulatory exceptions under the Stark Law. The related government investigation found no criminal or intentional conduct and found no evidence that patient care or safety was compromised.

In a Stipulation and Order dated 12/15/13, Cayuga Medical Center at Ithaca was fined \$26,000 for care rendered to a patient who was admitted with pneumonia and dehydration. Failure to recognize the severity of the condition and a lack of monitoring led to the patient's death.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Capability and Feasibility

The applicant has stated that upon approval of this application by the Public Health and Health Planning Council, Cayuga Health System will obtain consent for the proposed changes from necessary lenders, insurers and trustees. There will be no change in the daily operations of each health care facility, although each facility is expected to experience cost benefits from the active parent designation.

BFA Attachments B and C are the 2013 financial summaries for each hospital in the System. Cayuga Medical Center and Schuyler Hospital have shown positive working capital, net assets and a net profit from operations.

Designation as an active parent and co-operator is expected to enhance Cayuga Health System facilities and contribute to a greater marketing presence for the System and its providers. Therefore, based on the preceding, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and contingent approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A Proposed Organizational Chart for Cayuga Health System, Active Parent
BFA Attachment B Financial Summary, Cayuga Medical Center-2013 audited
BFA Attachment C Financial Summary, Schuyler Hospital-2013 audited



Public Health and Health Planning Council

Project # 141283-E
Lake Erie Regional Health System

Program: Hospital
Purpose: Establishment

County: Chautauqua
Acknowledged: June 25, 2014

Executive Summary

Description

This application proposes to dis-establish Lake Erie Regional Health System of New York as the active parent and co-operator of TLC Health Network, including Tri-County Memorial Hospital, a 45-certified bed hospital and 5 extension clinics; Lake Shore Health Care Center, a 120-bed nursing home; a long term home health care program (with 267 slots), and a certified home health care agency. The applicant has indicated that current and post establishment board members will be the same. Lake Erie Regional Health System of New York will remain the active parent and co-operator of Brooks Memorial Hospital.

Lake Erie Regional Health System of New York does not provide any services or financial assistance to Tri-County Memorial Hospital. Rather, it is a parent holding company for two hospitals that provide hospital and health services to the community. The Health System has no assets.

On December 16, 2013, TLC Health Network filed petitions for relief under Chapter 11 of the federal bankruptcy laws in the United States Bankruptcy Court for the Western District of New York State. With the occurrence of historical losses, and the filing for relief under Chapter 11, auditors raise substantial doubt about TLC Health Network's ability to continue as a going concern.

Presented as BFA Attachment A is the organizational chart for Lake Erie Regional Health System of New York and TLC Health Network after the approval of the proposed transaction.

DOH Recommendation
Contingent Approval

Need Summary
Lake Erie Regional Health System of New York has no assets and no income, so no adverse effects will be seen in this change. This application is not proposing any change to beds, services, or staffing, therefore there will not be any effect on community need.

Program Summary
There will be no Program recommendation for this application.

Financial Summary
There are no project costs or 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

There will be no HSA recommendation for this project.

Office of Health Systems Management

Approval contingent upon:

1. Submission of the executed Certificate of Amendment of the Certificate of Incorporation of Lake Erie Regional Health System of New York, acceptable to the Department. [CSL]
2. Submission of evidence of adoption of the amended and restated bylaws of Lake Erie Regional Health System of New York, acceptable to the Department. [CSL]
3. Submission of the executed Certificate of Amendment of the Certificate of Incorporation of TLC Health Network, acceptable to the Department. [CSL]
4. Submission of evidence of adoption of the amended and restated bylaws of TLC Health Network, acceptable to the Department. [CSL]
5. Submission of the Certificate of Incorporation of Lake Shore Nursing Home, Inc. and any amendments thereto, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

August 7, 2014

Need Analysis

Project Summary

Lake Erie Regional Health System of New York ("LERHSNY") is proposing to be disestablished as the active parent and cooperator of TLC and all associated facilities.

Need Summary

Lake Erie Regional Health System of New York has no assets and no income. Therefore, no adverse effects will be seen in this change. This application is not proposing any change to beds, services, or staffing. Therefore, there will be no effect on community need.

Recommendation

From a need perspective, approval is recommended.

Financial Analysis

Capability and Feasibility

There are no project costs or budgets associated this application.

BFA Attachment B is the 2013 certified financial statements of TLC Health Network. As shown on Attachment B, the entity had a positive working capital position and a positive net asset position in 2013. Also, the entity incurred a loss from recurring operations of \$10,310,831 in 2013. The applicant has indicated that the reason for the losses are as follows: erosion of volumes from an inpatient and outpatient operation; lower revenues as a result of lower volume; unfavorable managed care contracts; no growth of physician services; higher expenses related to revenue losing services that were never evaluated, and no cost accounting for operational programs surviving on grant funding and state funded programs. The applicant has indicated that the following steps were implemented to improve operations: started to reduce expenses to match its volume by reducing its workforce, and cutting some programs and services. It also pursued discussions with several potential physicians to provide services at the campus but were unsuccessful. As a result, it filed for Chapter 11 bankruptcy protection and is now looking for partners to sustain its operation. The applicant has applied to NYS IAAF funds and is considering a loan from DASNY to sustain its operations.

BFA Attachment C is the internal financial statements of TLC Health Network through March 31, 2014. As shown, the entity had a negative working capital position and a positive net asset position through March 31, 2014. The applicant has indicated that the reason for the negative working capital position is due to its shortfall in cash with its unsustainable operations. Also, the entity incurred operational losses of \$1,746,074 through March 31, 2014. The applicant has indicated that the reason for the losses were as follows: erosion of volumes from an inpatient and outpatient operation; lower revenues as a result of lower volume; unfavorable managed care contracts; no growth of physician services; higher expenses related to revenue losing services that were never evaluated, and no cost accounting for operational programs surviving on grant funding and state funded programs. The applicant has indicated that the following steps were implemented to improve operations: started to reduce expenses to match its volume by reducing its workforce, and cutting some programs and services. It also pursued discussions with several potential physicians to provide services at the campus but were unsuccessful. As a result, it filed for Chapter 11 bankruptcy protection and is now looking for partners to sustain its operation. The applicant has applied to NYS IAAF funds and is considering a loan from DASNY to sustain its operations.

Recommendation

From a financial perspective, approval is recommended.

Attachments

- BFA Attachment A Organizational Chart for Lake Erie Regional Health System of New York and TLC Health Network after the de-establishment of Lake Erie Regional Health System of New York as the active parent and co-operator of TLC Health Network.
- BFA Attachment B 2013 certified financial statements of TLC Health Network
- BFA Attachment C March 31, 2014 internal financial statements of TLC Health Network



Public Health and Health Planning Council

Project # 132145 E

The Rye ASC

Program: Ambulatory Surgery Center
Purpose: Construction

County: Westchester
Acknowledged: September 19, 2013

Executive Summary

Description

The Rye Ambulatory Surgery Center, LLC (Rye ASC), an existing diagnostic and treatment center, was approved through CON 082025 for a limited life of five years as a multi-specialty freestanding ambulatory surgery center by the Public Health Council on 1/23/2009. The limited life for the facility began June 2010 once the facility opened and was issued an operating certificate. The applicant requests through this Certificate of Need the approval to transfer ownership interests in The Rye Ambulatory Surgery Center, LLC to fifty seven new physician members as well as to remove 5 current members. The current membership of The Rye Ambulatory Surgery Center, LLC (Rye ASC) is composed of 76 individual physician members each with an equal ownership percentage of approximately 1.3%. Upon approval of the application there will be a total of 128 members with approximately 0.78% membership interest each.

Because the proposed issuance of new membership interest represents a change of over 25 percent in the facility's ownership within a five-year period, review by the Public Health and Health Planning Council is required.

DOH Recommendation
 Contingent Approval

Need Summary

The applicant does not project any increase in its surgical volume.

The applicant has fulfilled their requirement of submitting Annual Reports for 2010 to 2013 that include the number of procedures and visits. Based on these reports, the number of projected procedures in

year 1 (2011) was 4,195 vs. 4,249 actual; in year 3 (2013), the projection was 4,625 procedures vs. 10,894 actual. Rye ASC did not meet its Medicaid projections at five (5) percent; the actual Medicaid utilization was 3.7 percent in 2011 and 1.9 percent in 2013. Charity care was projected at five (5) percent; the actual charity care was 0.02 percent in 2013. The applicant has taken measures to improve its charity care.

Program Summary

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

Financial Summary

There are no project costs associated with this proposal.

		<u>Year One</u>	<u>Year Three</u>
Budget	Revenues	\$11,545,057	\$12,389,803
	Expenses	<u>\$10,710,844</u>	<u>\$11,781,186</u>
	Gain/(Loss)	\$834,213	\$608,617

Subject to noted contingency, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, based on year three's projected budget.

The purchase price of \$1,140,000 will be met with \$20,000 in personal equity from each of the 57 proposed new members. The payout to the five members that are leaving is \$96,000. This amount will come out of the facility's equity as shown on BFA Attachment B.

Recommendations

Health Systems Agency

There will be no HSA recommendation of this application.

Office of Health Systems Management

Approval contingent upon:

1. Correcting submission of 2010-2013 annual utilization reports showing breakdown of visits by payor source to the SPARCS. The correction should include data for as many years as acceptable by the SPARCS. [RNR]
2. Developing and implementing a plan to improve Medicaid and Charity care utilization to meet these projections as reported in CON 082025; submitting progress reports to the DOH along with annual reports. [RNR]
3. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the DOH. These 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]
4. Submission of an executed Membership Subscription agreement from each of the proposed new members acceptable to the Department of Health. [BFA]
5. Submission of an executed operating agreement acceptable to the Department of Health. [BFA]
6. Submission of evidence of the applicant's acceptance of the membership subscription agreements for each of the proposed new members, acceptable to the Department. [CSL]
7. Submission of evidence of the withdrawal of member Mayda Davis from the applicant, acceptable to the Department. [CSL]
8. Submission of the fully executed Second Amended and Restated Operating Agreement of The Rye Ambulatory Surgery Center, LLC, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within two years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

August 7, 2014

Need Analysis

Background

The Rye Ambulatory Surgery Center, LLC (Rye ASC), is an existing diagnostic and treatment center that was approved for a limited life of five years. It provides multi-specialty ambulatory surgery services at 1 Theall Road, Rye, 10580, in Westchester County. Rye ASC is seeking approval to transfer membership interest to 57 new physician members at 0.78 percent each and withdraw 5 existing members.

Analysis

Based on CON 082025, the projections for year 1 and year 3 are given below; the table also gives actual utilization for years 2011 and 2013.

Number of Procedures CON 082025	Year 1 Projections	Year 3 Projections	Number of Procedures	Year 1: 2011 Actual	Year 3: 2013 Actual
Total	4,195	4,625	Total	4,249	10,894
Medicaid MC	5.0%	5.0%	Medicaid MC	3.7%	1.9%
Medicare FFS	24.0%	24.0%	Medicare: FFS+MC	22.3%	33.0%
Charity	5.0%	5.0%	Charity	0.0%	0.02%
Commercial FFS	66.0%	66.0%	Commercial FFS	58.6%	56.4%
			All Other	15.4%	8.7%
Total	100.0%	100.0%	Total	100.0%	100.0%

The applicant has taken following measures to improve its charity care:

- Rye ASC partnered with Open Door Family Medical Centers, a Federally Qualified Health Center (FQHC), to implement a charity care initiative; for example, 1) Rye ASC will waive all or a portion of its fees for Open Door patients that qualify for charity care, 2) Two of Open Door's surgeons became credentialed to perform surgery at Rye ASC, and 3) Rye ASC and Open Door have jointly developed referral mechanisms to promote continuity of care.
- In spite of these efforts, Open Door has found it very difficult to refer patients who qualify for charity care to Rye ASC. Open Door patients choose to use local hospitals that are closer to Open Door O/P facilities than Rye ASC. Rye ASC will continue to work closely with Open Door to try to improve their charity care utilization.
- Rye ASC is trying to find out if it can work directly with the Cancer Services Program of the Hudson Valley (CSPHV) by having its surgeons perform charity care breast surgery procedures for the CSPHV patients at Rye ASC. CSPHV is a state funded program for low-income and uninsured women with cancer.
- Rye ASC is exploring the possibility of providing charity care services to the Westchester County's Department of Senior Programs and Services' (WCDSPS) elderly members.
- Rye ASC plans to work with the closely-affiliated Westchester Medical Group, P.C (Westmed) physicians to provide charity care at Rye ASC; other efforts being considered are placing Westmed specialists at Open Door and rotating them on a periodic basis.
- Finally, Rye ASC reports that if these efforts are not successful, they are prepared to donate money to Open Door to support Open Door's charity care efforts; specifically, Rye ASC would be willing , on an annual basis, to donate \$1,000 for each case that they are below its annual charity care target of 200 cases.

Conclusion

The Department recognizes the efforts of the Rye ASC to work with Open Door Family Medical Centers to reach underserved clients. However, this collaboration has not resulted in a sufficient number of referrals of Medicaid and charity care clients for the ASC to have reached its goals for services to those groups. It also remains to be seen if the ASC's possible collaboration with groups such the Cancer Services Program of the Hudson Valley, the Westchester County Department of Senior Programs and Services and WestMed yield a significant number of Medicaid and charity care cases for the ASC. Continued operation of the ASC will allow time to determine if these efforts are successful, and if not, to determine

whether the applicant's proposal to donate funds to support Open Door's charity care efforts would be an effective alternative.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Program Description

The Rye Ambulatory Surgery Center, LLC (Rye ASC) is an operational ambulatory surgery center with 76 individual members, each of whom has a 1/76 membership interest in the center (approximately 1.3% each). This proposal seeks to add 57 new members (all practicing physicians). In addition, five (5) existing members of Rye ASC are withdrawing from the center. Upon approval of this application, Rye ASC will have 128 individual members, each of whom will have a 1/128 membership interest in the center (approximately 0.78% each) and a total of 44.53% interest will be transferred.

The applicant's Second Amended and Restated Operating Agreement, which was submitted with its application, contained provisions that show representative governance of the surgery center by Westmed Medical Group, P.C. ("Westmed"). Specifically, the membership in the applicant LLC of employees of Westmed terminates once they are no longer employees of Westmed, and the Board of Managers of the applicant must be made of those members of the applicant who are also serving on the Board of Directors of Westmed. These provisions were contained in this applicant's original Operating Agreement which was submitted as part of its approved establishment application (#082025-B). The applicant states that the relationship between Westmed and the applicant should be distinguished from other similar relationships, as the affiliation between the parties is local and coordination of care for the patients of the two entities is facilitated. Further, the applicant asserts that the affiliation is the basis of a plan to provide charity care to the applicant's patients.

Character and Competence

The partners in Rye Ambulatory Surgery Center, LLC are:

Proposed Partners (subject of CON)

Thomas Angello	Jill Landis
Robert Armbruster	Jay Lupin
Grace Briggs	Preston Lurie
Bryan Blair	Christopher Mattern
Judd Boczko	Laura Mechanic
Michael Bookbinder	Anthony Mercando (Manager)
Patricia Calayag	Jennifer Meyer
Michael Contillo	Sean Misciagna
Andrew Decker	Richard Morel
Julianne Dunne	Joseph Nasuti
James Ehrlich	Monica Rieckhoff
Barry Feuer	Alicia Rieger
Jonathan Finegold	Ruth Sanchez-Levi
Mitchell Fishbach	Deborah Scheinthal
Adora-Ann Fou-Cockburn	Cordelia Schwarz
Gary Gabelman	Susan Seligman-Haas
Amanda Ganem	Vito Sessa
Dawn Garcen	Seema Sharma
Gennifer Geller	Arleen Sharpe
Gabriela Grasa	Katherine Shen
Herbert Gretz	Jason Shuker
Jessica Halprin	Peter Stevens

Tara Harrington
Douglas Hart
Jordan Hirsch
Jenifer Johnson (Manager)
Lynn Josephson
Arun Kalyan-Masih
Erika Krauss

John Urzi
Jane Wachs
Joshua Waldman (Manager)
Matthew Weissler
Saryna Young
Steven Zabin

Current Partners (already approved)

Maria Abbattista
Diane Ainsworth
Stephen Andrus
Jack Berger
Jeffrey Berman
Jerry Campanella
Stephen Carolan
Silvio Ceccarelli
Caleb Charny
Patricia Close
Aris Comninellis
Barbara Coven
Michael Cushner (Manager)
David Cziner
Virginia Daly
Ranjan Dasgupta
Ronald Dennett
Bruno DiCosmo
James Doyle
John Ettenson
Stuart Feldman
Willmore Finerman
Steven Fink
Arthur Forni
Andrew Francella
Todd Friend
Sandy George
Mandira Gharekhan
Vanessa Grano
Steven Greenberg
Edward Gundy
Steven Herzog
Diana Hurwitz
Alan Jaffe
Morrie Kaplan
Iosif Kolbovsky
Anthony Korosi
Lawrence Kraftowitz
Evan Krakovitz
Steven Kubersky

Elizabeth Legatt
Jay Levat
Laura Macbeth
William Martimucci (Manager)
Steven Meixler
Eliot Moshman
Sam Natarjan
Barney Newman (Manager)
Young Don Oh
Joseph Paglia
George Piccorelli
Wendy Proskin
Jonathan Rie
Gary Rothbart
Lori Saltzman-Gabelman
Simeon Schwartz (Manager)
Kenneth Schwartz
Nitya Sharma
Bruce Sherling
Michael Silver (Manager)
Randy Stein (Manager)
Mitchell Stevens
Randy Stein
Mitchell Stevens
Michael Suzman (Manager)
Carolyn Thompson
Lori Tindel-Khan
Erin Walker
Kenneth Weiser
Jonathan Weiss
Mia Wright (Manager)
Emanuel Wurm
Jonathan Wynn
**Annamaria Calleo-Cross*
**Mayda Davis*
**Nancy Levesque*
**Clark Yoder*
**George Pelebecky*

*** withdrawing member**

All of the members are practicing physicians.

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. Armbruster disclosed three (3) pending malpractice cases. Drs. Blair and Finegold each disclosed two (2) pending malpractice cases. Dr. Waldman disclosed two (2) pending and one (1) settled malpractice case. Drs. Calayag, Ehrlich, Geller, Grasa, Hart, Krauss, Morel, Sharpe, Shen and Stevens each disclosed one (1) pending malpractice case. Drs. Hirsch, Lupin and Zabin disclosed one (1) pending and one (1) settled malpractice case. Drs. Boczko, Dunne, Garcen and Lurie each disclosed one (1) settled malpractice case. Dr. Josephson disclosed two (2) settled malpractice cases.

Additionally, 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

Membership Subscription and Operating Agreements

The applicant has submitted draft Membership Subscription and Operating Agreements, in which each proposed new member agrees to the terms and conditions of the Membership Subscription and also to the terms and conditions of the second Amended and Restated Operating agreement. Upon signature of the agreements and payment of the \$20,000 Membership Subscription fee, these 57 proposed members will have ownership interest in the business equivalent to approximately .78% or 1 business unit.

Operating Budgets

Following is a summary of the submitted operating budget, presented in 2014 dollars, for the first and third year subsequent to change in ownership:

<u>Year One (2014)</u>	<u>Per Diem</u>	<u>Total</u>	<u>Year Three (2016)</u>	<u>Per Diem</u>	<u>Total</u>
<u>Revenues:</u>			<u>Revenues:</u>		
Medicaid	\$658.99	\$225,873	Medicaid	\$659.21	\$370,873
Medicare	\$328.54	\$1,251,655	Medicare	\$328.48	\$1,327,881
Commercial	\$1,447.93	\$9,437,635	Commercial	\$1,448.25	\$10,012,387
Private Pay/Other	\$736.51	\$768,181	Private Pay/Other	\$693.00	\$814,965
Charity Care		(\$204,485)	Charity Care		(\$204,485)
Other Operating Revenue		\$66,198	Other Operating Revenue		<u>68,182</u>
Total		<u>\$11,545,057</u>	Total		\$12,389,803
<u>Expenses:</u>			<u>Expenses:</u>		
Operating		\$9,769,516	Operating		\$10,795,315
Capital		\$941,328	Capital		<u>985,871</u>
Total		\$10,710,844	Total		\$11,781,186
Net Income/(Loss)		\$834,213	Net Income/(Loss)		\$608,617

The following is noted with respect to the submitted operating budget:

	<u>2013</u> <u>Projected</u> <u>Utilization</u>	<u>2013</u> <u>Actual</u> <u>Utilization</u>	<u>Projected</u> <u>2014</u> <u>Utilization</u>	<u>Projected</u> <u>2016</u> <u>Utilization</u>
Payor Sources				
Medicare	1,110	3,590	3,810	4,043
Medicaid	231	206	342	563
Commercial	3053	6,143	6,518	6,913
Private Pay/Other	0	953	1,043	1,176
Charity Care	231	2	12	12

	<u>Projected %</u> <u>Year 1</u> <u>Utilization</u>	<u>Projected %</u> <u>Year 3</u> <u>Utilization</u>
Payor Sources		
Medicare	32.49%	31.82%
Medicaid	2.91%	4.43%
Commercial	55.59%	54.40%
Private Pay/Other	8.90%	9.25%
Charity Care	0.11%	0.10%

The applicant indicates that the reason for the low charity care is due to the facility not being able to receive enough qualified charity care patient referrals from their partner Open Door Family Medical Center, due to their qualified patients choosing to utilize hospitals that are closer than the Center to Open Door's outpatient facilities. Currently the facility is trying to find other facilities to partner with in order to increase their overall charity care.

Capability and Feasibility

Purchase price of \$1,140,000 will be met with \$20,000 in personal equity from each new proposed partner. Based on BFA Attachment A the net worth of the 57 proposed members, there is significant resources available to meet the required equity need with the use of a disproportionate share affidavit for 3 of the members who currently otherwise do not have enough liquid assets on hand to purchase their membership share. The issue of feasibility is centered on the applicants' ability to offset expenses with revenue and maintain a viable operating entity. The submitted budget indicates an excess of revenues over expenses of \$834,213 during the first year and \$608,617 during the third years of operation. The budget appears reasonable.

BFA Attachment B is the financial summary for The Rye Ambulatory Surgery Center, LLC for 2012, which indicates that the facility has experienced negative working capital, maintained a positive member's equity, and generated a net income of \$834,388 for 2012. The negative working capital is due to the facility choosing to show a 1,228,391 liability "Due to affiliate" as a current liability. While the liability is actually a long term debt that the applicant has opted to keep as current, in order to attempt to pay it off sooner. If it was placed into the Long term liability section the working capital would have been only \$2,358 negative.

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
BFA Attachment B

Net Worth of New Members
Financial Summary, The Rye Ambulatory Surgery Center, LLC 2012



Public Health and Health Planning Council

Project # 141090-B
Schenectady Specialty Services, LLC

Program: Diagnostic and Treatment Center
Purpose: Establishment and Construction

County: Schenectady
Acknowledged: March 6, 2014

Executive Summary

Description

Schenectady Specialty Services, LLC (SSS), a joint venture limited liability company, requests approval to establish and operate a diagnostic and treatment center primarily focusing on the provision of medical and ancillary clinical services related to the management and treatment of diabetes and other endocrine disorders. The joint venture is between two entities: Albany Medical College (College), and CapitalCare Holdings, LLC (CCH), a general business LLC owned by the physician members of CapitalCare Medical Group, LLC (Capital Care). The college sponsors Albany Medical Center's 450-member multispecialty physician practice, and CapitalCare is one of the Capital region's largest independent physician practices, operating 28 practice sites providing primary, specialty and ancillary care services in Albany, Schenectady, Rensselaer and Saratoga counties.

The suite is currently occupied by Capital Care Medical Group, LLC (CCMG), the applicant's affiliate, and is operating as a private medical practice. With approval of this application, the private practice will close and the facility will be converted to an Article 28 D&TC. The facility will be subleased from CapitalCare Medical Group, LLC "as is" with construction and renovation being minimal.

The ownership of Schenectady Specialty Services, LLC (SSS) is as follows:

Albany Medical College	50%
CapitalCare Holdings, LLC	50%

CapitalCare Holdings is owned by 55 individual practicing physicians with the same ownership percentage of .909% of the 50% ownership share of CapitalCare Holdings, LLC.

DOH Recommendation
Contingent Approval

Need Summary

SSS is proposing to establish and construct an Article 28 diagnostic and treatment center to provide primary medical care services. Specifically, the proposed project is to convert the existing private endocrinology practice to a D&TC at the same site. The focus is on the diabetic population.

Program Summary

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

Financial Summary

There are no project costs associated with this application

Budget:

Revenues	\$2,211,112
Expenses	<u>2,155,303</u>
Net Income	\$55,809

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Health Systems Management

Approval contingent upon:

1. Submission of an Executed Master Administrative and Consulting Services Agreement. [BFA]
2. Submission of an Executed Limited Administrative and Consulting Services Agreement. [BFA]
3. Submission of an executed transfer and affiliation agreement, acceptable to the Department with a local acute care hospital. [HSP]
4. Submission of an executed Administrative Services Agreement (ASA), acceptable to the Department. [HSP]
5. The submission of State Hospital Code (SHC) Drawings acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
6. Submission of an amended Articles of Organization that is acceptable to the Department. [CSL]
7. Submission of an executed Lease Agreement that is acceptable to the Department. [CSL]
8. Submission of an executed Sublease Agreement that is acceptable to the Department. [CSL]
9. Submission of an executed Limited Administrative and Consulting Services Agreement that is acceptable to the Department. [CSL]
10. Submission of an executed Amended and Restated Limited Liability Company Agreement that is acceptable to the Department. [CSL]
11. Submission of an executed Master Administrative and Consulting Services Agreement that is acceptable to the Department. [CSL]
12. Submission of the information required for Not-for-Profit members for Albany Medical College in compliance with Schedule 14. [CSL]
13. Submission of the information required for Limited Liability Company members for CapitalCare Holdings LLC in compliance with Schedule 14. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. 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 BAER Drawing Submission Guidelines DSG-03, prior to the applicant's start of construction. [AER]
7. The applicant shall complete construction by September 30, 2014 with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

August 7, 2014

Need Analysis

Background

Schenectady Special Services (SSS) is seeking approval to establish and construct an Article 28 diagnostic and treatment center to provide primary medical care services. The proposed D&TC will be located at 2125 River Road, Suite 303, Niskayuna, 12309, in Schenectady County. This is a joint venture of Albany Medical College and CapitalCare Holdings.

Analysis

The service area includes a total of 61 zip codes in four counties: Schenectady (19 zip codes), Fulton (9 zip codes), Montgomery (14 zip codes), and Schoharie (19 zip codes).

The number of projected visits is 7,497 in year 1 and 13,430 visits in year 3. These projections are based on the actual utilization of CapitalCare Medical Group-Endocrinology.

Of the proposed service areas of four counties, only two counties have freestanding D&TCs providing primary medical care services (HFIS):

Schenectady County:	3 Freestanding D&TCs with Primary Medical Care
Montgomery County:	1 Freestanding D&TC with Primary Medical Care
Fulton County:	0 Freestanding D&TC with Primary Medical Care
Schoharie County:	0 Freestanding D&TC with Primary Medical Care

The table below provides information on the mortality rate for diabetes for the four counties and the State.

<u>Age-Adjusted Diabetes Mortality Rate per 100,000 Population</u>	<u>Average 2009-2011</u>
Schenectady County	18.0
Fulton County	14.9
Montgomery County	24.2
Schoharie County	22.7
New York State	17.0

Source: NYSDOH Data

The proposed location is in a Medically Underserved Area/Population (MUA/P)-Homebound Population-Schenectady. Source: HRSA

The applicant is committed to serving patients needing care regardless of their ability to pay or the source of payment.

Conclusion

The proposed joint venture between Albany Medical College and CapitalCare Holdings will improve access to primary care services for people with diabetes and for the general population in Schenectady, Fulton, Montgomery, and Schoharie Counties.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

Schenectady Specialty Services, LLC (SSS) is seeking approval to establish and operate an Article 28 diagnostic and treatment center (D&TC) in Niskayuna (Schenectady County). The Center's site will be converted from a medical office suite that currently houses a two-physician specialty endocrinology office. The Center's immediate objective is to focus on the provision of services related to the management and treatment of diabetes and other endocrine disorders.

Proposed Operator	Schenectady Specialty Services, LLC
Site Address	2125 River Road, Niskayuna (Schenectady County)
Staffing (1 st Year / 3 rd Year)	12.5 FTEs /19.0 FTEs
Medical Director(s)	Richard Blinkhorn, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Will be provided by Albany Medical Center 19 miles / 26 minutes

Character and Competence

Schenectady Specialty Services, LLC (SSS) is a joint venture of Albany Medical College (AMC) and CapitalCare Holdings LLC, a general business LLC owned by 55 physician members of CapitalCare Medical Group, LLC (CCMG).

The members of the Schenectady Specialty Services, LLC are:

<u>Name</u>	<u>Percentage</u>
Albany Medical College	50%
CapitalCare Holdings, LLC	50%
Capital Care Medical Group, LLC	

The managers of Schenectady Specialty Services, LLC will be:

Cindy Chan, MD
 Lou Snitkoff, MD
 Geri Aitken, DO
 Vincent Verdile, MD
 Ferdinand Venditti, MD
 John Depaola

The 25 board members of AMC and the 55 practicing physician members of CapitalCare Medical Group were subject to 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.

Review of the board members of Albany Medical College revealed the following: Mr. Nigro disclosed that, in 2013, while in the capacity as the Managing Member of a New York limited liability company (a real estate company which owned a shopping center), severe economic market conditions resulted in a defaulted mortgage and a Receiver was appointed to operate the property. Ms. Weir disclosed involvement in three (3) recent legal matters dated 2011, 2012 and 2013. The 2011 action was an adversarial proceeding that has been resolved by settlement. The 2012 action is a civil lawsuit in which a former employee alleged constructive discharge in violation of the Dodd-Frank Act for providing information concerning, among other things, conflicts of interest to the Securities and Exchange

Commission (SEC). In another civil action (a Financial Regulatory Authority (FINRA) arbitration) filed in 2013, it was alleged that Ms. Weir and other senior officers had a duty to analyze, determine and notify the claimant of potential risks for an account managed on a discretionary basis by an unaffiliated advisor.

Review of the physician members of CapitalCare Holdings/CapitalCare Medical Group, LLC revealed the following: Dr. Sipperly disclosed that he agreed to a Consent Order effective May 4, 2012 issuing a censure and reprimand for a record keeping violation. He paid a fine and completed a continuing education course, as required. Drs. Fusella and (N.) Woods each disclosed that they have one (1) pending malpractice case and Dr. Lee disclosed he had one (1) settled malpractice case.

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

In a Stipulation and Order dated 9/14/04, Albany Medical Center Hospital was fined \$18,000 based on a focused survey of the facility's heart transplant program. It was determined that patients were incorrectly given high priority status on the organ transplant waiting list based on inaccurate information provided to the United Network for Organ Sharing.

In a Stipulation and Order dated 3/8/09, Albany Medical Center Hospital - South Clinical Campus was fined \$6,000 based on the findings that a pediatric patient was admitted for a left side inguinal hernia. A right side inguinal hernia repair was performed. Further review of records identified multiple instances where the facility was out of compliance with internal policy and state guidelines for performing surgery involving laterality.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Administrative Services Agreements

The applicant has submitted two draft Master administrative and consulting services agreements; each are identical in scope, the terms of which are summarized below:

Owner:	Schenectady Specialty Services, LLC
Company(1):	CapitalCare Holdings, LLC
Company(2):	Albany Medical College
Services Provided:	Facilities and equipment. The company licenses to owner on an exclusive basis the use of all of the medical and related furniture, fixtures and equipment in the facility on the commencement date ("Company equipment"), this shall be used by the owner solely for the operation of the owner's business. The owner can request additional company equipment be acquired for use by owner as company equipment, through a mutual agreement between the parties. The owner may also purchase additional owner equipment at its election. The company will assist owner in the selection of equipment and supplies and will maintain all of the equipment of the business in accordance with Owner's maintenance policies. Company shall assist in maintaining records of inventory and arrange for purchases of necessary and appropriate supplies and equipment on behalf of the owner. The company shall enforce for the benefit of the owner during the term of the agreement all of the company's and the owner's rights under all manufactures' warranties relating to any equipment provided by either party. Employees except as otherwise set forth in this agreement, the company will

provide or arrange for the provision of all full-time and part-time personnel necessary to manage and operate the non-physician aspect of the business. They will be employees or independent contractors of the company or the contractor. The company or the contractor are responsible for all wages, fringe benefits and all other compensation. The company shall prepare and submit on behalf of the owner all bills for items and services provided by or for the business, and shall administer controls and systems for the recording and collection of the revenues of the business. The company shall provide or arrange for the provision of accounting and financial services to the owners of the business, including budget projections, plans and projections regarding operations of the business. They also will provide the facility with monthly and yearly financial statements consistent with GAAP. The company shall negotiate, execute and maintain contracts and arrangements for and in the name of the owner.

Term: 20 years
Fee: None they are "Cost pass-through"

Although the agreement provides for the contracting of multiple services, the facility will maintain ultimate authority and responsibility for the conduct of the operation of the facility. The owner shall remain responsible for compliance with all applicable provisions of the Federal, State, and local laws, rules, regulations and ordinances, and standards of accreditation. The owner shall retain the ultimate authority over the overall policy, operation and assets of its operations and the business. The owner shall not delegate to the company, and the company will not be responsible for any powers and responsibilities not specifically allocated to the company in this agreement. Specifically, notwithstanding anything in this agreement to the contrary, the parties acknowledge that under New York Law, the owner must retain all authority and responsibility over the following: (1) authority for hiring or terminating employees, (2) controlling and maintaining the books and business records of the business, which will remain owned by the owner, (3) disposing of assets and incurring liabilities on behalf of the owner, (4) adopting and enforcing policies regarding the operation of the business, (5) compliance with all laws applicable to the owner and, (6) ultimate responsibility for the day-to-day operations of the business.

The applicant has submitted a draft Limited Administrative and Consulting Services Agreement, the terms of which are summarized below:

Facility: CapitalCare Holding, LLC
Contractor: CapitalCare Medical Group, LLC
Services: Provide the administrative and consulting services as described in the Master Agreement as detailed above. The contractor shall render the Services, subject to the authority of the Owner's governing body (the Board) and in accordance with the Master Agreement and applicable provisions of law, rule and regulation, policies and procedures promulgated by the owners and the terms, conditions and limitations herein set forth.

Provided:
Term: Coterminal with the Master Agreement and shall be terminated or extended in accord with the terms of Article IV of the Master Agreement.
Fee: None they are "Cost pass-through"

Capital Care Medical Group, LLC is a BCL Article 15 professional service Limited Liability Company that engages in the private practice of medicine; Capital Care Holdings, LLC and Capital Care Medical Group, LLC are only affiliated through common ownership (each of the 55 member physicians); neither LLC is an owner, manager, principal or member of the other.

Real Property Lease Rental Agreement

The applicant has submitted an executed lease and a draft sublease arrangement for the site that they will occupy, which is summarized below:

Date: March 30, 2012 for Original Lease, Sublease to be determined
 Premises: 5,406 Square feet of office space and common area space on the third floor of the building located at 2125 River Road, Niskayuna, NY
 Lessor: 2125 River Road Realty, LLC
 Lessee/Sublessor: CapitalCare Medical Group, LLC
 Sublessee: Schenectady Specialty Services, LLC
 Term: 10 years with (2) five year renewal options

Rental:	Yr1	\$92,658.84 annually	\$17.14 per sq.ft.	Yr11	\$110,714.49 annually	\$20.48 per sq.ft.
	Yr2	\$94,496.88 annually	\$17.48 per sq.ft.	Yr12	\$112,931.34 annually	\$20.89 per sq.ft.
	Yr3	\$96,388.98 annually	\$17.83 per sq.ft.	Yr13	\$115,201.86 annually	\$21.31 per sq.ft.
	Yr4	\$98,335.14 annually	\$18.19 per sq.ft.	Yr14	\$117,526.44 annually	\$21.74 per sq.ft.
	Yr5	\$100,281.03 annually	\$18.55 per sq.ft.	Yr15	\$119,851.02 annually	\$22.17 per sq.ft.
	Yr6	\$102,281.52 annually	\$18.92 per sq.ft.	Yr16	\$119,851.02 annually	\$22.17 per sq.ft.
	Yr7	\$104,335.80 annually	\$19.30 per sq.ft.	Yr17	\$122,229.66 annually	\$22.61 per sq.ft.
	Yr8	\$106,444.14 annually	\$19.69 per sq.ft.	Yr18	\$124,662.36 annually	\$23.06 per sq.ft.
	Yr9	\$108,552.48 annually	\$20.08 per sq.ft.	Yr19	\$127,149.12 annually	\$23.52 per sq.ft.
	Yr10	\$110,714.49 annually	\$20.48 per sq.ft.	Yr20	\$129,689.94 annually	\$23.99 per sq.ft.

Provision: The lessee/sublessee shall be responsible for utilities of the demised premise, taxes associated with their portion of the demised premises and the cost of waste removal, cleaning and janitorial services, as well as their portion of all common area expenses.

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

Operating Budget

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

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,234,375	\$2,211,112
Expenses:		
Operating	\$1,175,628	\$2,024,223
Capital	<u>140,092</u>	<u>131,080</u>
Total Expenses	\$1,315,720	\$2,155,303
Net Income/(Loss)	(\$81,345)	\$55,809
Utilization: (Visits)		
Cost Per Visit	\$175.50	\$160.48

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

	<u>Years One and Three</u>
Medicaid Fee For Service	0.34%
Medicaid Managed Care	7.71%
Medicare Fee For Service	21.25%
Medicare Managed Care	16.06%
Commercial Managed Care	52.75%
Private Pay/Other	1.89%

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

Capability and Feasibility

There are no project costs associated with this application. Working capital requirements are estimated at \$219,287, which appears reasonable based on two months of year one expenses. The full amount of the required working capital will come from each members' entity, equally. BFA Attachments A and B indicate the availability of sufficient funds to meet the working capital need for this project.

BFA Attachment A, the certified financial statements for CapitalCare Medical Group, LLC for the years 2011 through 2012, shows an average net operating income of \$12,088,720, an average positive net asset position, and an average positive working capital position.

As shown on BFA Attachment B, the certified financial statements for Albany Medical Center and Related Entities for the years 2011 through 2012, the facility generated an average net operating income of \$17,412,500, had an average positive net asset position and had an average positive working capital position.

BFA Attachment C is the pro-forma balance sheet of Schenectady Specialty Services, LLC as of the first day of operation, which indicates a positive owners' equity position of \$249,750. The submitted budget projects a net loss of \$81,345 during the first year of operation and a net gain of \$55,809 during the third year of operation. The loss in year one will be covered by the applicants. Review of the applicant's financials, as shown in BFA Attachment A and B, show adequate resources available to cover the loss. Revenues are based on current reimbursement methodologies for CCMG Endocrinology services. 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 contingent approval is recommended.

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	2011-2012 Certified Financial Statements for CapitalCare Medical Group, LLC
BFA Attachment B	2011-2012 Certified Financial Statements for Albany Medical Center and Related Entities
BFA Attachment C	Pro-forma Balance Sheet of Northern EC, LLC
BFA Attachment D	Organizational Chart for Schenectady Specialty Services, LLC
BHFP Attachment	Map



Public Health and Health Planning Council

Project # 141205-E
Workmen's Circle Dialysis Management, LLC d/b/a
Workmen's Circle Dialysis Center

Program: Diagnostic and Treatment Center
Purpose: Establishment

County: Bronx
Acknowledged: May 12, 2014

Executive Summary

Description

Workmen's Circle Dialysis Management, LLC d/b/a Workmens Circle Dialysis Center, a for-profit limited liability company, is requesting approval to be established as the new operator of Workmen's Circle Dialysis Center, Inc., a not-profit diagnostic treatment center (D&TC) that operates an existing 12-station chronic renal dialysis center. The D&TC leases space at 3155 Grace Avenue, New York (Bronx County), within the confines of Workmen's Circle Multi Care Center, a 524-bed residential health care facility.

Ownership of the company before and after the requested change is as follows:

Current Operator
Workmen's Circle Dialysis Center, Inc. 100.0%

Proposed Operator
Workmen's Circle Dialysis Management, LLC d/b/a Workmens Circle Dialysis Center

	<u>Ownership</u>
Soloman Rutenberg	25.01%
Pasquale DeBenedictis	25.01%
Alex Solovey	25.01%
Joseph Carillo II	24.97%

DOH Recommendation
Contingent Approval

Need Summary

There is still a slight need for net new stations in Bronx County. Therefore the retention of this facility is needed as a community resource so that residents and patients needing ESRD treatment will have the resources to meet their needs.

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 purchase price of \$25,000 will be provided from members' liquid resources. There are no project costs associated with this application.

Budget:	Revenues:	\$2,663,506
	Expenses:	<u>\$2,447,322</u>
	Gain:	\$216,184

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 an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
2. Submission of executed building lease acceptable to the Department of Health. [BFA]
3. Submission of an executed Certificate of Assumed Name that is acceptable to the Department. [CSL]
4. Submission of an executed Board Resolution that is acceptable to the Department. [CSL]
5. Submission of an executed Operating Agreement that is acceptable to the Department. [CSL]
6. Submission of an executed Certificate of Amendment to the Articles of Organization that is acceptable to the Department. [CSL]
7. Submission of an executed proposed Certificate of Amendment or a Certificate of dissolution, depending on the seller's type of legal entity and whether it will be dissolved following the proposed transfer that is acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from other adjacent entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]

Council Action Date

August 7, 2014

Need Analysis

Background

Workmens Circle Dialysis Management, LLC is seeking approval to be established as the new operator of Workmens Circle Dialysis Center, currently operated by Workmens Circle Dialysis Center Inc.

Analysis

The primary service area is Bronx County, which had a population estimate of 1,418,733 in 2013. The percentage of the population aged 65 and over was 10.9%. The nonwhite population percentage was 89.2%. These are the two population groups that are most in need of end stage renal dialysis service. Comparisons between Bronx County and New York State are listed below.

Ages 65 and Over:	10.9%	State Average:	14.1%
Nonwhite:	89.2%	State Average:	42.4%
Source: U.S. Census 2014			

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 483 free standing chronic dialysis stations operating in Bronx County and 93 in pipeline for a total of 576. This project will not add any stations.
- Based upon DOH methodology, the 483 existing free standing stations along with the 93 pipeline stations in Bronx County could treat a total of 2592 patients annually.

Projected Need

	2012		2017	
	Total Patients Treated	Total Residents Treated	*Projected Total Patients Treated	*Projected Residents Treated
	2668	2914	3093	3280
Free Standing Stations Needed	593	647	688	729
Existing Stations	483	483	483	483
Existing Stations w/pipeline	576	576	576	576
w/Approval of This CON	576	576	576	576
Unmet Need With Approval	17	71	112	153

*Resident data is accurate up to 2013 while patient data is accurate to 2012, resident data is projected out 4 years vs. 5 years for patient data. Based upon an 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 576 stations in Bronx County currently serve a population of 1,418,733 residents. This facility provides a needed resource for this community.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

Workmens Circle Dialysis Management, LLC seeks approval to become the new operator of Workmens Circle Dialysis Center, an existing twelve (12) station chronic renal dialysis center operated by Workmens Circle Dialysis Center, Inc., a not-for-profit corporation, and located within the confines of the Workmens Circle Multi Care Center nursing facility in Bronx County. There are no significant physical environment or programmatic changes anticipated as a result of this proposal.

Character and Competence

The members of Workmens Circle Dialysis Management, LLC are:

<u>Name</u>	<u>Percentage</u>
Pasquale DeBenedictis	25%
Alex Solovey	25%
Soloman Rutenberg	25%
Joseph F. Carillo II	25%

Mr. DeBenedictis has been employed by a skilled nursing facility (SNF) for over 17 years. A former Certified Public Accountant, Mr. DeBenedictis currently serves as Director of Finance. Mr Solovey, a licensed Physical Therapist, is employed as the Director of Rehabilitation for a physical therapy practice. Mr. Carillo is a New York State licensed Nursing Home Administrator in good standing who has been employed by an SNF for over 27 years. He also owns interest in an Article 28 dialysis center in Suffolk County. Mr. Rutenberg has over 15 years of involvement with SNFs, including six (6) years of previous work experience as an Assistant Administrator of a 400-bed SNF in Bronx.

Disclosure information was similarly submitted and reviewed for the Medical Director. Dr. Maya Rao is board-certified in internal medicine and nephrology and been employed for the last five (5) years as the Medical Director of Inpatient Dialysis at Allen Hospital.

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

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.

Messrs. DeBenedictis, Rutenberg and Solovey disclosed membership interest in Cassena Care of Norwalk (Connecticut), a 120-bed skilled nursing facility. On November 15, 2013, a Stipulation and Order was issued to Cassena for regulatory violations noted during an investigation conducted in September 2013. The facility was fined \$1020 and directed to arrange for an Independent Nurse Consultant to be at the facility for 20 hours weekly.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement, which is summarized as follows:

Date:	March 10, 2014
Seller:	Workmen's Circle Dialysis Center, Inc.
Purchaser:	Workmen's Circle Dialysis Management, LLC d/b/a Workmens Circle Dialysis Center
Acquired Assets:	Convey purchase assets free and clear of all liens, claims, assessments, security interest, mortgages, collateral assignments, leases, attachments, levies and other defects in title of any type. Purchase assets includes: all motor vehicles; furnishings; fixtures and equipment; furnishing, transferable rights under all leases, contracts and agreements related to operations; permitted all licenses and permits; business books and records; inventory; security deposits and prepayments for future services; phone numbers and e-mail addresses; goodwill; the name Workmen's Circle Dialysis Center, Inc. including all other trade names and trademarks; all other transferable assets, personal or mixed, tangible or intangible used in the business.
Excluded Assets:	Accounts Receivable prior to closing date
Purchase Price:	\$25,000
Payment:	\$25,000 at closing

BFA Attachment A is the proposed members' net worth summaries, which reveal sufficient resources to meet the equity requirement.

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. Currently there are no outstanding Medicaid and Assessment liabilities

Lease Agreement

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

Premises:	12,000 sq. ft. located at 3155 Grace Avenue, Bronx, New York 10469
Owner/Landlord:	JOPAL BRONX, LLC
Lessee:	Workmen's Circle Dialysis Management, LLC d/b/a Workmens Circle Dialysis Center
Term:	Ten years
Rent:	\$89,130 per year plus 3% increase starting in the 2 nd year. Plus \$284,474.28 per year for 5 years or a total of \$1,422,371.40 (for repayment of prior improvements to the Dialysis Center)
Provisions:	Taxes, utilities, insurance, and maintenance

The lease is a non-arm's length agreement.

Operating Budget

The applicant has submitted first year's operating budget, in 2014 dollars, as summarized below:

	<u>Current Year*</u>	<u>Incremental</u>	<u>Year One</u>
Revenues			
Commercial Fee-For Service	\$63,241	\$203,011	\$266,252
Medicare Fee-For-Service	\$413,191	\$1,713,401	\$2,126,592
Medicaid Fee-For-Service	\$135,028	\$134,259	\$269,287
Private Pay	<u>\$1,375</u>	<u>\$0</u>	<u>\$1,375</u>
Total Revenues	\$612,835	\$2,050,671	\$2,663,506
Expenses:			
Operating	\$602,033	\$1,455,814	\$2,057,847
Capital	<u>\$65,203</u>	<u>\$324,272</u>	<u>\$389,475</u>
Total Expenses	\$667,236	\$1,780,086	\$2,447,322
Revenues over Expenses (Loss)	<u>\$(54,401)</u>	<u>\$270,585</u>	<u>\$216,184</u>
Utilization: (treatments)	1,887	7,473	9,360
Cost Per Treatment	\$353.60	\$238.20	\$261.47

*Current year represents July through December 2013.

Utilization by payor source for the current year, and the first year subsequent to the change in operator, is summarized below:

	<u>Current Year</u>	<u>Year One</u>
Medicaid Fee-For-Service	21.78%	10.00%
Medicare Fee-For-Service	64.44%	80.00%
Commercial Fee-For-Service	13.51%	9.96%
Private Pay & All Other	.27%	.04%

The applicant states that the current year loss of \$54,401 is attributable to its initial start-up costs including: enrollment into Medicare and Medicaid programs, and establishing commercial insurance contracts. Utilization and expenses are based upon the facility's current activity, operating at approximately 2.5 shifts (60 patients).

Capability and Feasibility

Total purchase price of \$25,000 will be met with members' equity. BFA Attachment A is Workmen's Circle Dialysis Management, LLC d/b/a Workmens Circle Dialysis Center members' net worth statements which shows there are sufficient assets to complete the transaction. There are no project costs associated with this application.

The working capital requirement is estimated at \$407,887 and is based on two months of the first year expenses, which will be satisfied from the members' equity. Review of BFA Attachment A, summary of net worth, indicates sufficient resources to satisfy the projects' equity requirements. BFA Attachment B is the pro-forma balance sheet that shows operations will start off with \$515,464 in equity.

The first year's financial projections shows net income of \$216,184 and by the third year operations are expected to generate a surplus of \$844,771. Revenues reflect current reimbursement methodologies for Medicaid and Medicare and commercial revenues were based on experience. The budget appears reasonable.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A
BFA Attachment B

Net Worth Statements
Pro-forma Balance Sheet for Workmen's Circle Dialysis Management,
LLC d/b/a Workmens Circle Dialysis Center



Public Health and Health Planning Council

Project # 141172-E
Hospicare & Palliative Care Services of Tompkins County, Inc.

Program: Hospice
Purpose: Establishment

County: Tompkins
Acknowledged: April 24, 2014

Executive Summary

Description

Hospicare & Palliative Care Services of Tompkins County, Inc. (Hospicare), a New York not-for-profit corporation, is seeking approval to add Cortland County to its service area by entering into an Asset and Purchase agreement to acquire Caring Community Hospice of Cortland, the Cortland County hospice. This is an acquisition and merger transaction, which was approved by resolution of the Cortland County Legislature on February 27, 2014. Hospice operations in Cortland County will continue to be headquartered at 11 Kennedy Parkway in Cortland. The building is owned by Cortland Hospice Foundation, which has entered into a lease agreement with Hospicare.

proposes to purchase, acquire, and merge the Article 40 hospice operated by Cortland County Health Department d/b/a Caring Community Hospice of Cortland, which is approved to serve Cortland County only. Upon transfer of ownership, Hospicare & Palliative Care Services of Tompkins County, Inc. will merge all the operations of Cortland County Health Department d/b/a Caring Community Hospice of Cortland into its existing operations, resulting in the ultimate closure of the Caring Community Hospice of Cortland operated by the Cortland County Health Department.

DOH Recommendation Contingent Approval

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

Need Summary

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

Budget:	Revenues:	\$815,777
	Expenses:	<u>815,781</u>
	Gain (Loss):	\$ (4)

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

Program Summary

Hospicare & Palliative Care Services of Tompkins County, Inc., a voluntary not-for-profit Article 40 hospice approved to serve Tompkins County only,

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 Certificate of Assumed Name that is 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

August 7, 2014

Need Analysis

Background

Hospicare & Palliative Care Services of Tompkins County (Hospicare) has submitted an application to expand its service area into Cortland County and become established as the new operator of the hospice located at 11 Kennedy Parkway, Cortland, 13045, in Cortland County. This is in response to the impending closure of the hospice operated by Caring Community Hospice of Cortland.

Caring Community Hospice of Cortland's closure plan for its Article 40 hospice is predicated on the approval of another hospice to provide services in Cortland County, and on the associated successful transfer of all Cortland County hospice patients. This closure plan was accepted and approved by the New York State Department of Health in a letter dated February 11, 2014.

Hospicare became the natural partner to provide these services because of the long-standing relationships between Cortland County and Tompkins County and the relationships that had developed over time between the hospice professionals in those counties.

Current services provided by Cortland County are home-based and facility-based hospice services primarily at the "home care" level. It is anticipated that the existing array of services will be expanded to include both inpatient and outpatient palliative care services on the same terms as they are currently being provided by Hospicare in Tompkins County. Likewise, Hospicare operates a six-bed hospice residence in Tompkins County and those services will become available to Cortland County residents, a service which is not currently available to them.

The intention is to begin provision of services as soon as possible following approval of this application and the approval by the Centers for Medicare & Medicaid Services. Policies and procedures are already in place for Hospicare's operations in Tompkins County and these same standards will be applied to Cortland County upon initiation of services. Travel distance and times will not change because services to Cortland County residents will be based in the current hospice office's location. Upon approval, the current hospice office in Cortland County will become the satellite office of Hospicare, which will maintain its main office at its current location in Ithaca, NY.

Conclusion

In the absence of other applicants to serve Cortland County, and in view of the proposed arrangement, the long-standing relationship that currently exists between these two counties as well as their established connections with referral sources and related agencies in the jurisdiction, approval of this application would help ensure continued access to hospice care by the residents of Cortland County.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

Hospicare & Palliative Care Services of Tompkins County, Inc., a voluntary not-for-profit Article 40 hospice approved to serve Tompkins County only, proposes to purchase, acquire, and merge the Article 40 hospice operated by Cortland County Health Department d/b/a Caring Community Hospice of Cortland, which is approved to serve Cortland County only. Upon transfer of ownership, Hospicare & Palliative Care Services of Tompkins County, Inc. will merge all the operations of Cortland County Health Department d/b/a Caring Community Hospice of Cortland into its existing operations, resulting in the ultimate closure of the former Cortland County Health Department d/b/a Caring Community Hospice of Cortland.

Hospicare & Palliative Care Services of Tompkins County, Inc. currently has its sole practice location address at 172 East King Road, Ithaca, New York 14850 (Tompkins County), which will remain as both the hospice's main parent office practice location, and the location of The Hospicare Residence, the hospice's currently approved and operational 6-bed hospice residence facility. Hospicare plans to add the current sole practice location of Cortland County Health Department d/b/a Caring Community Hospice of Cortland at 11 Kennedy Parkway, Cortland, New York 13045 (Cortland County) as the hospice's new additional satellite office multiple practice location.

In addition, Hospicare plans to establish a new assumed name (d/b/a) of Hospicare and Palliative Care Services, to be effective on the same effective date as the actual acquisition and merger purchase / sale date, at which time the agency will officially become Hospicare and Palliative Care Services of Tompkins County, Inc. d/b/a Hospicare and Palliative Care Services, approved to serve both Tompkins and Cortland Counties.

Hospicare and Palliative Care Services of Tompkins County, Inc., has no member (parent) corporations, and no affiliated providers or provider corporations.

The governing body of the applicant is as follows:

Mark B. Wheeler, Esq., President
Partner, Harris Beach, PLLC (Law Firm)

Linda J. Pasto, RN, Vice-President
Professor of Nursing, Tompkins Cortland
Community College

W. Charles Julian Guttman, Esq., Secretary
Partner, Guttman and Wallace (Law Firm)

Loren A. Gardner, CFP, Co-Treasurer
Wealth Advisor, Tompkins Trust Company
(Bank)

Catherine L Haupert, CFP, CTFA, Co-
Treasurer
Vice President, Trust Officer, Tompkins Trust
Company (Bank)

Paul Emerson Bates, MD
Retired Partner, Obstetrics and Gynecology
Associates of Ithaca (Medical Practice)

Joan Jacobs Brumberg, PhD
Retired Professor, Cornell University - College
of Human Ecology

Linda C. Crumb, RN
Staff RN, Cayuga Medical Center

Sandra H. Dhimitri
Director of Human Resources, Cornell
University

Elizabeth R. East
Assistant Dean / Director of Admissions,
Cornell University
Affiliations: Kendall at Ithaca (CCRC)

Bonita N. Lindberg
Retired Human Resources Director, Albany
International Corporation (Manufacturing)
Affiliations: Cayuga Medical Center (Hospital)

Roland M. Lynch
President, Capsulated Systems (Research and
Development)

Granger J. Macy, PhD
Associate Professor of Management, Ithaca
College
Co-Owner, Lakeview Mobile Home Park
Affiliations: New Roots Charter School
(Education)

Susanne F. Maloy
Retired

Linda H. Mikula
Communications Specialist, Cornell University

Sharon L. Morehouse, Realtor
Associate Real Estate Broker, Senecayuga
Properties, LLC (Real Estate)

Janet E. Morgan, RN, PhD
Retired Nursing Professor, Tompkins Cortland
Community College

Judith C. Stewart
Retired Editorial Manager, Cornell University

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, the NYS Department of State, the Security and Exchange Commission (SEC) Investment Advisors Directory, and the Financial Industry Regulatory Authority (FINRA) Securities Broker Central Registration, where appropriate, 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.

The Division of Hospitals and Diagnostic and Treatment Centers reviewed the compliance history of the affiliated hospital for the time period specified as the affiliation. The review revealed the following enforcement action:

Cayuga Medical Center was the subject of an enforcement action in 2013 based on violations citing failure to recognize the severity, and lack of adequate monitoring, of a patient's condition of pneumonia and dehydration, which led to the patient's death. The hospital paid a \$26,000 civil penalty to resolve this matter. The hospital has been in compliance since that time.

It has been determined that the affiliated hospital has provided a substantially consistent high level of care.

The Nursing Home Licensure and Certification Unit reviewed the compliance history of the affiliated Continuing Care Retirement Community (CCRC) for the time period specified as the affiliation. It has been determined that the CCRC has been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

The Division of Residential Services reviewed the compliance history of the residential health care facility component of the affiliated CCRC for the time period specified as the affiliation. It has been determined that the residential health care facility has been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

The Division of Adult Care Facilities and Assisted Living reviewed the compliance history of the adult home / adult care facility component of the affiliated CCRC for the time period specified as the affiliation. It has been determined that the adult home / adult care facility has 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 applicant hospice for the time period 2007 through 2014. It has been determined that, from 2007 through 2014, the applicant hospice has been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

A review of all personal qualifying information indicates there is nothing in the background of the board members of Hospicare and Palliative Care Services of Tompkins County, Inc., to adversely affect their positions on the board. The applicant has the appropriate character and competence under Article 40 of the Public Health Law.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The change in ownership will be effectuated in accordance with an executed asset purchase and sale agreement, the terms of which are summarized below:

Date:	April 14, 2014
Seller:	County of Cortland
Purchaser :	Hospicare & Palliative Care Services of Tompkins County, Inc.
Purchased Assets:	The value of all professional, consulting and managerial services and all tangible assets used in operation of the corporation; equipment; supplies and inventory; prepaid expenses; documents and records; assignable leases, contracts, licenses and permits; telephone numbers, fax numbers and all logos; resident trust funds; deposits; accounts and notes receivable; cash, deposits and cash equivalents;
Excluded Assets:	Any security, vendor, utility or other deposits with any Governmental Entity; any refunds, debtor claims, third-party retroactive adjustments and related documents prior to closing.
Assumed Liabilities:	Those associated with purchased assets
Purchase Price:	\$3,330 for the tangible assets.
Payment of Purchase Price:	\$3,330 to be paid at closing.

The proposed members have submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 40 of the Public Health Law with respect to the period of time prior to the applicant acquiring interest, without releasing the transferor of its liability and responsibility.

Lease Agreement

Facility occupancy is subject to an executed lease agreement, the terms of which are summarized as follows:

Date:	April 1, 2014
Premises:	Administrative offices located at 11 Kennedy Parkway in Cortland
Landlord:	Hospice Foundation of Cortland County
Tenant:	Hospicare & Palliative Care Services of Tompkins County, Inc.
Terms:	3 years commencing upon DOH approval with a one year continuous option to renew.
Rental:	No payment of rent required in exchange for hospice services given to community residents without regard to their ability to pay for such services.
Provisions:	Tenant is responsible for general liability insurance, utilities and maintenance

The lease arrangement is an arm's length agreement.

Operating Budget

Following is a summary of the submitted operating budget, presented in 2014 dollars, for the first and third year subsequent to change in ownership:

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Inpatient	\$ 24,055	\$ 35,657
Home Care	<u>495,092</u>	<u>780,120</u>
Total	\$519,147	\$815,777
Expenses:		
Operating-Inpatient	\$ 22,189	\$ 36,281
Operating-Home Care	<u>495,132</u>	<u>779,500</u>
Total	\$517,321	\$815,781
Net Income(Loss)	\$(1,826)	\$(4)
Total Inpatient Days	39	55
Total Home Care Visits	3,612	5,420

Capability and Feasibility

There are no project costs associated with this application. The asset purchase price of \$3,330 will be through existing accumulated funds. BFA Attachment B is the financial summary of Hospicare & Palliative Care Services of Tompkins County, Inc. for 2013, which shows available funds.

Working capital requirements, estimated at \$86,220, appear reasonable based on two months of first year expense, which will be satisfied through existing operations. BFA Attachment A is the pro-forma balance sheet of Hospicare as of the first day of operation, which indicates positive fund balance of \$515,633.

BFA Attachment B presents a financial summary of Hospicare & Palliative Care Services of Tompkins County, Inc. for 2013. As shown, the hospice has maintained positive working capital and net asset positions and generated a net loss from operations of \$380,096 for 2013, which was due to an impact of \$200,000 in reduction of the Medicare Hospice rate and the reduction of the average length of stay for inpatient stays by 2 days. BFA Attachment C presents a financial summary of Caring Community Hospice of Cortland for 2013. As shown, the hospice has a net loss from operations of \$131,671 for 2013, which can be attributed to the following indicators:

- As a county run operation, salary and fringe benefits accounted for 49% of expenditures. All salaries are set by union contracts and fringe benefits exceeded 58% last year- both uncontrollable expenses.
- The absence of an electronic practice management system (PMS) results in inefficiencies in both practice and billing. The county is not in a position to purchase a PMS for the program as they are restricted by the State government to a 2% tax cap.
- Overall patient census was lower last year, possibly due to an increasing presence of Certified Home Health Agencies offering palliative care services.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A

BFA Attachment B

BFA Attachment C

Pro-forma Balance Sheet

Financial Summary, Hospicare & Palliative Care Services of Tompkins
County, Inc.-2013

Financial Summary, Caring Community Hospice of Cortland-2013



Public Health and Health Planning Council

Project # 141190-E

HHH Acquisition, LLC d/b/a The Grove at Valhalla Rehabilitation and Healing Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Westchester
Acknowledged: May 2, 2014

Executive Summary

Description

HHH Acquisition, LLC, a recently formed New York limited liability company, requests approval to become the operator of Hebrew Hospital of Westchester, an existing 160-bed residential health care facility, located at 61 Grasslands Road, Valhalla, New York. Upon approval of this application, the name of the facility will become The Grove at Valhalla Rehabilitation and Healing Center.

The current and proposed operators of the nursing home are as follows:

Current

Hebrew Hospital Home of Westchester, Inc. (not-for-profit)

Proposed

HHH Acquisition, LLC:

Members:

Judy Landa	50%
Devorah Friedma	25%
Sharon Einhorn	25%

The current operations of Hebrew Hospital Home of Westchester include the RHCF (the subject of this CON application) and a 500-slot long term home health care program (LTHHCP). On November 7, 2013, Hebrew Hospital Home of Westchester, Inc. and HHH Acquisition entered into an Asset Purchase Agreement (APA) whereby HHH Acquisition agreed to purchase the operations of the RHCF and certain other assets from Hebrew Hospital Home of Westchester, Inc. The LTHHCP is not included in this transaction. The purchase price for the acquisition of the operating interests is \$10 plus the assumption of certain liabilities identified in the APA.

Also, Hebrew Hospital Home of Westchester, Inc. and Tarrytown II, LLC entered into a Real Estate Purchase Agreement on November 7, 2013, whereby Tarrytown II, LLC agreed to purchase the RHCF building from Hebrew Hospital Home of Westchester, Inc. Tarrytown II, LLC and HHH Acquisition have entered into a lease whereby HHH Acquisition will lease the RHCF from Tarrytown II, LLC for a term of 30 years. There is a relationship between Tarrytown II, LLC and HHH Acquisition that is being acknowledged in this application, in that there is common ownership between the entities.

DOH Recommendation

Contingent Approval

Need Summary

Hebrew Hospital Home of Westchester Inc.'s utilization in 2010, 2011 and 2012 was 96.4%, 96.4%, and 95.4%, respectively. Utilization at this facility does not meet the Department's 97% planning optimum. However, to address the issue of profitability, on November 7, 2013, Hebrew Hospital Home entered into an Asset Purchase Agreement (APA), and also a Consulting and Administrative Services Agreement (CASA) with HHH Acquisition, in order to assist in the facility's operations, to stabilize operations, and to restore profitability. HHH Acquisition now seeks to exercise its right under the APA to become the operator of the RHCF.

There will be no changes in 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.

Financial Summary

The purchase price for the acquisition of the operating interests is \$10 plus the assumption of the liabilities. The purchase price for the acquisition of the real estate interests is \$25,000,000. The purchase price will be paid as follows: Equity of \$2,100,000 from the proposed members; assumption of an existing HUD insured mortgage of \$15,000,000; one year note from the Seller of \$1,000,000; proceeds of an IRS Section

1031 qualifying sale of a Tarrytown property of \$6,000,000, and an equity contribution by Benjamin Landa, a member of Tarrytown II, LLC of \$900,000. The applicant has indicated that the sale of the Tarrytown property is expected to close in July, 2014.

Budget:

Revenues	\$16,901,597
Expenses	<u>16,520,726</u>
Net Income	\$380,871

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. 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:
 - Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
 - Submit an annual report for two years to the DOH, which demonstrates substantial progress with the implement of the plan. The plan should include but not be limited to:
 - Information on activities relating to a-c above;
 - 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 and approval of a plan for the disposition of the 500-slot long term home health care program (LTHHCP) currently operated by Hebrew Hospital Home of Westchester, Inc. [LTC]
4. Submission of a programmatically acceptable name for the facility. [LTC]
5. Submission of an executed lease rental agreement that is acceptable to the Department of Health. [BFA]
6. Submission of a promissory note that is acceptable to the Department of Health. [BFA]
7. Submission of a photocopy of an executed facility lease agreement, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's executed proposed Articles of Organization, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's executed proposed Operating Agreement, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Termination of the Consulting and Administrative Services Agreement between HHH Acquisition, LLC and Hebrew Hospital Home of Westchester, Inc. [LTC]

Council Action Date

August 7, 2014

Need Analysis

Background

HHH Acquisition, LLC, a recently formed New York limited liability company, seeks approval to be established as the new operator of Hebrew Hospital Home of Westchester, an existing 160-bed Article 28 residential health care facility. The facility is located at 61 Grasslands Road, Valhalla, NY, 10595, in Westchester County.

Analysis

Hebrew Hospital Home of Westchester was close to the 97% planning optimum for 2010 and 2011 but was slightly lower for 2012. The facility's occupancy was higher than that of Westchester County as a whole for 2010, 2011 and 2012, as shown in Table 1 below:

Table 1: Overall RHCF Occupancy Percentage, by Year:

<u>Facility/County/Region</u>	<u>% Occupancy 2010</u>	<u>% Occupancy 2011</u>	<u>% Occupancy 2012</u>
Hebrew Hospital Home of Westchester	96.4%	96.4%	95.4%
County—Westchester	92.9%	92.4%	92.6%

The 2016 projected bed need for Westchester County is 43 and the county has an occupancy rate of 92.6%.

Table 2: RHCF Need – Westchester County

2016 RHCF Projected Need	6,716
Current Beds	6,720
Beds Under Construction	(47)
Total Resources	6,673
Unmet Need	43

The above table shows that all facilities in the county are operating at close to full capacity. According to the 709.3 RHCF bed need methodology, there is a projected need for an additional 43 beds.

- The CASA and APA's purpose was to restore the facility to profitability
- The facility is just shy of the planning optimum's 97% occupancy rate, at 95.4% in 2012.
- HHH Acquisition will engage in outreach programs to promote attendance at seminars

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.

Hebrew Hospital Home of Westchester was below the 75 percent planning average for 2011 and 2012. The facility reported Medicaid admissions of 9.7 percent and 10.2 percent in 2011 and 2012, respectively. The 75 percent planning averages for Westchester County for these years were 23.8 percent (2011) and 21.1 percent (2012).

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Hebrew Hospital Home of Westchester Inc.	The Grove at Valhalla Rehabilitation and Healing Center
Address	61 Grasslands Road Valhalla, NY. 10595	Same
RHCF Capacity	160	Same
Type of Operator	Voluntary - Not-for-profit	Proprietary
Class of Operator	Corporation	Limited Liability Company
Operator	Hebrew Hospital Home of Westchester Inc.	HHH Acquisition, LLC Members: Judy Landa 50% Devorah Friedman 25% Sharon Einhorn 25%

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Bellhaven Center for Rehabilitation and Nursing Center	03/2010 to present
Brookhaven Rehabilitation and Health Care Center	07/2004 to 02/2009
Dumont Center for Rehabilitation	08/2010 to present
Fort Tryon Center for Rehabilitation and Nursing	07/2004 to 01/2009
Franklin Center for Rehabilitation and Nursing	07/2004 to 01/2009
Highfield Gardens Care Center of Great Neck (formerly Wedgewood Care Center)	07/2004 to 11/2005
Ramapo Manor Center for Rehabilitation & Nursing	07/2012 to present
Sans Souci Rehabilitation & Nursing Center	10/2009 to present
St. James Rehabilitation & Healthcare Center	08/2012 to present
The Grand Pavilion for Rehabilitation at Rockville Center	08/2012 to present
The Riverside	08/2013 to present
West Lawrence Care Center	07/2004 to present

Individual Background Review

Judy Landa reports no employment during the past ten years. Ms. Landa discloses the following health care facility interests with dates of ownership, as follows.

Brookhaven Rehabilitation and Health Care Center	04/2001 to 02/2009
Fort Tryon Center for Rehabilitation and Nursing	11/2002 to 01/2009
Franklin Center for Rehabilitation and Nursing	11/2002 to 01/2009
Highfield Gardens Care Center of Great Neck (formerly Wedgewood Care Center)	01/1997 to 11/2005
West Lawrence Care Center	09/2003 to present

Devorah Friedman holds a New York State speech language pathologist license and is considered to be in good standing. She is currently employed as the owner/operator of Bellhaven Center for Rehabilitation and Nursing. Ms. Friedman discloses the following ownership interests.

Sans Souci Rehabilitation & Nursing Center	10/2009 to present
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Dumont Center for Rehabilitation	08/2010 to present
Bellhaven Center for Rehabilitation and Nursing Center	03/2010 to present
Ramapo Manor Center for Rehabilitation & Nursing	07/2012 to present
St. James Rehabilitation & Healthcare Center	08/2012 to present
The Grand Pavilion for Rehabilitation at Rockville Center	08/2012 to present
The Riverside	08/2013 to present

Sharon Einhorn discloses no employment history over the last 10 years. Ms. Einhorn discloses the following ownership interests.

Dumont Center for Rehabilitation	08/2010 to present
Bellhaven Center for Rehabilitation and Nursing Center	03/2010 to present
Ramapo Manor Center for Rehabilitation & Nursing	07/2012 to present
St. James Rehabilitation & Healthcare Center	08/2012 to present
The Grand Pavilion for Rehabilitation at Rockville Center	08/2012 to present
The Riverside	09/2013 to present

Character and Competence – Analysis

No negative information has been received concerning the character and competence of the applicants.

A review of Sans Souci Nursing Home for the period reveals that the facility was fined \$10,000 pursuant to a Stipulation and Order for surveillance findings on February 11, 2011. Deficiencies were found under 10 NYCRR 415.12(j): Quality of Care – Hydration.

A review of Brookhaven Rehabilitation & Health Care Center, LLC for the period identified above reveals the following.

- The facility was fined \$2,000 pursuant to a Stipulation and Order issued April 3, 2009 for surveillance findings on April 25, 2008. Deficiencies were found under 10 NYCRR 415.12 - Quality of Care: Accidents.

A review of Highfield Gardens Care Center of Great Neck for the period identified above reveals the following.

- The facility was fined \$1,000 pursuant to a Stipulation and Order issued August 16, 2005 for surveillance findings on August 27, 2004. Deficiencies were found under 10 NYCRR 415.12(c)(2) - Quality of Care: Pressure Sores.

A review of Sans Souci Rehabilitation & Healthcare Center for the period identified above reveals the following.

- The facility was fined \$10,000 pursuant to a Stipulation and Order issued March 16, 2012 for surveillance findings on February 11, 2011. Deficiencies were found under 10 NYCRR 415.12(j) - Quality of Care: Hydration.

A review of operations for Brookhaven Rehabilitation & Health Care Center, LLC, Highfield Gardens Care Center of Great Neck, and Sans Souci Rehabilitation and Nursing Center for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of Bellhaven Center for Rehabilitation and Nursing, Dumont Center for Rehabilitation and Nursing, Fort Tryon Center for Rehabilitation and Nursing, Franklin Center for Rehabilitation and Nursing, Ramapo Manor Center for Rehabilitation & Nursing, St. James Rehabilitation and Healthcare Center, The Grand Pavilion for Rehabilitation at Rockville Center, The Riverside, and West Lawrence Care Center reveals that a substantially consistent high level of care has been provided since there were no enforcements for the time period reviewed.

Project Review

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.

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

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement for the purchase of the operation, which is summarized below:

Date	November 7, 2013
Seller	Hebrew Hospital Home of Westchester, Inc.
Purchaser	HHA Acquisition, LLC
Assets Acquired	Business and operation of the Facility; all inventory, supplies and other articles of personal property; funds held in trust for residents of the Facility and any and all deposits for prepaid room and service charges for the Residents relating to periods on or after the Closing Date; all security deposits and prepayments, if any, for future services held by Seller; all policies and procedures manuals; all telephone numbers and fax numbers used by the Facility, other than those telephone numbers and fax numbers utilized by Seller's programs other than the Facility; copies of all current financial books and records in Seller's possession relating to the Facility; all current resident/patient records relating to the Facility; all current employee and payroll records of Retained Employees; goodwill in connection with the business of the Facility; copies of all other current books and records relating to the Facility; to the extent assignable, all licenses and permits held or owned by Seller relating to the ownership or operation of the Facility; Seller's Medicare and Medicaid provider numbers and all other assets of Seller relating to the Facility other than the Excluded Assets.
Excluded Assets	Any cash, deposits and other cash equivalents; all marketable securities and accrued interest dividends thereon; all claims, causes of action, suits and rights of Seller to federal, state and local tax refunds, tax refund claims, credits, deductions or other tax benefits; all books, records, ledgers, files, documents, books of account, taxpayer identification numbers and correspondence and lists of Seller relating to the organization of Seller; all claims, causes of action, suits and rights relating to Excluded Assets, Excluded Contracts and/or Retained Liabilities; 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 Seller before the Effective Date; all proceeds of any appeals (for rate reductions and PRI adjustments addressed to the Medicare or Medicaid programs) relating to periods prior to the Effective Date which are paid by the appropriate payor after the Effective Date; all insurance policies not transferred to Buyer herein, the rights to receive payments under such policies; the name "Hebrew Hospital Home" including any and all other trade names, logos, trademarks and service marks associated with the Facility and the Purchased Assets; all rights to the additional 70 beds owned by the Seller and currently approved by DOH under Project No. 092058 and all receivables for services provided prior to the Effective Date from any source.
Assumed Liabilities	At the Closing, Buyer shall assume or shall be obligated to payor or otherwise discharge the ongoing obligations of Seller arising on and after the

	Effective Date with respect to the Facility and the Purchased Assets including, but not limited to Seller's obligations under the Contracts assumed by Buyer hereunder.
Excluded Liabilities	Amounts that are to become due and payable on or after the Closing Date in payment for services or goods, provided to or delivered to the Facility prior to the Effective Date; long term, short term or other debts and obligations of Seller; any amounts due Medicare, Medicaid and other third party payors, as a result of retroactive rate reductions, audits or otherwise, related to services provided by the Facility prior to the Effective Date; taxes, interest and penalties, if any, due and payable by Seller for periods prior to the Effective Date and professional liability claims for acts or commissions of Seller or any of its employees, agents or representations or other tort claims asserted against Seller occurring prior to the Effective Date.
Purchase Price	\$10

The applicant has submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, the facility has no outstanding liabilities.

Real Estate Purchase Agreement

The applicant has submitted an executed real estate purchase agreement for the purchase of the real estate; which is summarized below:

Date	November 7, 2013
Premises	The parcel of land situated at 61 Grasslands Road, Valhalla, New York.
Seller	Hebrew Hospital Home of Westchester, Inc.
Purchaser	Tarrytown II, LLC
Purchase Price	\$25,000,000

The applicant's financing plan appears as follows:

Equity (proposed members)	\$2,100,000
Assumption of an existing HUD insured mortgage	15,000,000
One year note from the Seller	1,000,000
Proceeds of an IRS Section 1031 qualifying sale of a Tarrytown property	6,000,000
Equity via Benjamin Landa	900,000

Lease Rental Agreement

The applicant has submitted a draft lease rental agreement for the site that they will occupy, which is summarized below:

Premises	The site located at 61 Grasslands Road, Valhalla, New York
Lessor	Tarrytown II, LLC
Lessee	HHH Acquisition, LLC
Term	30 years
Rental	Year 1-5- \$750,000 annually Year 6-10- \$787,500 annually Year 11-15- \$826,875 annually Year 16-20- \$868,218.75 annually Year 21-25- \$911,629.69 annually Year 26-30- \$957,211.17 annually

The applicant has indicated that the lease arrangement will be a non-arm's length lease arrangement.

Operating Budget

The applicant has submitted an operating budget, in 2014 dollars, during the first year after the change in operator; summarized below:

	<u>Per Diem</u>	<u>Total</u>
Revenues:		
Medicaid Managed Care	\$224.93	\$8,437,520
Medicare Fee For Service	\$603.54	4,868,138
Commercial Fee For Service	\$372.70	1,812,436
Private Pay	\$361.63	<u>1,783,503</u>
Gross Revenues		\$16,901,597
Expenses:		
Operating	\$256.85	\$14,125,012
Capital	<u>43.56</u>	<u>2,395,714</u>
Total Expenses	\$300.41	\$16,520,726
Net Income		\$380,871
Utilization: (Patient days)		54,994
Occupancy		94.16%
Breakeven Occupancy		92.11%

Utilization broken down by payor source during the first year after the change in operator is as follows:

Medicaid Managed Care	68.21%
Medicare Fee For Service	14.67%
Commercial Fee For Service	8.84%
Private Pay	8.28%

The applicant projected the expense reductions in the following categories:

- Salaries and Wages: Reduction in numbers of management and supervisory staff (a reduction of 7.63 FTEs in Year 1), which will total \$499,178 in savings.
- Employee Health Benefits: Reduction of employee health benefits due to the reduction of FTEs in management/supervisory salaries (\$956,734) and bringing employee health benefits percentage more with norm.
- Medical Surgical Supplies-Medical & Surgical Supplies: are being reduced by \$11,659.
- Non-med, non surg supplies: are being reduced by \$263,858.
- Purchased Services: are being reduced by \$1,172,294 due to eliminating the expense for third party administrative services and reducing expenses for plant operation/maintenance, housekeeping and resident food services.
- Other Direct Expenses: are being reduced by \$1,934,671 due to reducing expenses for certain professional fees (fiscal, activities, dental, physical therapy and speech (hearing therapy), reducing administrative expenses and eliminating a lease expense for moveable equipment.

Expense assumptions are based on current historical experience and taking into account expense reductions that the applicant proposed. The applicant is increasing utilization from 93.01% in 2013 to 94.16% during the first year after the change in operator. The applicant has indicated that the reason for the increase is that they are very familiar with Westchester County, including Valhalla and neighboring communities. The applicant plans to work closely with local health care and social service providers, including hospitals, adult care facilities, assisted living programs, senior citizen centers, religious organizations, community centers and the Westchester County Department of Social Services, in order to publicize the new ownership of the facility and to convey the new operator's proven approach to operating an RHC in a friendlier, more home-like and enjoyable environment for elderly residents than the prior operator. The applicant anticipates that its community relationships, its aggressive outreach efforts and the manner in which its members will provide a high quality, more home-like environment, will lead to increased utilization by a more acute resident population, as it has at other facilities that the applicant's members have operated in New York State. The applicant projects a slight decrease in Medicaid

utilization and a slight increase in Medicare and Private Pay due to closely reflect the population demographics of Valhalla and the immediately surrounding communities and the historical experience of the proposed members.

Capability and Feasibility

The operational purchase price of \$10 will be met via equity from the proposed members. The real estate purchase price of \$25,000,000 will be met as follows: Equity of \$2,100,000 from the proposed members of HHH Acquisition, LLC; assumption of an existing HUD insured mortgage of \$15,000,000; one year note from the Seller of \$1,000,000; proceeds of an IRS Section 1031 qualifying sale of Tarrytown property of \$6,000,000; and an equity contribution by Benjamin Landa, a member of Tarrytown II, LLC of \$900,000. BFA Attachment C is the personal net worth statement of Benjamin Landa, which indicates the availability of sufficient funds for the equity contribution.

Working capital requirements are estimated at \$2,753,454, which appears reasonable based on two months of first year expenses after the change in operator. The applicant will provide equity from the proposed members personal resources to meet the working capital requirement. BFA Attachment A are the personal net worth statements of the proposed members of HHH Acquisition, LLC, which indicates the availability of sufficient funds for the equity contribution for the operational purchase price, real estate purchase price equity portion and the working capital requirements. The applicant has submitted an affidavit indicating that the equity will be provided disproportionate to ownership interests. BFA Attachment D is the pro- forma balance sheet of HHH Acquisition, LLC, which indicates a positive net asset position of \$2,750,454 as of the first day of operation.

The submitted budget projects a net income of \$380,871 during the first year after the change in operator. Revenues are based on current reimbursement methodologies for nursing homes. The budget appears reasonable.

Staff notes that with the expected 2014 implementation of managed care for nursing home residents, Medicaid reimbursement is expected to change from a state wide price with a cost based capital component payment methodology, to a negotiated reimbursement methodology. Facility payments will be the result of negotiations between the managed long term care plans and the facility. At this point in time, it cannot be determined what financial impact this change in reimbursement methodology will have on this project.

BFA Attachment B is the financial summary of Hebrew Hospital of Westchester from 2011 through 2013. As shown, the facility had an average negative working capital position and an average positive net asset position from 2011 through 2013. The applicant has indicated that the reason for the average negative working capital position is due to historical losses. The applicant incurred average historical losses of \$555,710 from 2011 through 2013. The applicant has indicated that the reason for the losses were attributed to that there were 13.63 FTE's employed by the RHCF devoted to management and supervision. The applicant believes that this is too high and should be reduced by more than 50%.

BFA Attachment E is the financial summary of West Lawrence Care Center. As shown, the facility had an average negative working capital position and an average positive net asset position from 2011 through 2013. The applicant has indicated that the reason for the average negative working capital position is because of prior year losses. Also, the facility incurred average losses of \$490,135. The applicant has indicated that the reason for the losses are because of the change in methodology for West Lawrence's Medicaid rate computation. During that time period, West Lawrence's Medicaid rate dropped by approximately \$40 per day, causing significant losses for those years. The applicant has indicated that they implemented the following steps to improve operations: the facility has cut, and will continue to cut where feasible, expenses by reducing excess staffing, revising contracts and being more aggressive with purchasing negotiations.

BFA Attachment E is the financial summary of Bellhaven Center for Rehab. As shown, the facility had an average negative working capital position from 2011 through 2013. The applicant has indicated that the reason for the average negative working capital position is a payable to private and third party payers

(which were current liabilities) that more properly should have been treated not as current but as long term. Also, the facility achieved average net income of \$3,303,138 from 2011 through 2013.

BFA Attachment E is the financial summary of Sans Souchi Rehab. As shown, the facility had an average negative working capital position and an average positive net asset position from 2011 through 2013. The applicant has indicated that the reason for the average negative working capital position is due to amounts owed by San Souchi to a related party company. Also, the facility achieved an average net income of \$1,919,981 from 2011 through 2013.

BFA Attachment E is the financial summary of Dumont Center for Rehab. As shown, the facility had an average negative working capital position and a positive net asset position from 2011 through 2013. The applicant has indicated that the reason for the average negative working capital position is due to two unusual items that were reported as current liabilities in 2011. First, \$962,447 due to affiliates was recorded as a current liability and represented expenses shared among affiliated entities and outstanding rent payments due to a related party. This matter was resolved in 2012 and was no longer reflected as a liability, which greatly reduced the working capital deficit. Second, \$432,434 due to third party payers was recorded as a current liability in 2011. Also, the facility achieved an average net income of \$2,159,785 from 2011 through 2013.

BFA Attachment E is the financial summary of The Grand Pavilion Rehab. As shown, the facility had a positive working capital position and a positive net asset position in 2013. Also, the facility achieved a positive net income of \$1,474,584.

BFA Attachment E is the financial summary of St. James Rehab. As shown, the facility had a positive working capital position and a positive net asset position in 2013. Also, the facility achieved a net income of \$5,158,255 in 2013.

BFA Attachment E is the financial summary of Ramapo Center. As shown, the facility had a positive working capital position and a positive net asset position in 2013. Also, the facility achieved a net income of \$3,101,875 in 2013.

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- Proposed Members
BFA Attachment B	Financial Summary- Hebrew Hospital of Westchester
BFA Attachment C	Personal Net Worth Statement of Benjamin Landa
BFA Attachment D	Pro-forma Balance Sheet as of the first day of operation.
BFA Attachment E	Financial Summaries for the other owned facilities.



Public Health and Health Planning Council

Project # 141128-E
Comprehensive at Orleans, LLC d/b/a The Villages of Orleans Health and Rehabilitation Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Orleans
Acknowledged: March 31, 2014

Executive Summary

Description

Comprehensive at Orleans, LLC d/b/a The Villages of Orleans Health and Rehabilitation Center, is seeking approval to become established as the new operator of the existing 120-bed, public county residential health care facility (RHCF) located at 14012 Route 31 in Albion. The sole member of Comprehensive at Orleans is Bernard Fuchs.

On March 8, 2013, the County entered into a lease agreement with the Orleans County Health Facilities Corporation (OCHFC), giving the latter a lease with an exclusive option to purchase the facility. OCHFC has entered into a purchase and sale agreement to sell the nursing facility to Comprehensive at Orleans, the proposed operator and Telegraph Realty, LLC, the real property purchaser. The County of Orleans entered into a Facility Transition Agreement with the proposed operator on February 6, 2014.

Since March of 2011, Bernard Fuchs has had a 6% membership interest in Hopkins Center for Rehabilitation & Healthcare a 288-bed RHCF located in Brooklyn, and a 25% membership interest in Bensonhurst Center for Rehab and Residential Care since January of 2012, a 200-bed RHCF located in Brooklyn.

DOH Recommendation
Contingent Approval

Need Summary

The Department of Health estimates that there will be a need for 360 RHCF beds in Orleans County by 2016. With an approved capacity of 310 beds, the County is expected to have a shortage of 50 beds. While this proposal will not affect existing capacity, it does involve the second largest of three residential health care facilities in Orleans County, representing one third of the projected need.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The facility is in compliance with CMS 2013 sprinkler mandates.

Financial Summary

The purchase price for the operating assets and real property is \$7,800,000. The purchase price will be paid by \$1,560,000 in cash and a \$6,240,000 mortgage at 5.50% over a 3-year term with a 25-year amortization via a bridge to HUD loan. Telegraph Realty, LLC has submitted an affidavit stating that they will fund the balloon payment, should acceptable financing not be available at the time the bridge loan comes due after the 3-year period and if they cannot obtain a HUD loan or fixed rate term loan.

There are no project costs associated with this proposal.

Budget:	Revenues:	\$10,595,000
	Expenses:	<u>\$10,453,000</u>
	Gain:	\$142,000

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 loan commitment for the purchase price that is acceptable to the Department of Health. [BFA]
2. Submission of an executed lease agreement that is acceptable to the Department of Health. [BFA]
3. Submission of a copy of an executed Leaseback Agreement between the County of Orleans and the Orleans Health Facilities Corporation ("OHFC"), acceptable to the Department. [CSL]
4. Submission of a copy of an executed Purchase and Sale Agreement among the Orleans County Health Facilities Corporation ("OHFC"), the County of Orleans, and Comprehensive at Orleans, LLC, acceptable to the Department. [CSL]
5. Submission of a copy of the executed Articles of Organization of Telegraph Realty, LLC, acceptable to the Department. [CSL]
6. Submission of a copy of the executed Operating Agreement of Telegraph Realty, LLC, acceptable to the Department. [CSL]
7. Submission of a copy of an executed Escrow Agreement among Harris Beach, PLLC, Orleans County Health Facility Corporation, Comprehensive at Orleans, LLC, and Telegraph Realty, LLC must be provided. [CSL]
8. Submission of a copy of the applicant's executed Certificate of Amendment of the Articles of Organization of Comprehensive at Orleans 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]

Council Action Date

August 7, 2014

Need Analysis

Project Summary

Comprehensive at Orleans, an LLC owned solely by Mr. Bernhard Fuchs, is seeking approval for the complete transfer of ownership of The Villages of Orleans Health and Rehabilitation Center, of 14012 Route 31, Albion, NY, from Orleans County to the LLC. The Villages of Orleans Health and Rehabilitation Center will remain a 120 bed residential health care facility located in Orleans County. Mr. Fuchs currently has interests in two residential health care facilities, both in Kings County: Bensonhurst Center for Rehabilitation and Healthcare and Hopkins Center for Rehabilitation and Healthcare.

Analysis

The following table summarizes occupancy and Medicaid admissions rates at The Villages of Orleans Health and Rehabilitation Center over the last 3 years.

Year	2010	2011	2012
Occupancy	91.5%	93.5%	91.9%
Medicaid Admissions	22.8%	25.0%	25.6%

While occupancy rates are below the Department's 97% planning goal, they have been consistently above the County average. Medicaid admissions have also consistently exceeded the Department's 75% of County average minimum standard.

Conclusion

Upon approval of this proposal there will be no change to the RHCF capacity of Orleans County. However, the Department hopes that this project will allow the continued operation of The Village of Orleans Health and Rehabilitation Center, which provides necessary nursing home services to the residents of an underserved county. In light of the unmet need and the reasonable utilization and Medicaid admission rates of the facility, approval of this proposal is recommended.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	The Villages of Orleans Health & Rehabilitation Center	Same
Address	14012 Route 31 Albion, NY 14411	Same
RHCF Capacity	120	Same
ADHC Program Capacity	N/A	Same
Type of Operator	County	Limited Liability Company
Class of Operator	Public	Proprietary
Operator	Orleans County Legislature	Comprehensive at Orleans, LLC d/b/a The Villages of Orleans Health & Rehabilitation Center Members: Bernard Fuchs 100.00%

Character and Competence - Background

Facilities Reviewed

Nursing Homes:

Hudson Pointe at Riverdale Center for Nursing and Rehabilitation	01/2006 to 08/2010
Hopkins Center for Rehabilitation and Healthcare	03/2011 to present
Bensonhurst Center for Rehabilitation and Healthcare	01/2012 to present

Individual Background Review

Bernard Fuchs is the CEO and Chief Investment Officer at Tiferes Investors LLC, an investment company located in Lawrence, New York. Mr. Fuchs discloses the following ownership interests in health facilities:

Hudson Pointe at Riverdale Center for Nursing and Rehabilitation	01/2006 to 08/2010
Hopkins Center for Rehabilitation and Healthcare	03/2011 to present
Bensonhurst Center for Rehabilitation and Healthcare	01/2012 to present

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of Hopkins Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to Stipulation and Order NH-12-037 issued August 24, 2012 for surveillance findings on April 11, 2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) – Quality of Care: Accidents; and 10 NYCRR 415.26 – Administration.

A review of operations for Hopkins Center for Rehabilitation and Healthcare for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of operations for Hudson Pointe at Riverdale Center for Nursing and Rehabilitation, and Bensonhurst Center for Rehabilitation and Healthcare for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

Project Review

No changes in the program or physical environment are proposed in this application. The facility is in compliance with CMS 2013 sprinkler mandates.

Recommendation

From a programmatic perspective, approval is recommended.

<h2>Financial Analysis</h2>

Facility Transition Agreement

On February 6, 2014, County of Orleans and Comprehensive at Orleans, LLC entered into a transition agreement with the acknowledgement of Orleans County Health Facilities Corporation (OCHFC), a local development corporation. Previously, The County of Orleans and OCHFC entered into a lease agreement with exclusive option to purchase and acquire the facility assets. The County of Orleans has a leaseback agreement whereas the County leases the Facility Assets back from OCHFC for operating purposes.

Purchase and Sale Agreement

The change in ownership will be effectuated in accordance with an executed purchase and sale agreement, the terms of which are summarized below:

Date: February 6, 2014
Seller: Orleans County Health Facilities Corporation
Purchaser : Comprehensive at Orleans, LLC, the operator and Telegraph Realty, LLC, the real property purchaser
Purchased Assets: The real property and all assets used in operation of the facility. Facilities; equipment; supplies and inventory; prepaid expenses; documents and records; assignable leases, contracts, licenses and permits; telephone numbers, fax numbers and all logos; resident trust funds; deposits; accounts and notes receivable; cash, deposits and cash equivalents;
Excluded Assets: Any security, vendor, utility or other deposits with any Governmental Entity; any refunds, debtor claims, third-party retroactive adjustments and related documents prior to closing, and personal property of residents.
Assumed Liabilities: Those associated with purchased assets.
Purchase Price: \$7,800,000 for the operating interest and real property.
Payment of Purchase Price: A \$780,000 down payment held in escrow with the balance at closing.

The real property has been purchased by Telegraph Realty, LLC for \$7,800,000, which is owned by Ephram Lahasky, David Gast and Josh Farkovits, who are not associated with the proposed member of the operations. Telegraph will transfer the operations to Comprehensive at Orleans, LLC.

The proposed members have submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring interest, without releasing the transferor of its liability and responsibility.

Lease Agreement

Facility occupancy is subject to a draft lease agreement, the terms of which are summarized as follows:

Premises: A 120-bed RHCF located at 14012 Route 31, Albion
Lessor: Telegraph Realty, LLC
Lessee: Comprehensive at Orleans, LLC
Terms: 10 years commencing on the execution of the lease
Rental: Base rent equal to the debt service payments of the mortgage covering the premises. \$459,829 per year plus \$600,000 per year.
Provisions: Tenant is responsible for taxes, insurance, utilities and maintenance

The lease arrangement is a non-arm's lease agreement. The applicant has submitted an affidavit attesting to the relationship between landlord and tenant in that members of each company have previous business relationships involving real estate transactions in Beaver, Pennsylvania.

Operating Budget

Following is a summary of the submitted operating budget for the RHCF, presented in 2014 dollars, for the first year subsequent to change in ownership:

Revenues:	
Medicaid	\$7,097,000
Medicare	1,934,000
Private Pay	<u>1,564,000</u>
Total Revenues	\$10,595,000
Expenses:	
Operating	\$9,199,000
Capital	<u>1,254,000</u>
Total Expenses	<u>\$10,453,000</u>
Net Income	<u>\$142,000</u>
Utilization: (patient days)	41,612
Occupancy	95.0%

The following is noted with respect to the submitted RHCF operating budget:

- Expenses include lease rental.
- Medicaid revenues include assessment revenues.
- Medicaid rates are based on 2014 Medicaid pricing rates with no trend.
- Medicare and Private Rates are based on the experience of the County.
- Overall utilization is projected at 95.0%, while utilization by payor source is expected as follows:

Medicaid	80.50%
Medicare	9.13%
Private Pay	10.37%
- Breakeven occupancy is projected at 93.73%.

Capability and Feasibility

The purchase price for the realty and operations will be financed by a loan of \$6,240,000 at an interest rate of 5.5% for 10 years, with a 25-year amortization with the remaining \$1,560,000 from the members of Telegraph Realty, LLC, who will then transfer the operations to the proposed member of Comprehensive at Orleans, LLC. BFA Attachment B is the net worth statement of the members of Telegraph Realty, LLC, which shows sufficient equity. A Letter of Interest has been submitted by HHC Finance. A bridge-to-HUD financing loan has been proposed for the acquisition of the assets, which includes the estimated bridge fees, HUD application fees, debt reserves, repairs and bridge closing costs, and anticipates a HUD loan approval within two to three years.

Telegraph Realty, LLC has submitted an affidavit stating that they will fund the balloon payment, should acceptable financing not be available at the time the bridge loan comes due after the 3 year period, and if they cannot obtain a HUD loan or fixed rate term loan.

Working capital requirements are estimated at \$1,742,167 based on two months of the first year expenses, which will be satisfied from the proposed member's equity. BFA Attachment A is the net worth of proposed member, which shows sufficient equity.

The submitted budget indicates that a net income of \$142,000 would be maintained during the first year following change in ownership. DOH staff has reviewed the difference between the current 2012 certified net operating loss of \$2,825,048, as shown on BFA Attachment D, and the first year budgeted net income of \$142,000 and has concluded that the difference is due to the reduction in employee fringe benefits of \$1,702,000, staffing decreases of \$241,000 without interruption of care and increased reimbursement rates of \$1,335,000, as shown on BFA Attachment I. The facility will no longer participate in the County benefit plan. BFA Attachment G is the budget sensitivity analysis based on April 30, 2014 current utilization of the facility, which shows the budgeted revenues would decrease by \$125,872 resulting in a net income in year one of \$17,128. The increased utilization has occurred for the last 6 months. The increased Medicaid rate is based on current acuity levels at the RHCF. BFA Attachment C is the pro-forma balance sheet of The Villages of Orleans Health and Rehabilitation Center, which indicates positive member equity of \$1,742,000 as of the first day of operations. The budget appears reasonable.

Staff notes that with the expected 2014 implementation of managed care for nursing home residents, Medicaid reimbursement is expected to change from a state-wide price with a cost-based capital component payment methodology to a negotiated reimbursement methodology. Facility payments will be the result of negotiations between the managed long term care plans and the facility. At this point in time it cannot be determined what financial impact this change in reimbursement methodology will have on this project.

As shown on BFA Attachment D, the facility maintained positive working capital and positive net assets and an average net loss from operations of \$2,698,001 for the period shown between 2011-2013, and a net operating loss of \$892,192 as of April 30, 2014. The county cannot maintain its current operation due to re-occurring losses from year to year and has therefore decided to sell the facility to a new operator.

BFA Attachments E and F, Financial Summary of the proposed member affiliated RHCs, shows the facilities have maintained positive income from operations for the periods shown. Bensonhurst Center for Rehabilitation and Hopkins Center for Rehabilitation had negative working capital in 2012 and 2013, respectively, due to organization and financing costs under new ownership.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth of Proposed Members
BFA Attachment B	Net Worth of property members- Telegraph Realty , LLC
BFA Attachment C	Pro-forma Balance Sheet,
BFA Attachment D	Financial Summary, 2011- April 30,2014
BFA Attachment E	Financial Summary of Hopkins Center for Rehabilitation & Healthcare
BFA Attachment F	Financial Summary of Bensonhurst Center for Rehab & Residential Care
BFA Attachment G	Budget Sensitivity Analysis
BFA Attachment H	Amortization Table for Mortgage Payment
BFA Attachment I	Calculation of increased Medicaid reimbursement rates



Public Health and Health Planning Council

Project # 141140-E

Cortland Acquisition, LLC d/b/a Crown Center for Nursing and Rehabilitation

Program: Residential Health Care Facility
Purpose: Establishment

County: Cortland
Acknowledged: April 8, 2014

Executive Summary

Description

Cortland Acquisition, LLC d/b/a Crown Center for Nursing and Rehabilitation (Crown Center), a for-profit entity, is seeking approval to be established as the new operator of Cortland Operating Company, LLC d/b/a Crown Center for Nursing and Rehabilitation, an existing 200-bed residential health care facility (RHCF) located at 28 Kellogg Road, Cortland, (Cortland County). A separate realty entity, Cortland Property NY, LLC, will acquire the facility's real property.

Ownership of the operations and real property before and after the requested change in ownership is as follows:

Current Operator

Cortland Operating Company, LLC d/b/a Crown Center for Nursing and Rehabilitation

Current Owners

Bent Philipson	<u>Ownership</u> 100.00%
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Proposed Operator

Cortland Acquisition, LLC d/b/a Crown Center for Nursing and Rehabilitation

Proposed Owners

Akiva Rudner	<u>Ownership</u> 56.00%
Yossie Zucker	15.00%
Israel Minzer	13.00%
William Schwartz	6.90%
Harold Weinstein	4.55%

Current Realty Owner

28 Kellogg Road, LLC

Current Owners

	<u>Ownership</u>
Benjamin Landa	25.5%
Philipson Family LLC	15.0%
David Rubinstein	12.5%
Rochel David	12.5%
Leah Freidman	12.5%
Oscar Rosenberg	8.0%
Sher SNF, LLC	5.0%
JD-MLS SNF, LLC	5.0%
Equity Trust Co –as Custodian FBO	
Acct 102114 Roth IRA	4.0%

Proposed Realty Owner

Cortland Property NY, LLC

Proposed Owners

	<u>Ownership</u>
Mark Friedman	27.00%
Neal Einhorn	27.00%
Akiva Rudner	2.00%
Yossie Zucker	15.00%
Israel Minzer	13.00%
William Schwartz	6.90%
Harold Weinstein	4.55%
Aaron Schlosser	4.55%

BFA Attachment A presents the proposed members' net worth statements for Cortland Acquisition, LLC. Some of the members have ownership interest in the following five RHCF facilities: Bellhaven Center Management, LLC d/b/a Bellhaven Center for Rehabilitation & Nursing Care; Dumont Operating, LLC d/b/a Dumont Center for Rehabilitation and Nursing Care; St. James Operating, LLC d/b/a St. James Rehabilitation & Healthcare Center; Ramapo Manor Nursing Center, Inc. d/b/a Ramapo Manor Center for Rehabilitation & Nursing, and Rockville Operating, LLC d/b/a The Grand Pavilion for Rehab & Nursing at

Rockville Centre. Presented as BFA Attachments E and F are the first two listed RHCf, the remaining three listed RHCf's are not included, as they weren't owned until after June of 2012.

DOH Recommendation
Contingent Approval

Need Summary

Crown Center for Nursing and Rehabilitation's utilization was 98.4% in 2010, 93.2% in 2011, and 88.4% in 2012. Current utilization, as of April 30, 2014, is 93.0%. The applicant believes that the recently updated facility will lead directly to increased utilization. The various resident care areas and support areas throughout the first floor of the facility were renovated, including resident rooms, resident bathrooms, corridors, lobby, therapy area, dining and activity areas, providing a more home-like atmosphere. The applicant is confident that by addressing both the clinical and resident care of this facility, occupancy will exceed 93.0% and continue to grow, expecting it to reach the Department's planning optimum in the near future.

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.

Financial Summary

Cortland Acquisition, LLC d/b/a Crown Center for Nursing and Rehabilitation has agreed to acquire the RHCf operations of Cortland Operating Company, LLC d/b/a Crown Center for Nursing and Rehabilitation by assuming certain liabilities (with a value estimated at \$3,988,165). Cortland Property NY, LLC the applicant's landlord, is purchasing the real property for \$11,000,000 and its member(s) have already contributed \$1,500,000 in equity, along with entering into a \$9,500,000 loan, interest only for the first eighteen months at 7.5%, followed by an interest rate of 7.5% for 25 years, with a 25 year amortization schedule. A letter of interest for the real property loan has been provided by Greystone Servicing Corporation, Inc. There are no project costs associated with this proposal.

Budget:	Revenues:	\$14,705,242
	Expenses:	<u>\$14,460,915</u>
	Gain:	\$244,327

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Health Systems Management

Approval contingent upon:

1. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
 - Submit an annual report for two years to the DOH, which demonstrates substantial progress with the implement of the plan. The plan should include but not be limited to:
 - Information on activities relating to a-c above;
 - 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 commitment for a real property loan acceptable to the Department of Health. [BFA]
4. Submission of an executed building lease acceptable to the Department of Health. [BFA]
5. Submission of a photocopy of the applicant's executed proposed Articles of Organization, acceptable to the Department. [CSL]
6. Submission of a photocopy of the applicant's executed proposed Operating Agreement, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

August 7, 2014

Need Analysis

Background

Cortland Acquisition, LLC seeks approval to become the established operator of Crown Center for Nursing and Rehabilitation, a 200-bed Article 28 residential health care facility, located at 28 Kellogg Road, Cortland, 13045, in Cortland County.

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 91.2% for 2012 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

Crown Center for Nursing and Rehabilitation's utilization was 98.4% in 2010, 93.2% in 2011, and 88.4% in 2012. Utilization in 2010 is represented by the first eight months of 2010 that Highgate LTC Management operated the facility (97.9%) and the last four months of the year that current owner Cortland Operating Company took over (99.2%). The applicant noted that the facility went through significant changes, including hiring an outside consultant to assist with operation and restoring profitability and stability, and a substantial restructuring of personnel on all levels. As the facility restructured its leadership and management, the focus was placed primarily on stabilization and clinical care and less on occupancy, which resulted in declining utilization.

Table 2: Summit Park Nursing Care Center/Rockland County

<u>Facility/County/Region</u>	<u>% Occupancy 2010</u>	<u>% Occupancy 2011</u>	<u>% Occupancy 2012</u>
Crown Center for Nursing and Rehabilitation	98.4%	93.2%	88.4%
Cortland County	64.3%	93.0%	91.2%

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.

Crown Center for Nursing and Rehabilitation's Medicaid admissions for 2011 and 2012 of 49.8% and 52.5%, respectively has exceeded Cortland County 75% rates in both 2011 and 2012 of 23.7%.

Conclusion

Approval of this application will result in the maintenance of a needed RHCF resource for the community.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Crown Center for Nursing and Rehabilitation	Same
Address	28 Kellogg Road Cortland, NY 13045	Same
RHCF Capacity	200	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Proprietary	Proprietary
Class of Operator	Limited Liability Company	Limited Liability Company
Operator	Cortland Operating Company, LLC	Cortland Acquisition, LLC Members: Akiva Rudner 56.0 % Yossie Zucker 15.0 % Israel Minzer 13.0 % William Schwartz 6.9 % Harold Weinstein 4.55% Aaron Schlosser 4.55%

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Bellhaven Center for Rehabilitation and Nursing Center	03/2010 to present
Dumont Center for Rehabilitation	08/2010 to present
Ramapo Manor Center for Rehabilitation & Nursing	07/2012 to present
St. James Rehabilitation & Healthcare Center	08/2012 to present
The Grand Pavilion for Rehabilitation at Rockville Center	08/2012 to present
The Riverside	08/2013 to present

Individual Background Review

Akiva Rudner is a nursing home administrator with license in good standing. He currently serves as Chief Operating Officer at CareRite LLC, a nursing home consulting service. Mr. Rudner discloses ownership in the following facility:

St. James Rehabilitation & Healthcare Center	08/2012 to present
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Yossie Zucker is a New York State certified public accountant with license currently inactive. Mr. Zucker is the owner of CareRite Services LLC, in Lakewood, New Jersey, a financial consulting firm for nursing homes. He discloses ownership interests in the following facilities:

St. James Rehabilitation & Healthcare Center	08/2012 to present
The Grand Pavilion for Rehabilitation at Rockville Center	08/2012 to present
The Riverside	08/2013 to present

Israel Miner is the president of Healthcare Equipment and Parts, a diagnostic medical equipment supplier in Brooklyn, NY. Mr. Miner discloses the following ownership interests:

Dumont Center for Rehabilitation	08/2010 to present
Belhaven Center for Rehabilitation and Nursing Center	03/2010 to present
Ramapo Manor Center for Rehabilitation & Nursing	07/2012 to present
St. James Rehabilitation & Healthcare Center	08/2012 to present
The Grand Pavilion for Rehabilitation at Rockville Center	08/2012 to present

William Schwartz is the president of Vista Packaging, Inc., a cosmetic packaging company. Mr. Schwartz discloses no licenses nor ownership interests in health care facilities.

Harold Weinstein is the Vice President at Max Kahan Inc., a precious metals refinement company located in New York, New York. Mr. Weinstein discloses the following ownership interest:

St. James Rehabilitation & Healthcare Center	08/2012 to present
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Aaron Schlosser lists his employment as sales at Robert Klein Diamonds, a jewelry company located in New York, New York. Mr. Schlosser discloses the following ownership interest:

St. James Rehabilitation & Healthcare Center	08/2012 to present
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Character and Competence - Analysis

No negative information has been received concerning the character and competence of the applicants.

A review of Bellhaven Center for Rehabilitation and Nursing, Dumont Center for Rehabilitation and Nursing, Ramapo Manor Center for Rehabilitation & Nursing, St. James Rehabilitation and Healthcare Center, The Grand Pavilion for Rehabilitation at Rockville Center, and The Riverside reveals that a substantially consistent high level of care has been provided since there were no enforcements for the time period reviewed.

Project Review

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The facility is in compliance with CMS 2013 sprinkler mandates.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement-Operations

The applicant has submitted an executed asset purchase agreement for the purchase of the operating interest, the terms of which are summarized as follows:

Date:	July 1, 2011
Seller:	Cortland Operating Company, LLC d/b/a Crown Center for Nursing and Rehabilitation
Purchaser:	Cortland Acquisition, LLC d/b/a Crown Center for Nursing and Rehabilitation
Purchased Assets:	Transfer, assign, and convey all title and interest in basic assets free and clear of all liens, claims, assessments, security interests, mortgages and other encumbrances. Basic Assets includes: agreement of lease for the premises; inventory; contracts; residents trust assets; the name "Crown Center for Nursing and Rehabilitation"; security deposits & prepayments; procedures manuals & computer software; telephone numbers; copy of books, records, and plans; goodwill; Medicare and Medicaid providers agreements and numbers; assignable licenses & permits; leasehold improvements; furniture & equipment owned or leased; liquid assets; accounts receivable and retroactive rate increase on or after contract date.
Excluded Assets:	Personal property
Assumed Liabilities-Operations:	All liabilities of operator relating to the use, ownership and operation of the facility on or after the contract date including: accounts & trade payables; amounts due Medicare, Medicaid & other third party payors, cash receipts assessments as the results of audits, rate changes or otherwise; loans arranged by buyer to operator.
Retained Liabilities:	Liabilities relating to the use, ownership or operation of the facility prior to the contract date.
Purchase Price:	Assumption of the assumed liabilities, estimated at \$3,988,165.
Payment of Purchase Price:	From ongoing operations.

BFA Attachment C is the pro-forma balance sheet showing the applicant will start off with equity of \$711,058 which is made up of: \$4,699,223 in assets offset by \$3,988,165 in liabilities.

Additionally on July 1, 2011, Cortland Operating Company, LLC d/b/a Crown Center for Nursing and Rehabilitation (operations seller) entered into a consulting agreement with MN Consulting LLC to assist with the facility's operations and restore profitability and stability. The consulting agreement provided that Mark Friedman and Neil Einhorn, both members of MN Consulting, LLC and Cortland Property NY, LLC, would assist with the facility's operations and Mark Friedman would be the Chief Operating Officer. Since executing the consulting agreement the operations have improved, as can be seen in BFA Attachment D.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. There are currently outstanding Assessment liabilities as of May 9, 2014 and no outstanding Medicaid liabilities as of June 19, 2014.

Asset Purchase Agreement- Real Property

The applicant has submitted an executed option to purchase the real property and a first amendment to purchase the real property, the terms of which are summarized as follows:

Date: July 1, 2011 option to purchase the real property and March 26, 2014 first amendment to purchase the real property located at 28 Kellogg Road, Cortland, New York 13045

Seller: 28 Kellogg Road, LLC

Purchaser: Cortland Property NY, LLC

Purchased Assets: Convey to property buyer good, marketable and insurable title to the property, free and clear of all liens and encumbrances. The property is sold in its "as is" condition.

Purchase Price: \$11,000,000

Payment of Purchase Price: \$ 1 500,000 deposit on signing agreement
9 500,000 at closing
\$11,000,000

The purchase price is proposed to be satisfied as follows:

Equity - Cortland Property NY, LLC Members	\$1,500,000
Loan- 7.5% interest only for the first 18 months and then 25-year terms at 7.5%	<u>9,500,000</u>
Total	\$11,000,000

A letter of interest has been provided by Greystone Servicing Corporation. The applicant has stated they expect to have its \$9,500,000 loan converted to a loan from the Department of Housing and Urban Development (HUD) and/or insured by them.

BFA Attachment B is the proposed members' net worth summaries for Cortland Property NY, LLC that reveals sufficient resources to meet the equity requirement. It is noted that liquid resources may not be available in proportion to the proposed ownership interest. Mark Friedman has provided an affidavit stating he is willing to contribute resources disproportionate to his membership interest for the real estate operations.

Lease Agreement

A letter of interest has been submitted to lease the real property, terms are summarized below:

Premises: 200 Bed RHCf located at 28 Kellogg Road, Cortland, NY 13045

Owner/Landlord: Cortland Property NY, LLC

Lessee: Cortland Acquisition, LLC d/b/a Crown Center for Nursing and Rehabilitation

Term: Ten years – with a 20-year renewal option

Rent: \$650,000 per year (\$54,166.67 per month)

Provisions: Taxes, utilities, insurance, and maintenance

The lease arrangement 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.

Operating Budget

The applicant has provided an operating budget, in 2014 dollars, for the first year of operations subsequent to the change in ownership. The budget is summarized below:

	<u>Per Diem</u>	<u>Total</u>
Revenues:		
Medicaid	\$183.16	\$9,943,638
Medicare	401.26	2,042,432
Commercial	364.09	1,522,243
Private Pay & Other	257.86	713,756
Assessment Revenue		<u>483,173</u>
Total Revenues:		\$14,705,242
Expenses:		
Operating		\$13,479,773
Capital		<u>981,142</u>
Total Expenses:		\$14,460,915
Net Income:		<u>\$244,327</u>
RHFC Utilization (patient days)		66,328
RHFC Occupancy		90.86%

The following is noted with respect to the submitted RHCF operating budget:

- RHCF expenses include lease rental
- RHCF Medicaid revenues are based on current rates
- RHCF Medicare revenues were based on current rates
- RHCF private pay revenues are based on 2013 rates
- RHCF projected utilization is 90.86%. Utilization as reported on the DOH website as of April 30, 2014 was 93%. The current operator started operating the facility on August 30, 2010. Up to that time the facility was troubled and struggled financially, and occupancy lagged. In 2009, occupancy was 80.71% and in the first eight months of 2010, it was approximately 82%. Since MN Consulting, LLC began assisting with operations in 2011, the facility has been restored to profitability and operation have been stabilized. In 2011, occupancy was 93.19%; in 2012, it was 88.42% in 2013 it was 90.66% and by April 30, 2014, occupancy was at 93%.
- Breakeven utilization is projected at 89%.
- RHCF utilization by payor source is anticipated as follows:

Medicaid	81.85%
Medicare	7.68%
Commercial	6.30%
Private/Other	4.17%

Capability and Feasibility

Cortland Acquisition, LLC d/b/a Crown Center for Nursing and Rehabilitation will acquire the RHCF operations of Cortland Operating Company, LLC d/b/a Crown Center for Nursing and Rehabilitation by assuming certain liabilities, which will be paid from continuing operations. Concurrently Cortland Property NY, LLC will purchase the real property for \$11,000,000, which will be funded as follows: \$1,500,000 in member(s) equity along with a \$9,500,000 loan at the above stated terms. A letter of interest for the real property loan has been provided by Greystone Servicing Corporation, Inc. BFA Attachment B is Cortland Property NY, LLC members net worth statements. Cortland Property NY, LLC shows there are sufficient assets to complete the transaction. It is noted that liquid resources may not be available in proportion to the proposed ownership interest. Mark Friedman has provided an affidavit stating he is willing to contribute resources disproportionate to his membership interest for the real property. There are no project costs associated with this application.

The working capital requirement is estimated at \$2,410,153 and is based on two months of the first year operating expenses. Crown Center for Nursing and Rehabilitation has a net account receivable total of \$1,904,983 as seen on BFA Attachment C, Operations Pro-forma Balance Sheet that will be applied to the working capital. The applicant's members will contribute \$505,170 in equity to satisfy the remaining working capital. Additionally, the applicant has provided a letter stating that to the extent any portion of the accounts receivable is not available when needed, the applicant's members will contribute sufficient personal liquid resources to satisfy any working capital shortfall. Review of BFA Attachment A, summary of net worth, indicates sufficient resources to satisfy the working capital equity requirement. It is also noted that liquid resources may not be available in proportion to ownership interest; therefore Israel Minzers' has provided an affidavit stating he will contribute resources disproportionate to his membership interest on behalf of Akiva Rudner.

Review of BFA Attachments C, Cortland Acquisition, LLC d/b/a Crown Center for Nursing and Rehabilitation pro-forma balance sheet, shows the entity will start off with \$711,058 in equity.

The submitted budget indicates that net income of \$244,327 would be generated in the first year after change in ownership. The following is a comparison of 2012 historical and projected revenue and expense:

Projected Income	\$ 14,705,242
Projected Expense	<u>14,460,915</u>
Projected Net Income	\$244,327
Annual 2012 Income	\$12,884,961
Annual 2012 Expense	<u>13,604,692</u>
Annual 2012 Net Income (Loss)	(\$719,731)
Incremental Net Income (Loss)	<u>\$964,058</u>

Incremental net revenues is estimated to increase approximately \$1,820,281, primarily coming from commercial payer contacts that MN Consulting, LLC negotiate in 2012, and implemented in 2013. Inpatient days are expected to increase by 1,608 days going from 64,720 inpatient days or 88.42% occupancy in 2012 to 66,328 inpatient days or 90.86% occupancy.

The applicant projects expenses to increase by \$856,223 primarily from realigning expenses, along with increases in utilities, medical supplies, professional fees and interest expense. The budget was created taking into consideration the proposed new owners experience in operating similar facilities. 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

As shown on BFA Attachment D, Cortland Operating Co., LLC d/b/a Crown Center for Nursing and Rehabilitation for the period from 2011 through 2012 and 2013, had an average negative working capital position, for 2011 through 2012 the facility had an average net loss of \$901,017, and in 2013 generated a positive surplus of \$962,753, which included a prior year positive Medicaid rate adjustment of \$683,676. For the period 2011 through 2012 the facility had a negative net asset position of \$ 504,447. In 2013, the net asset position became positive and ended the year at \$205,888. On July 1, 2011, the current operator of the facility entered into a Consulting Agreement with MN Consulting, LLC to assist with the operations in order to restore profitability and stability, which was accomplished in 2013.

As shown on BFA Attachment E, Bellhaven Center Management, LLC d/b/a Bellhaven Center for Rehabilitation & Nursing Care for the period from 2011 through 2012 and 2013, had an average positive working capital position and an average positive net asset position. The facility generated an average operating surplus of \$3,054,000 for the period 2011-2012, and an operating surplus of \$ 4,070,212 for 2013.

As shown on BFA Attachment F, Dumont Operating, LLC d/b/a Dumont Center for Rehabilitation and Nursing Care for the period from 2011 through 2012 and 2013, had an average positive working capital position and an average positive net asset position. The facility generated an average operating surplus of \$2,153,000 for the period 2011-2012 and an operating surplus of \$ 2,513,112 for 2013.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth of Proposed Members, Cortland Acquisition, LLC d/b/a Crown Center for Nursing and Rehabilitation
BFA Attachment B	Net Worth of Proposed Members, Cortland Property NY, LLC
BFA Attachment C	Pro-forma Balance Sheet, Cortland Acquisition, LLC d/b/a Crown Center for Nursing and Rehabilitation
BFA Attachment D	Financial Summary, Cortland Operating Company, LLC d/b/a Crown Center for Nursing and Rehabilitation
BFA Attachment E	Financial Summary, Bellhaven Center Management, LLC d/b/a Bellhaven Center for Rehabilitation & Nursing Care
BFA Attachment F	Financial Summary, Dumont Operating, LLC d/b/a Dumont Center for Rehabilitation and Nursing Care



Public Health and Health Planning Council

Project # 141212-E
CCRN Operator, LLC d/b/a Focus Rehabilitation and Nursing Center at Otsego

Program: Residential Health Care Facility
Purpose: Establishment

County: Otsego
Acknowledged: May 15, 2014

Executive Summary

Description

CCRN Operator, LLC, d/b/a Focus Rehabilitation and Nursing Center at Otsego and Focus Home Care at Otsego, is requesting to become established as the operator of Otsego Manor, a 174-bed residential health care facility (RHCF) with 2 respite beds, and Otsego Manor Long Term Home Health Care Program (LTHHCP), both of which are located at 128 Phoenix Mills Cross Road, Cooperstown (Otsego County), New York 13326, and are currently operated by Otsego County. The members of CCRN Operator, LLC are as follows: Joseph Zupnik, with a 99% membership interest; and Elisa Zupnik, with a 1% membership interest. The managing member will be Joseph Zupnik.

Phoenix Mills Realty, LLC and CCRN Operator, LLC entered into a Purchase and Sales Agreement with Otsego County Health Facilities Corporation on April 23, 2014, for the acquisition and sale, respectively, of the Real Property and the Business Assets of Otsego Manor. The purchase price of Otsego Manor is \$18,548,400. As stated in the Agreement, the buyer will allocate the purchase price among assets at a future date. The entire purchase price will be paid by Phoenix Mills Realty, LLC. The members of Phoenix Mills Realty, LLC are Mr. Hillel Weinberger (99%) and Mr. David Gruber (1%).

Phoenix Mills Realty, LLC entered into a Lease Agreement on May 13, 2014 with CCRN Operator, LLC, for the rental of the property related to the RHCF and the LTHHCP. There will be no common ownership at closing or immediately thereafter between Phoenix Mills Realty, LLC and CCRN Operator, LLC.

DOH Recommendation

Contingent Approval

Need Summary

Otsego Manor's utilization was 98.2% in 2010, 98.0% in 2011, and 97.1% in 2012. Current utilization, as of April 30, 2014, is 99.4%, which exceeds the Department planning optimum of 97 percent and the County's overall utilization rate.

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 applicant.

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 not in compliance with CMS 2013 sprinkler mandates as of the date of this report.

Financial Summary

There are no project costs associated with this application.

BUDGET:	Revenues:	\$15,861,166
	Expenses:	<u>15,828,171</u>
	Gain:	\$ 32,995

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. 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. 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]
4. Submission of an executed working capital loan acceptable to the Department of Health. [BFA]
5. Submission of a copy of an executed certificate of assumed name for CCRN Operator, LLC, acceptable to the Department. [CSL]
6. Submission of a copy of an executed operating agreement of CCRN Operator, LLC, acceptable to the Department. [CSL]
7. Submission of a copy of executed articles of organization of Phoenix Mills Realty, LLC, acceptable to the Department. [CSL]
8. Submission of a copy of the executed operating agreement of Phoenix Mills Realty, LLC, acceptable to the Department. [CSL]
9. Submission of a copy of an executed purchase and sale agreement between Otsego County and the Otsego Health Facilities Corporation ("HFC") conveying property rights to the real property on which the facility is located and/or the facility assets, acceptable to the Department. [CSL]
10. Submission of a copy of the separate executed agreement between Otsego County and the Otsego HFC allowing Otsego County to continue operating the facility, acceptable to the Department. [CSL]
11. Submission of a copy of the health facility transition agreement entered into between Otsego County and CCRN Operator LLC and acknowledged by the Otsego HFC, acceptable to the Department. [CSL]

12. Submission of a copy of an executed purchase and sale agreement among CCRN Operator, LLC, Otsego Health Facilities Corporation, and Phoenix Mills Realty LLC, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within **three** years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Certification that the facility is in full compliance with the CMS 2013 mandate at the time of closing. [LTC]

Council Action Date

August 7, 2014

Need Analysis

Project Description

CCRN Operator, LLC d/b/a Focus Rehabilitation and Nursing Center at Otsego and Focus Home Care at Otsego, seeks approval to become the established operator of Otsego Manor, a 174-bed Article 28 residential health care facility, located at 128 Phoenix Mills Cross Road, Cooperstown, 13326, in Otsego County. The operator is also seeking approval to become the established operator of Otsego Manor Long Term Home Health Care Program located at the same address.

Analysis

There is currently a need for 125 beds in Otsego County as indicated in Table 1 below. The overall occupancy for Otsego County is 97.0% for 2012 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

Otsego Manor's utilization was 98.2% in 2010, 98.0% in 2011, and 97.1% in 2012. Otsego Manor has met the Department's utilization rate and has continually exceeded the County's overall occupancy rates.

Table 2: Otsego Manor/Otsego County

Facility/County/Region	% Occupancy 2010	% Occupancy 2011	% Occupancy 2012
Otsego Manor	98.2%	98.0%	97.1%
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 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.

Otsego Manor's Medicaid admissions for 2011 and 2012 was 28.1% and 24.5%, respectively. This facility exceeded Otsego County 75% rates in 2011 and 2012 of 20.8% and 16.8%, respectively.

Conclusion

Approval of this application will result in the maintenance of a needed and well-utilized source of RHCF care for the residents of Otsego County.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Otsego Manor	Focus Rehabilitation and Nursing Center at Otsego
Address	128 Phoenix Mills Cross Road Cooperstown, NY 13326	Same
RHCF Capacity	174	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Public	Limited Liability Company
Class of Operator	County	Proprietary
Operator	Otsego County-Board of Representatives	CCRN Operator, LLC d/b/a Focus Rehabilitation and Nursing Center at Otsego Members: Joseph Zupnik* 99.0% Elisa Zupnik 1.0% 100.00% *Managing Member

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Rome Center for Rehabilitation and Health Care	01/2006 - 06/2010
Chittenango Center for Rehabilitation and Health Care	01/2006 - 06/2010
Focus Rehabilitation and Nursing at Utica (receiver)	11/2011 - present

Adult Care

Focus Senior Living at Utica (receiver)	11/2011 - present
Focus Home Care (CHHA) (PA)	05/2010 - present

Individual Background Review

Joseph Zupnik discloses he is an owner and director of Sterling Management Group, LLC, since 2004, and CEO of Empire State Ambulance Corp, d/b/a EMStar from 06/2013 to present. Mr. Zupnik discloses the following health facility interests:

Nursing Homes

Rome Center for Rehabilitation and Health Care (formerly Stonehedge Health and Rehabilitation Center – Rome)	01/2006 - 06/2010
Chittenango Center for Rehabilitation and Health Care (formerly Stonehedge Health and Rehabilitation Center – Chittenango)	01/2006 - 06/2010
Focus Rehabilitation and Nursing at Utica (receiver)	11/2011 - present

Adult Care

Focus Senior Living at Utica (receiver)	11/2011 - present
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Eliza Zupnik discloses she is a homemaker for the past ten years. Ms. Zupnik discloses ownership interests in the following health care facilities:

Nursing Homes

Focus Rehabilitation and Nursing at Utica	11/2011 - present
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Adult Care

Focus Senior Living at Utica (receiver)	11/2011 - present
Focus Home Care (CHHA) (PA)	05/2010 - present

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of Chittenango Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to Stipulation and Order NH-10-053 issued November 15, 2010 for surveillance findings on October 22, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1,2) Quality of Care: Accidents and Supervision, and 415.26(b)(3)(4) Governing body.

A review of Rome Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$6,000 pursuant to Stipulation and Order NH-08-040 issued July 8, 2008 for surveillance findings on August 31, 2007. Deficiencies were found under 10 NYCRR 415.12(f)(1) Quality of Care: Mental and Psychosocial Functioning, 415.12(h)(1,2) Quality of Care: Accidents, and 415.26 Organization and Administration.

A review of operations for Focus Rehabilitation and Nursing at Utica, Focus Senior Living at Utica, and Focus Home Care for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of operations for Chittenango Center for Rehabilitation and Health Care, and Rome Center for Rehabilitation and Health Care for the period identified above, results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

Project Review

No changes in the program or physical environment are proposed in this application. The facility is not compliant with CMS 2013 sprinkler mandates.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Facility Transition Agreement

On April 23, 2014, the County of Otsego and CCRN Operator, LLC entered into a Facility Transition Agreement, which was acknowledged by Otsego County Health Facilities Corporation (OCHFC), a not-for-profit local development corporation. OCHFC had entered into a quitclaim deed on June 1, 2013, for the real property and Facility operational assets, whereas the county could continue to operate the facility until its rights were terminated by OCHFC.

Purchase and Sale Agreement

The change in ownership will be effectuated in accordance with an executed purchase and sale agreement, the terms of which are summarized below:

Date:	April 23, 2014
Seller:	Otsego County Health Facilities Corporation
Purchaser :	Phoenix Mills Realty, LLC
Purchased Assets:	The real property and all assets used in operation of the facility. Facilities; equipment; supplies and inventory; prepaid expenses; documents and records; assignable leases, contracts, licenses and permits; telephone numbers, fax numbers and all logos; resident trust funds; deposits; accounts and notes receivable; cash, deposits and cash equivalents;

Excluded Assets: Any security, vendor, utility or other deposits with any Governmental Entity; any refunds, debtor claims, third-party retroactive adjustments and related documents prior to closing, and personal property of residents.

Assumed Liabilities: Those associated with purchased assets

Purchase Price: \$18,548,000 for the real property operating interest.

Payment of Purchase Price: \$1,854,800 has been paid in cash and put into escrow with the balance of \$16,693,200 to be paid at closing.

The proposed members have submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring interest, without releasing the transferor of its liability and responsibility.

Lease Agreement

Facility occupancy is subject to an executed lease agreement, the terms of which are summarized as follows:

Date: May 13, 2014

Premises: A 174-bed RHCF located at 128 Phoenix Mills Cross Road in Cooperstown

Landlord: Phoenix Mills Realty, LLC

Tenant: CCRN Operator, LLC

Terms: 40 years commencing on the execution of the landlord closing on the purchase and sales agreement.

Rental: Annual rent is equal to the Landlord's annual debt service payment, mortgage insurance premiums, real property taxes and property and liability insurance (Budgeted at \$1,085,384 annually).

Provisions: Tenant is responsible for general liability insurance, utilities and maintenance

The lease arrangement is an arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the Landlord and operating entity.

Operating Budget

Following is a summary of the submitted operating budget, presented in 2014 dollars, for the first year subsequent to change in ownership:

Inpatient Revenues:	
Medicaid	\$7,865,000
Medicare	1,632,540
Private Pay/Other	<u>4,963,635</u>
Total RHCF	\$14,461,175
Outpatient Revenues:	
Medicaid	\$1,299,990
Medicare	<u>100,001</u>
Total ADHCP	\$1,399,991
Total Revenue	\$15,861,166
Expenses:	
Operating	\$14,475,586
Capital	<u>1,352,585</u>
Total	\$15,828,171
Net Income	\$32,995

Total Patient Days	61,828
Visits	11,935

- Medicaid capital component includes lease rental payment.
- Medicare and private pay revenues are based on current payment rates.
- Medicaid rates are based on 2014 Medicaid pricing rates with no trend.
- Overall utilization is projected at 97.35%.
- Inpatient utilization by Payor source is anticipated as follows:

Medicaid	65.36%
Medicare	6.77%
Private/Other	27.87%
- Breakeven utilization is projected at 97.15%.

The ADCHHCP utilization is budgeted at 5% Medicare and 95% Medicaid.

Capability and Feasibility

There are no project costs associated with this application. The total purchase price for the real property and the operations is \$18,548,000, and will be paid by \$3,076,244 of the members' equity from Phoenix Mills Realty, LLC, and the remaining \$15,472,156 will be financed through a three year mortgage with 5.0% interest rate over a 25 year amortization. A bank letter of interest from Capital Funding, LLC has been submitted by the applicant. A bridge-to-HUD financing loan has been proposed for the acquisition of the assets of Otsego Manor, which includes the estimated bridge fees, HUD application fees, debt reserves, repairs, and bridge closing costs, and anticipates a HUD loan approval within two to three years. BFA Attachment D is the net worth statement of Mr. Hillel Weinberger, majority member of Phoenix Mills Realty, LLC, which shows sufficient equity.

Mr. Weinberger of Phoenix Mills Realty, LLC, has submitted an affidavit stating that he will fund the balloon payment should acceptable financing not be available at the time the bridge loan comes due after the 3 year period if he cannot obtain a HUD loan or acceptable fixed rate term loan.

Working capital requirements are estimated at \$2,638,028 based on two months' of first year expenses; and will be satisfied from \$1,319,014 of proposed member's equity and \$1,319,014 from a bank loan over 5 years at 6% interest. A bank letter of interest from Capital Finance, LLC has been submitted by the applicant. BFA Attachment A, net worth of proposed members for CCRN Operator, LLC, shows sufficient equity. An affidavit from each applicant member which states that he or she is willing to contribute resources disproportionate to ownership percentages has been provided by the proposed members.

The submitted budget indicates that a net income of \$32,995 would be maintained during the first year following change in ownership. DOH staff has reviewed the difference between the current 2012 net operating loss of \$9,427,269, as shown on BFA Attachment C, and the first year budgeted net income of \$32,995 and has concluded that the difference is mainly due to the reduction in employee fringe benefits of \$9,300,000 and an additional \$1,600,000 in administrative salary reductions, without interruption of patient care. The facility will no longer participate in the County benefit plan. BFA Attachment B presents the pro forma balance sheet of Focus Rehabilitation & Nursing Center at Otsego. As shown, the facility will initiate operation with \$1,319,014 members' equity. The budget appears reasonable.

Staff notes that with the expected 2014 implementation of managed care for nursing home residents, Medicaid reimbursement is expected to change from a state-wide price with a cost-based capital component payment methodology to a negotiated reimbursement methodology. Facility payments will be the result of negotiations between the managed long term care plans and the facility. At this point in time, it cannot be determined what financial impact this change in reimbursement methodology will have on this project.

Review of BFA Attachment C, financial summary of Otsego Manor, shows positive working capital, negative net equity, and an average net loss from operations of \$10,089,320 for the period shown. The negative net equity and the net loss were due to extremely high fringe benefit costs, which had been underfunded for many years.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth of Proposed Members
BFA Attachment B	Pro-forma Balance Sheet, Otsego Manor
BFA Attachment C	Financial Summary, Otsego Manor Geriatric Center, 2011- 2013
BFA Attachment D	Net Worth of Phoenix Mills Realty, LLC



Public Health and Health Planning Council

Project # 141174-E
Samaritan Home Health, Inc.

Program: Certified Home Health Agency
Purpose: Establishment

County: Jefferson
Acknowledged: May 2, 2014

Executive Summary

Description

Samaritan Home Health, Inc., a newly formed not-for-profit entity, requests approval to become the operator of the current certified home health agency (CHHA) operated by HCA Genesis. The CHHA is licensed to operate in Jefferson County, and the new proposed operator will maintain and continue all currently certified services. The applicant will lease space located at 199 Pratt Street, Watertown, New York. There are no construction and/or equipment costs associated with the request. Currently, Samaritan Medical Center manages the CHHA via a management agreement with HCA Genesis, Inc.

The current and proposed operator of the CHHA is as follows:

Current

HCA Genesis, Inc. (Not-for-profit)

Proposed

Samaritan Home Health, Inc. (Not-for-profit)

DOH Recommendation
Contingent Approval

Need Summary

There is no Need recommendation necessary for this review. There will not be any change in services.

Program Summary

This proposal seeks a change of ownership for the Article 36 certified home health agency (CHHA) operated by HCA Genesis, Inc., d/b/a Genesis Healthcare of New York, to Samaritan Home Health, Inc.

Financial Summary

The purchase price for the operation is \$50,000 and will be met via equity from the operations of Samaritan Medical Center.

Budget:

Revenues	\$1,039,051
Expenses	<u>1,010,833</u>
Excess of Revenues over Expenses	\$28,218

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Health Systems Management

Approval contingent upon:

1. Submission of an executed lease rental agreement that is acceptable to the Department of Health.
[BFA]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval.
[PMU]

Council Action Date

August 7, 2014

Program Analysis

Program Description

HCA Genesis, Inc., d/b/a Genesis Healthcare of New York, is an Article 36 certified home health agency (CHHA) located in Watertown, New York, serving Jefferson County only. The current proposal seeks to change the ownership of the Article 36 CHHA from HCA Genesis, Inc., to Samaritan Home Health, Inc., a newly formed not-for-profit voluntary corporation. The sole member (parent) corporation of Samaritan Home Health, Inc., is Samaritan Medical Center, a not-for-profit voluntary corporation that currently operates an Article 28 hospital in Watertown, New York. Effective April 30, 2014, Samaritan Medical Center was approved by NYS Department of Health to enter into a management agreement to manage the operations of HCA Genesis, Inc., d/b/a Genesis Healthcare of New York, until such time as the proposed change of ownership is approved by Public Health and Health Planning Council, and the actual legal sale transaction and change of ownership occurs.

The Samaritan Home Health, Inc. CHHA will continue to operate from the current practice location address of 199 Pratt Street, Watertown, New York 13601, as Samaritan Medical Center is already the current owner and landlord of that property, which is physically located on the Samaritan Medical Center campus. The Samaritan Home Health, Inc. CHHA will also continue to be approved to serve Jefferson County only, and will be approved to provide the following CHHA services: Home Health Aide, Medical Social Services, Medical Supplies/Equipment/Appliances, Nursing, Nutritional, Occupational Therapy, Physical Therapy, and Speech Language Pathology.

In addition to the applicant Samaritan Home Health, Inc., Samaritan Medical Center is also the member (parent) corporation of the following entities:

- Samaritan Keep Nursing Home, Inc. (RHCF),
- Samaritan Senior Village, Inc. (RHCF),
- Samaritan Senior Village, Inc., d/b/a Samaritan Summit Village (ACF and ALP),
- Samaritan Senior Village, Inc., d/b/a Samaritan Summit Village (LHCSA),
- Samaritan Medical Center Foundation (charitable fund raising foundation),
- Edward J. Noble Hospital (1991 to 2003 – now inactive corporation – no longer in operation),
- Clifton-Fine Hospital (March 31, 2014 to present)

The governing body of the applicant, Samaritan Home Health, Inc., consists of the following board members:

Thomas H. Carman, R.Ph. (Maine), President
President and CEO, Samaritan Medical
Center (Hospital)

Rev. Frederick G. Garry, Vice President
Pastor, First Presbyterian Church (Religion)

Lisa A. Weber, Secretary
Owner, LCO Destiny, LLC (Manufacturing),
Timeless Décor, Timeless Expressions
(Decorating)

Paul A. Kraeger, Treasurer
Senior VP and Treasurer, Samaritan Medical
Center (Hospital)

Affiliations: Samaritan Keep Nursing Home
(RHCF), Samaritan Senior Village (RHCF,
ALP, ACF, LHCSA), Samaritan Medical
Center Foundation (charitable fund raising
foundation), Family Counseling Service of
Northern New York, Inc. (Social
Worker/Counseling Practice)

The governing body of the member (parent) corporation, Samaritan Medical Center, consists of the following board members:

Lisa A. Weber, Chairperson
Disclosed above

Rev. Frederick G. Garry, Vice Chairperson
Disclosed above

Melanie A. Parker-Geurtsen, DVM, Secretary
Veterinarian, Cowcalls Incorporated (Farm
Animal Veterinary Practice)

Paul A. Kraeger, Treasurer
Disclosed above

Thomas H. Carman, R.Ph. (Maine),
President/CEO
Disclosed above

Alfred E. Calligaris, CPA (New Jersey)
CEO, Stebbins Engineering and
Manufacturing, Inc. (Industrial Design and
Installation Services)
Affiliations: Family Counseling Service of
Northern New York, Inc. (Social
Worker/Counseling Practice)

Paul G. Carr, PhD, PE
Retired Professional Engineer,
Part-Time Professor, Cornell University

Bruce J. Dines, DMD
Self Employed, Bruce J. Dines, DMD, PC
(Oral and Maxillofacial Surgery, Dentistry)
Affiliations: Samaritan Keep Nursing Home
(RHCF)

David J. Flint, MD
Hospitalist, Samaritan Medical Center
(Hospital)
Affiliations: Samaritan Keep Nursing Home
(RHCF), Samaritan Senior Village (RHCF,
ALP, ACF, LHCSA)

Kathleen H. Gebo, RN
Retired Nursing and New Vision Instructor,
Jefferson-Lewis BOCES (Education)
Affiliations: Samaritan Keep Nursing Home
(RHCF)

Robert O. Kimball, MD
Surgeon, Samaritan Medical Practice
(Physicians/Surgeons Practice)

Col. Matthew E. Mattner
Colonel, US Army, Fort Drum (Military Base)

Cyril Mouaikel, Stock Broker/Investment
Advisor
Senior VP, Branch Director, RBC Wealth
Management (Brokerage/Investment Firm)

Ronald G. Perciaccante, MD
Retired Pediatrician, Child and Adolescent
Health Associates (Pediatrics Practice)

Mary A. Perrine
Coordinator of Institutional Research and
Planning, Jefferson Community College
(Higher Education)

Catherine Burns Quencer, Esq.
Attorney / Principal Shareholder,
Schwerzmann and Wise, PC (Law Firm)
Affiliations: Samaritan Keep Nursing Home
(RHCF)

David P. Rechlin, DO
Physician, Director Cardiopulmonary
Services, Director Sleep Disorders, Co-
Director ICU, Samaritan Medical Center
(Hospital)
Associate Professor, Clinical Instructor,
Director Graduate Medical Education, Director
Internal Medicine Residency,
Samaritan Medical Center (Hospital)

Jack D. Rush, MD
Physician, Samaritan Medical Center (Hospital)

Joan Treadwell Woods
Retired
Affiliations: Samaritan Keep Nursing Home (RHCF), Samaritan Senior Village (RHCF, ALP, ACF, LHCSA)

Jan K. Turcotte, MD
Retired Self-Employed Surgeon

Daniel J. Villa, R.Ph.
Retired President / Pharmacist, Kinney Drugs (Pharmacy)

Peter L. Walton, Esq.
Partner, Conboy, McKay, Bachman, and Kendall, LLP (Law Firm)
Affiliations: Samaritan Keep Nursing Home (RHCF), Samaritan Senior Village (RHCF, ALP, ACF, LHCSA)

Renee G. Waterbury
First Grade Teacher, Watertown City School District

Martin A. Yenawine
Retired

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, the New Jersey Department of Law and Public Safety's Division of Consumer Affairs, the Maine Office of Professional and Occupational Regulation's Board of Pharmacy, the Security and Exchange Commission (SEC) Investment Advisors Directory, and the Financial Industry Regulatory Authority (FINRA) Securities Broker Central Registration, where appropriate, 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.

The Division of Hospitals and Diagnostic and Treatment Centers reviewed the compliance history of the affiliated hospitals for the time period 2007 through 2014, or the time period specified as the affiliation, whichever applied. It has been determined that the hospitals have all been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

The Division of Residential Services reviewed the compliance history of the affiliated residential health care facilities for the time period 2007 through 2014. The review revealed that the following facility was the subject of an enforcement action:

An enforcement action was taken against Samaritan Keep Nursing Home, Inc., in 2010 based on an October, 2009 survey citing violations in Quality of Care: Nutrition, and Medical Services: Physician Services. This enforcement was resolved with a \$4000 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 additional enforcement or administrative actions imposed.

The Division of Adult Care Facilities and Assisted Living reviewed the compliance history of the affiliated adult home / adult care facility for the time period 2007 through 2014. It has been determined that the adult home / adult care facility has 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 licensed home care services agency for the time period 2007 through 2014. It has been determined that the licensed home care services agency has been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

A review of all personal qualifying information indicates there is nothing in the background of the board members of the applicant corporation, Samaritan Home Health, Inc., or the applicant's member (parent) corporation, Samaritan Medical Center, 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 an executed asset purchase agreement for the purchase of the operation of HCA Genesis, which is summarized below:

Date:	November 11, 2013
Seller:	HCA Genesis, Inc.
Purchaser:	Samaritan Home Health, Inc.
Assets Acquired:	The books and records and any permits and similar rights to the extent transferable and related solely to the operation of the Home Care Business.
Assumed Liabilities:	The Seller agrees to fully and timely process, pay, discharge and perform, as appropriate, all liabilities and obligations under the Assumed Contracts, solely to the extent such liabilities and obligations arise and/or are attributable to performance required or events occurring prior to the Closing Date.
Purchase Price:	\$50,000
Payment of Purchase Price:	Cash at Closing

The applicant has submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, there are no outstanding liabilities.

Lease Rental Agreement

The applicant has submitted a draft lease rental agreement for the site that they will occupy, which is summarized below:

Premises:	2,600 square feet located at 199 Pratt Street, Watertown, New York
Lessor:	Samaritan Medical Center
Lessee:	Samaritan Home Health, Inc.
Term:	Five years
Rental:	\$52,000 annually (\$20.00 per sq.ft.)
Provisions:	The lessor shall be responsible for maintenance, utilities and real estate taxes.

The lease arrangement will be a non-arm's length lease arrangement.

Operating Budget

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

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Medicaid Fee For Service	\$22,766	\$27,728
Medicare Fee For Service	369,874	450,507
Commercial Fee For Service	<u>504,820</u>	<u>614,871</u>
Gross Revenues	\$897,460	\$1,093,106
Less:		
Charity Care	26,924	32,193
Bad Debt Expense	<u>17,949</u>	<u>21,862</u>
Net Revenues	\$852,587	\$1,039,051
Expenses:		
Operating	\$895,474	\$958,833
Capital	<u>52,000</u>	<u>52,000</u>
Total Expenses	\$947,474	\$1,010,833
Excess of Revenues over Expenses	(\$94,887)	\$28,218
Visits	5,500	6,605
Hours	512	604

Expense assumptions are based on the historical experience of the current CHHA. Utilization assumptions are based on a ramp up of current levels to a third year census of 60. A census of 60 represents the CHHA's pre-receivership case load, demonstrating that the market will support the census level. Revenues are reflective of the current payment rates including the Medicaid Episodic Payment System.

Utilization, broken down by payor source during the first year after the change in operator is summarized below:

Medicaid Managed Care	58.40%
Medicare Fee For Service	3.37%
Commercial Fee For Service	36.23%
Charity Care	2.00%

Capability and Feasibility

The purchase price for the operations is \$50,000, and will be met via equity from Samaritan Medical Center and Affiliates. Working capital requirements are estimated at \$157,912, which is equivalent to two months of first year expenses. The working capital requirements will be met via equity from Samaritan Medical Center and Affiliates. BFA Attachment A are the 2012 and 2013 certified financial statements of Samaritan Medical Center and Affiliates, which indicates sufficient funds to meet the equity contribution for the purchase price and the working capital requirements.

BFA Attachment B is the pro-forma balance sheet of Samaritan Home Health, Inc., which indicates a positive net asset position of \$255,802 as of the first day of operation.

The submitted budget indicates an excess of revenues over expenses of (\$94,887) and \$28,218 during the first year and third years after the change in operator. Revenues are based on current payment rates, including Medicaid Episodic Payment System. The first year loss will be offset by Samaritan Medical Center and Affiliates.

BFA Attachment A, the 2012 and 2013 certified financial statements of Samaritan Medical Center and Affiliates, shows the entity had an average positive working capital position and an average positive net asset position from 2012 through 2013. The entity incurred a loss from operations of \$7,435,713 in 2013. The entity incurred losses in operations in the following affiliates: Samaritan Medical Practice PC (\$4,535,363); Samaritan Keep Nursing Home (\$3,275,435); The Samaritan Medical Center Foundation of Northern New York, Inc. (\$324,331) and Samaritan Senior Village (\$4,958,385). Samaritan Medical Center achieved income from operations of \$5,457,918 during 2013.

HCA Genesis was the operator of Mercy of Northern New York, Watertown. The Mercy of Northern New York (operated by HCA Genesis) CHHA was operated in conjunction with the skilled nursing facility; the finances were combined and remained so until the Mercy of Northern of New York facility closed in the first quarter of 2013. Furthermore, the Mercy financial system was inaccurate and in a state of disarray. In 2010, as the Department of Health was recommending closure of the facility due to the lack of a plan by management to make the facility financially viable, the CHHA was asked to reduce its census to its current level. In October 2010, Samaritan Medical Center's affiliate E.J. Noble of Alexandria Bay (inactive corporation) became receiver of the skilled nursing facility until the construction of Samaritan Senior Village (SSV), a skilled nursing and assisted nursing facility, was constructed and opened in April 2013, Samaritan and the interim management of Mercy followed the Department of Health approved closure plan in late 2012 and early 2013. The CHHA staff was moved to space on the Samaritan Medical Center campus and an asset purchase agreement and management agreement were prepared in order to preserve this essential home care service.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments


BFA Attachment A Financial Summary- Samaritan Medical Center and Affiliates
BFA Attachment B Pro-forma Balance Sheet



STATE OF NEW YORK - DEPARTMENT OF HEALTH

MEMORANDUM

TO: Public Health and Health Planning Council

FROM: James E. Dering, General Counsel
Division of Legal Affairs 

DATE: May 14, 2014

SUBJECT: Proposed Dissolution of the Pluta Cancer Center, Inc.

The Pluta Cancer Center, Inc. ("the Center") request Public Health and Health Planning Council approval of their proposed dissolutions in accordance with the requirements of Not-For-Profit Corporation Law §1002(c) and §1003, as well as 10 NYCRR Part 650.

The Center was originally incorporated on July 11, 2001 for the purpose of operating a diagnostic and treatment center for the purposes of providing radiation oncology therapy and for soliciting, collecting, receiving and acquiring gifts and grants in various forms. A plan of closure was submitted and accepted by the Department in 2012. In December 28, 2012, the Center surrendered its operating license in connection with a transfer of assets to Strong Memorial Hospital. The Center now seeks to dissolve.

Attached are copies of:

- (1) A letter, dated February 27, 2014, from the applicant's attorney seeking Public Health and Health Planning Council approval of the proposed dissolution and stating the reasons therefor;
- (2) Verified Petition for the Approval of Certificate of Dissolution;
- (3) The Certificate of Incorporation, Certificates of Change and amendments thereto;
- (4) The Certificate of Dissolution of the Center;
- (5) Amended and Restated Plan of Dissolution of the Center;

- (6) A letter dated September 14, 2012, from Kelly McCormick-Sullivan, President and CEO of Pluta Cancer Center, Inc. regarding the Plan of Closure of Pluta Cancer Center, Inc.
- (7) A letter dated November 21, 2012, regarding the decertification of Pluta Family Cancer Center.
- (8) A court order, dated December 30, 2012, from State Supreme Court Justice Judge Polito, authorizing the transfer of substantially all of the Corporation's assets to Strong Memorial Hospital.

The Certificate of Dissolution is in legally acceptable form.

JD/DY

Attachments

HISCOCK & BARCLAY[®]

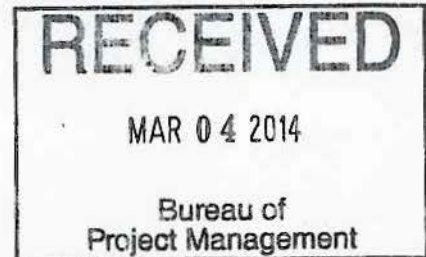
Mengyi Xu
Associate



February 27, 2014

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Diana Yang
Department of Health
Bureau of Project Management
Corning Tower, 18th Floor
Albany, New York 12237



Re: Proposed Dissolution of the Pluta Cancer Center, Inc.

Dear Ms. Yang:

We are the attorneys for the Pluta Cancer Center, Inc. (the "Corporation") Pursuant to 10 NYCRR § 650.1, we hereby request the approval of the Public Health Council (the "Council") to the Corporation's voluntary dissolution.

Enclosed please find the proposed Certificate of Dissolution attached as **Exhibit 1**.

The Corporation's public purpose is to operate and conduct a diagnostic and treatment center for the purposes of providing radiation oncology therapy as provided for in Article 28 of the Public Health Law. The Corporation surrendered its operating license, No. 2701233R on or about December 28, 2012, in connection with the transfer of substantially all of its assets to Strong Memorial Hospital. Attached hereto as **Exhibit 2** is a copy of the Corporation's Closure Plan and a copy of the letter from the New York State Department of Health (the "DOH") dated September 14, 2012 approving the Closure Plan.

On December 30, 2012, State Supreme Court Justice Judge Polito authorized the transfer of substantially all of the Corporation's assets to Strong Memorial Hospital. Attached as **Exhibit 3** is a copy of the Order and approval from the DOH regarding the same. The facility previously operated by the Corporation is now an extension clinic of Strong Memorial Hospital.

The proposed Plan of Dissolution and Distribution of Assets is also attached hereto as **Exhibit 4**. As of this date, the Corporation has no assets and no liabilities.

Attached hereto as **Exhibit 5** is the Petition proposed to be submitted to the New York State Attorney General's Office in support of the application of the proposed Plan of Dissolution and Distribution of Assets.

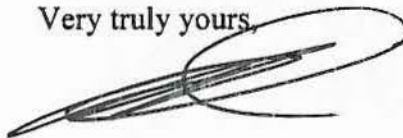
Diana Yang
Department of Health
February 27, 2014
Page 2

Finally, for your consideration, enclosed please find the Corporation's Certificate of Incorporation, a Certificate of Amendment and two Certificates of Change attached hereto as **Exhibit 6**.

Based on the enclosed documents, we respectfully submit that the Corporation's voluntary dissolution should be approved. Your kind consideration in this matter is greatly appreciated.

Should you have any questions, please do not hesitate to contact me or Raymond McCabe, Esq. at (716) 566-1408.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Mengyi Xu', with a large, stylized flourish extending to the right.

Mengyi Xu

MX
Enclosures

cc: Jamie Bishop (via electronic mail)
Raymond N. McCabe (via electronic mail)
George M. Mackey (via electronic mail)

**VERIFIED PETITION FOR APPROVAL OF
CERTIFICATE OF DISSOLUTION**

-----X
 In the Matter of the Application of
 Pluta Cancer Center, Inc. : VERIFIED PETITION
 For Approval of Certificate of
 Dissolution pursuant to :
 Section 1002 of the Not-for -Profit
 Corporation Law. :
 -----X

TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
 144 Exchange Street
 Rochester, New York 14614-2176

Petitioner, **Pluta Cancer Center, Inc.** (the "Corporation") by Jamie Bishop, Chief Financial Officer of the Corporation for its Verified Petition alleges:

1. Pluta Cancer Center, Inc., whose principal address is 125 Red Creek Dr., Rochester, New York, 14623, was incorporated pursuant to New York's Not-for-Profit Corporation Law on December 26, 2001, under the name **Pluta Family Cancer Center, Inc.** A copy of the Certificate of Incorporation and all Certificates of Amendment and Certificates of Change thereto are attached hereto as **Exhibit A**.

2. The names, addresses and titles of the Corporation's directors and officers are as follows:

<u>NAME and TITLE</u>	<u>ADDRESS</u>
Ronald A. Pluta, Director and Chairman of the Board	200 Red Creek Dr., Suite 200 Rochester, NY 14624
Walter Parkes, Secretary and Director	803 Phillips Road Victor, NY 14564
Katherine M. Clark, Treasurer and Director	3680 Buffalo Road Rochester, NY 14624
Jamie Bishop, Chief Financial Officer	125 Red Creek Dr. Rochester, NY 14624
Jan Dombrowski, Medical Director	125 Red Creek Dr. Rochester, NY 14623
James C. Gould, Director	120 Office Park Way Pittsford, NY 14534

Jean Howard, Director	32 Berkeley Street Rochester, NY 14607
Mary Pluta, Director	113 Tennyson Way Pittsford, NY 14534
Barbara Pluta Randall, Director	15 Lake LaComa Drive Pittsford, NY 14534
Gerald Van Strydonck, Director	30 Erie Crescent Fairport, NY 14450
Kevin N. Hill, Director	150 Sawgrass Drive Rochester, NY 14620
John W. Oberlies, Director	242 Shoreham Drive Rochester, NY 14618

3. The purposes for which the Corporation was organized are as follows:

(A) to operate and conduct a diagnostic and treatment center for the purposes of providing radiation oncology therapy as provided for in Article 28 of the Public Health Law;

(B) To do any other act or thing incidental to or connected with the foregoing purposes or the advancement thereof, but not for the pecuniary profit or financial gain of its members, directors or officers, except as permitted under the Not-for-Profit Corporation Law; and

(C) To solicit, collect, receive, acquire and take by gift, grant, devise or bequest, real or personal property, including without limitation as to the foregoing, money, funds, stocks, bonds and other securities, and to hold, administer, sell, convert, invest and reinvest such property or any part thereof, and to use, disburse and distribute such property and the income therefrom, and to encourage, support, take part in, and engage in any and all lawful activities, including without limitation, borrowing money, which may be necessary, appropriate, useful or proper for carrying out the purposes set forth above.

4. The Corporation is a Type B corporation.

5. A meeting of the Board of Directors of the corporation was held pursuant to duly given notice on _____, 2014, at which a resolution was duly passed by a majority of the directors adopting a Plan of Dissolution and authorizing the filing of a Certificate of Dissolution in accordance with Section 1003 of the Not-for-Profit Corporation Law. A copy of the Plan, executed by the Secretary or other duly authorized officer is attached as **Exhibit B**.

6. The Corporation has no members.

7. A certified copy of the Corporation's Plan of Dissolution was filed with the Office of the Attorney General.

8. The Corporation has no assets or liabilities and its final report showing zero assets has been filed with the Attorney General.

9. A copy of the Certificate of Dissolution and the Plan of Termination are being submitted to the Department of Health for its approval.

10. With this Petition, the original Certificate of Dissolution is being submitted to the Attorney General for approval pursuant to Not-for-Profit Corporation Law Section 1003.

WHEREFORE, Petitioner requests that the Attorney General approve the Certificate of Dissolution of Pluta Cancer Center, Inc., a not-for-profit corporation, pursuant to Not-for-Profit Corporation Law Section 1003.

IN WITNESS WHEREOF, the Corporation has caused this Petition to be executed
This ____ day of _____, 2014

Jamie Bishop, Chief Financial Officer

Verification

STATE OF NEW YORK)

:SS.:

COUNTY OF MONROE)

Jamie Bishop, being duly sworn, deposes and says:

I am the Chief Financial Officer of Pluta Cancer Center, Inc., the corporation named in the above Petition and make this verification at the direction of its Board of Directors. I have read the foregoing Petition and know the contents thereof to be true of my own knowledge, except those matters that are stated on information and belief and as to those matters I believe them to be true.

Jamie Bishop

Sworn and subscribed before me
this ____ day of _____, 2014.

Notary Public (Seal)

Exhibit A

**Certificate of Incorporation,
Certificate of Amendment and
Certificates of Change**

CERTIFICATE OF INCORPORATION

CI-1

CERTIFICATE OF INCORPORATION

OF

F 011226000333

THE PLUTA FAMILY CANCER CENTER, INC.

(Under §402 of the Not-for-Profit Corporation Law)

The undersigned, for the purpose of forming a not-for-profit corporation under §402 of the Not-for-Profit Corporation law of the State of New York, hereby certify:

ARTICLE I
CORPORATE NAME

The name of the Corporation is: THE PLUTA FAMILY CANCER CENTER, INC.

ARTICLE II
CORPORATE TYPE

The Corporation is a corporation as defined in subparagraph (a)(5) of §102 of the Not-for-Profit Corporation Law. The Corporation is a Type B corporation under §201 of the Not-for-Profit Corporation Law.

ARTICLE III
CORPORATE PURPOSES

The purposes for which the Corporation is formed are:

- (A) To operate and conduct a diagnostic and treatment center for the purposes of providing radiation oncology therapy as provided for in Article 28 of the Public Health Law;
- (B) To do any other act or thing incidental to or connected with the foregoing purposes or the advancement thereof, but not for the pecuniary profit or financial gain of its members, directors or officers, except as permitted under the Not-for-Profit Corporation Law; and
- (C) To solicit, collect, receive, acquire and take by gift, grant, devise or bequest, real or personal property, including without limitation as to the foregoing, money, funds, stocks, bonds and other securities, and to hold, administer, sell, convert, invest and reinvest such property or

any part thereof, and to use, disburse and distribute such property or any part thereof, and to use, disburse and distribute such property and the income therefrom, and to encourage, support, take part in, and engage in any and all lawful activities, including without limitation, borrowing money, which may be necessary, appropriate, useful or proper for carrying out the purposes set forth above.

Furthermore, the Corporation shall have and may exercise all powers necessary to effect any or all of the purposes set forth above, including without limitation all powers enumerated in §202 of the Not-for-Profit Corporation Law subject, however, to the limitation that it shall exercise only such activities and make only such expenditures as may be carried on and made by an organization exempt from federal income tax under §501(c)(3) of the Internal Revenue Code of 1986 as it now exists or as it may hereafter be amended. Nothing herein shall authorize the Corporation to undertake or carry on any of the activities described in §404 of the Not-for-Profit Corporation Law which require approval of another State agency or organization.

ARTICLE IV CORPORATION OFFICE

The office of the Corporation is to be located in the County of Monroe, State of New York.

ARTICLE V SECRETARY OF STATE AS AGENT OF CORPORATION

The Secretary of State is designated as the agent upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any ^{process} notices required by law is:

The Pluta Family Cancer Center, Inc.
2 Tobey Village Office Park
Pittsford, New York 14534

ARTICLE VI INITIAL DIRECTORS

The names and addresses of the initial directors until the first annual meeting are:

2

<u>NAME</u>	<u>ADDRESS</u>
RONALD A. PLUTA	113 Tennyson Way Pittsford, New York 14534
DENNIS ALONGI	c/o Axiom/Sigma Marketing Group 1850 Winton Road South Rochester, New York 14618
KATHLEEN CLARK	c/o Clark Moving and Storage 3680 Buffalo Road Rochester, New York
WALTER PARKES	830 Phillips Road Victor, New York 14584

**ARTICLE VII
STATE AND FEDERAL TAX EXEMPTION**

Notwithstanding any other provision of this Certificate of Incorporation, the Corporation is organized exclusively for charitable purposes within the meaning of §501(c)(3) of the Internal Revenue Code of 1986, as amended from time to time (the "Code"); and shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal income tax under Code §501(c)(3) or corresponding provisions of any subsequent Federal tax laws.

No part of the net earnings of the Corporation shall inure to the benefit of any member, trustee, director or officer of the Corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation), and no member, trustee, director or officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the Corporation's assets on dissolution of the Corporation.

No substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided by Code §501(h)), or participating in, or intervening in (including the publication or distribution of statements), any political campaign on behalf of any candidates for public office:

In the event of dissolution, all of the remaining assets and property of the Corporation shall, after payment of necessary expenses thereof, be distributed to a nonprofit organization or organization which may have been created to succeed the Corporation and which is also exempt under Code §501(c)(3), or if there is no

3

such organization, to another organization or organizations exempt under Code §501(c)(3), or corresponding provisions of any subsequent Federal tax laws, having similar aims and objects as the Corporation and which may be selected as an appropriate recipient of such assets, or to the Federal government, or state or local government for a public purpose if no such organization or organizations can be identified, subject to the approval of a Justice of the Supreme Court of the State of New York.

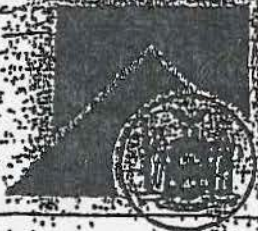
In any taxable year in which the Corporation is a private foundation as described in Code § 509(a), the Corporation shall distribute its income for said period at such time and manner as not to subject it to tax under Code § 4942, and the Corporation shall not: (a) engage in any act of self-dealing as defined in Code § 4941(a) or retain any business holdings as defined in Code § 4943(a)(2)(b) make any investments in such manner as to subject the Corporation to tax under Code § 4944, or (c) make any taxable expenditures as defined in Code § 4945(d) or corresponding provisions of any subsequent Federal tax laws.

IN WITNESS WHEREOF, I have subscribed this Certificate and affirm under the penalties of perjury that its contents are true on this 10 day of July, 2001.

Philip J. Scarlata
 PHILIP J. SCARLATA
 Incorporator
 c/o O'Connell and Aronowitz
 100 State Street
 Albany, New York 12207-1885

6:DATA\ATTORNEY\PLS\Filia Family\CT\Incorp-CM.wpd

4



STATE OF NEW YORK
DEPARTMENT OF HEALTH
ROSWELL TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

011 226000333

December 13, 2001.

Mr. Philip J. Sgarlata
Attorney-at-Law
O'Connell and Aronowitz
100 State Street
Albany, New York 12207

Re: Certificate of Incorporation of The Pluta Family Cancer Center, Inc.

Dear Mr. Sgarlata:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 15th day of November, 2001, I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of The Pluta Family Cancer Center, Inc., dated July 11, 2001.

Sincerely,

Karen S. Westervelt
Executive Secretary

RECEIVED
DEC 26 2001
O'Connell and Aronowitz, P.C.
For _____

5

ARTIFICIALLY CREAMED
OF
F011226000-330
THE PLUTA FAMILY CANCER CENTER, INC.

Under Section Four Hundred Two of the Not-for-Profit Corporation Law

O'CONNELL AND ARONOWITZ, P.C.

ATTORNEYS AND COUNSELLORS AT LAW

111 West Street

Albany, New York 12242

PHONE 518-486-2800

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED DEC 28 2001

TAX \$

BY: *OC*

Monroe

RECEIVED

749 DEC 25 11:29

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330

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
THE PLUTA FAMILY CANCER CENTER, INC.**

Under Section 803 of the Not-for-Profit Corporation Law

New York State
Department of State
Division of Corporations, State Records
and Uniform Commercial Code
41 State Street
Albany, NY 12231

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF

The Pluta Family Cancer Center, Inc.

(Insert Name of Domestic Corporation)

Under Section 803 of the Not-for-Profit Corporation Law

FIRST: The name of the corporation is: The Pluta Family Cancer Center, Inc.

If the name of the corporation has been changed, the name under which it was formed is: _____

SECOND: The date of filing of the certificate of incorporation with the Department of State is:

12/26/01

THIRD: The law the corporation was formed under is: New York

FOURTH: The corporation is a corporation as defined in Section 102(a)(5) of the Not-for-Profit Corporation Law. The corporation is a Type B corporation. If the corporate purposes are being enlarged, limited or otherwise changed, the corporation shall be a Type corporation.

FIFTH: (Set forth each amendment in a separate paragraph providing the subject matter and full text of each amended paragraph.) The amendment effected by this certificate of amendment is as follows:

Paragraph I of the Certificate of Incorporation relating to Corporate Name

The name of the Corporation is: The Pluta Family Cancer Center, Inc.

is hereby amended to read in its entirety as follows: The name of the Corporation is:

Pluta Cancer Center, Inc.

SIXTH: The Secretary of State is designated as agent of the corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the corporation is: 224 Alexander Street, Rochester, NY 14607

SEVENTH: The certificate of amendment was authorized by: [Check the appropriate box]

- The amendment was authorized by a vote of a majority of the members at a meeting.
- The amendment was authorized by the unanimous written consent of the members entitled to vote thereon.
- The amendment was authorized by a vote of a majority of the entire board of directors. The corporation has no members.

(Signature)

Ronald A. Pluta

(Name and Capacity of Signer)

Ronald A. Pluta

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF

The Pluta Family Cancer Center, Inc.

(Insert Name of Domestic Corporation)

Under Section 803 of the Not-for-Profit Corporation Law

Filer's Name Erin L. Clark, Esq.

Address 2000 HSBC Plaza

City, State and Zip Code Rochester, New York 14604

NOTE: This form was prepared by the New York State Department of State. It does not contain all optional provisions under the law. You are not required to use this form. You may draft your own form or use forms available at legal stationery stores. The Department of State recommends that all documents be prepared under the guidance of an attorney. Please be sure to review Section 804 and Section 404 of the Not-for-Profit Corporation Law to determine if any consents or approvals are required to be attached to this certificate of amendment. The certificate must be submitted with a \$30 filing fee.

For Office Use Only

**State of New York
Department of State } SS:**

I hereby certify, that the Certificate of Incorporation of PLUTA CANCER CENTER, INC. was filed on 12/26/2001, under the name of THE PLUTA FAMILY CANCER CENTER, INC., as a Not-for-Profit Corporation and that a diligent examination has been made of the Corporate index for documents filed with this Department for a certificate, order, or record of a dissolution, and upon such examination, no such certificate, order or record has been found, and that so far as indicated by the records of this Department, such corporation is an existing corporation. I further certify the following:

Certificate of Change was filed on 06/18/2002.

A certificate changing name to PLUTA CANCER CENTER, INC. was filed on 02/25/2003.

Certificate of Change was filed on 07/28/2005.

I further certify, that no other documents have been filed by such Corporation.



*Witness my hand and the official seal
of the Department of State at the City
of Albany, this 13th day of December
two thousand and eleven.*

A handwritten signature in black ink, appearing to read "Daniel Shapiro".

Daniel Shapiro
First Deputy Secretary of State

FILING RECEIPT

=====

ENTITY NAME: THE PLUTA FAMILY CANCER CENTER, INC.

DOCUMENT TYPE: CHANGE (DOM. NFP)
PROCESS

COUNTY: MONR

SERVICE COMPANY: ** NO SERVICE COMPANY **

SERVICE CODE: 00

=====

FILED: 06/18/2002 DURATION:***** CASH#:020618000908 FILM #:020618000869

ADDRESS FOR PROCESS

THE CORPORATION
224 ALEXANDER STREET
ROCHESTER, NY 14607

REGISTERED AGENT



=====

FILER	FEES		PAYMENTS	
-----	----	20.00	-----	20.00
ERIN L CLARK	FILING	20.00	CASH	0.00
HISCOCK BARCLAY SAPERSTON & DAY	TAX	0.00	CHECK	20.00
100 HSBC PLAZA	CERT	0.00	CHARGE	0.00
ROCHESTER, NY 14604	COPIES	0.00	DRAWDOWN	0.00
	HANDLING	0.00	BILLED	0.00
			REFUND	0.00

=====

CERTIFICATE OF CHANGE OF

The Pluta Family Cancer Center, Inc.

(Insert Name of Domestic Corporation)

Under Section 803-A of the Not-for Profit Corporation Law

FIRST: The name of the corporation is: The Pluta Family Cancer Center, Inc.

If the name of the corporation has been changed, the name under which it was formed is: _____

SECOND: The certificate of incorporation was filed by the Department of State on: 12/26/01

THIRD: The change(s) effected hereby are: *[Check appropriate box(es)]*

- The county location, within this state, in which the office of the corporation is located, is changed to: _____
- The address to which the Secretary of State shall forward copies of process accepted on behalf of the corporation is changed to: 224 Alexander Street, Rochester
New York 14607
- The corporation hereby: *[Check one]*
- Designates _____
as its registered agent upon whom process against the corporation may be served.
- Changes the designation of its registered agent to: _____
- Changes the address of its registered agent to: _____
- Revokes the authority of its registered agent.

FOURTH: The change was authorized by the board of directors.

Ronald A. Pluta
(Signature)

Ronald A. Pluta, Chairman
(Name and Capacity of Signer)

CERTIFICATE OF CHANGE
OF

The Pluta Family Cancer Center, Inc.

(Insert Name of Domestic Corporation)

Under Section 803-A of the Not-for-Profit Corporation Law

Filer's Name Erin L. Clark

Address Hiscock Barclay Saperston & Day, LLC, 2000 HSBC Plaza

City, State and Zip Code Rochester, New York 14604

NOTE: This form was prepared by the New York State Department of State. You are not required to use this form. You may draft your own form or use forms available at legal stationery stores. The Department of State recommends that all documents be prepared under the guidance of an attorney. The certificate must be submitted with a \$20 filing fee.

For Office Use Only

FILING RECEIPT

ENTITY NAME: PLUTA CANCER CENTER, INC.

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP)
PROCESS NAME

COUNTY: MONR

SERVICE COMPANY: ** NO SERVICE COMPANY **

SERVICE CODE: 00

FILED: 02/25/2003 DURATION: ***** CASH#: 030225000945 FILM #: 030225000912

ADDRESS FOR PROCESS

THE CORPORATION
224 ALEXANDER STREET
ROCHESTER, NY 14607

REGISTERED AGENT



FILER	FEE	AMOUNT	PAYMENT TYPE	AMOUNT
-----	-----	30.00	PAYMENTS	30.00
ERIN L CLARK ESQ	FILING	30.00	CASH	0.00
2000 HSBC PLAZA	TAX	0.00	CHECK	30.00
ROCHESTER, NY 14604	CERT	0.00	CHARGE	0.00
	COPIES	0.00	DRAWDOWN	0.00
	HANDLING	0.00	BILLED	0.00
			REFUND	0.00

New York State
Department of State
Division of Corporations, State Records
and Uniform Commercial Code
41 State Street
Albany, NY 12231
www.dos.state.ny.us

CERTIFICATE OF CHANGE OF

Pluta Cancer Center, Inc.
(Insert Name of Domestic Corporation)

Under Section 803-A of the Not-for Profit Corporation Law

FIRST: The name of the corporation is: Pluta Cancer Center, Inc.

If the name of the corporation has been changed, the name under which it was formed is: _____

SECOND: The certificate of incorporation was filed by the Department of State on: _____

December 26, 2001

THIRD: The change(s) effected hereby are: [Check appropriate box(es)]

- The county location, within this state, in which the office of the corporation is located, is changed to: _____
- The address to which the Secretary of State shall forward copies of process accepted on behalf of the corporation is changed to read in its entirety as follows: Pluta Cancer Center, Inc., 125 Red Creek Drive, Rochester, New York 14623

The corporation hereby: [Check one]

- Designates _____
as its registered agent upon whom process against the corporation may be served.
The street address of the registered agent is: _____

- Changes the designation of its registered agent to: _____
_____. The street address of the registered agent is: _____

- Changes the address of its registered agent to: _____

- Revokes the authority of its registered agent.

FOURTH: The change was authorized by the board of directors.

Ronald A. Pluta
(Signature)

Ronald A. Pluta, President

(Name and Title of Signer)

CERTIFICATE OF CHANGE
OF

Pluta Cancer Center, Inc.

(Insert Name of Domestic Corporation)

Under Section 803-A of the Not-for-Profit Corporation Law

Filer's Name Hiscock & Barclay, LLP

Address 50 Beaver Street

City, State and Zip Code Albany, New York 12207

NOTE: This form was prepared by the New York State Department of State. You are not required to use this form. You may draft your own form or use forms available at legal stationery stores. The Department of State recommends that all documents be prepared under the guidance of an attorney. The certificate must be submitted with a \$20 filing fee.

For Office Use Only

FILING RECEIPT

=====

ENTITY NAME: PLUTA CANCER CENTER, INC.

DOCUMENT TYPE: CHANGE (DOM. NFP)
PROCESS

COUNTY: MONR

SERVICE COMPANY: ** NO SERVICE COMPANY **

SERVICE CODE: 00

=====

FILED:07/28/2005 DURATION:***** CASH#:050728001030 FILM #:050728000966

ADDRESS FOR PROCESS

THE CORPORATION
125 RED CREEK DRIVE
ROCHESTER, NY 14623

REGISTERED AGENT



=====

FILER	FEES		PAYMENTS	
-----	-----	20.00	-----	20.00
	FILING	20.00	CASH	0.00
	TAX	0.00	CHECK	20.00
HISCOCK & BARCLAY, LLP	CERT	0.00	CHARGE	0.00
50 BEAVER STREET	COPIES	0.00	DRAWDOWN	0.00
	HANDLING	0.00	OPAL	0.00
			REFUND	0.00
ALBANY, NY 12207			-----	

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Exhibit B

Certified Plan of Dissolution

**CERTIFICATE OF DISSOLUTION
OF
PLUTA CANCER CENTER, INC.**

(UNDER SECTION 1003 OF THE NOT-FOR-PROFIT CORPORATION LAW)

I, Jamie Bishop, the Chief Financial Officer of **PLUTA CANCER CENTER, INC.** hereby certify:

1. The name under which the corporation was formed is **PLUTA FAMILY CANCER CENTER, INC.** The current name of the corporation is **PLUTA CANCER CENTER, INC.** (the "Corporation").

2. The Certificate of Incorporation of the corporation was filed by the Department of State of the State of New York on December 26, 2001.

3. The names and addresses of the Corporation's directors are as follows:

<u>NAME and TITLE</u>	<u>ADDRESS</u>
Ronald A. Pluta, Director and Chairman of the Board	200 Red Creek Dr., Suite 200 Rochester, NY 14624
Walter Parkes, Secretary and Director	803 Phillips Road Victor, NY 14564
Katherine M. Clark, Treasurer and Director	3680 Buffalo Road Rochester, NY 14624
Jamie Bishop, Chief Financial Officer	125 Red Creek Dr. Rochester, NY 14624
Jan Dombrowski, Medical Director	125 Red Creek Dr. Rochester, NY 14623
James C. Gould, Director	120 Office Park Way Pittsford, NY 14534
Jean Howard, Director	32 Berkeley Street Rochester, NY 14607
Mary Pluta, Director	113 Tennyson Way Pittsford, NY 14534
Barbara Pluta Randall, Director	15 Lake LaComa Drive Pittsford, NY 14534
Gerald Van Strydonck, Director	30 Erie Crescent Fairport, NY 14450

Kevin N. Hill, Director	150 Sawgrass Drive Rochester, NY 14620
John W. Oberlies, Director	242 Shoreham Drive Rochester, NY 14618

4. The dissolution of the Corporation was authorized by a majority vote of the Board of Directors.
5. The Corporation elects to dissolve.
6. At the time of dissolution, the corporation is a Type B corporation.
7. The corporation filed with the Attorney General a certified copy of its Plan of Dissolution.
8. The Plan of Dissolution filed with the Attorney General included a statement that at the time of dissolution the corporation has no assets.
9. At the time of the authorization of its Plan of Dissolution, the corporation did not hold any assets that are legally required to be used for a particular purpose pursuant to the Not-for-Profit Corporation Law.
10. Prior to the filing of this Certificate with the Department of State, the endorsement of the Attorney General will be attached.

IN WITNESS WHEREOF, the undersigned have signed and verified this Certificate this ____ day of _____, 2014.

Jamie Bishop, Chief Financial Officer

Verification

STATE OF NEW YORK)

:SS.:

COUNTY OF MONROE)

Jamie Bishop, being duly sworn, deposes and says:

I am the Chief Financial Officer of Pluta Cancer Center, Inc., the corporation named in the above Petition and make this verification at the direction of its Board of Directors. I have read the foregoing Petition and know the contents thereof to be true of my own knowledge, except those matters that are stated on information and belief and as to those matters I believe them to be true.

Jamie Bishop

Sworn and subscribed before me
this ___ day of _____, 2014.

Notary Public (Seal)

**AMENDED AND RESTATED PLAN OF DISSOLUTION
OF PLUTA CANCER CENTER, INC.**

The Board of Directors of PLUTA CANCER CENTER, INC. (the "Corporation"), having considered the advisability of voluntarily dissolving the Corporation, and having determined it in the best interests of the Corporation to effect such dissolution, and the Board having adopted this Plan for voluntary dissolution of the Corporation by unanimous vote of the Directors, does hereby resolve to dissolve the corporation pursuant to this voluntary Plan.

WHEREAS, the Corporation previously adopted a Plan of Dissolution (the "Plan") in December 2012; and

WHEREAS, pursuant to the Plan, the Corporation set aside a reserve fund in the amount of \$25,000 to be used to pay the expenses of winding up the corporation's affairs, such as attorneys and accountant's fees (the "Reserve Fund"); and

WHEREAS, the Plan was not submitted to the Attorney General of the State of New York for its approval; and

WHEREAS, more than 270 days have lapsed since the date of adoption of the Plan of Dissolution; and

WHEREAS, it is in the best interests of the Corporation to adopt this amended and restated Plan of Dissolution.

NOW THEREFORE, Board does hereby adopt this Amended and Restated Plan of Dissolution, as follows:

1. The Corporation has no assets and no liabilities; and
2. There being no members of the Corporation, no vote of the membership is required to approve this dissolution, and action by the Board of Directors of the Corporation is sufficient to approve this Amended Plan; and
3. Approval of the dissolution of the corporation is required to be obtained from the New York State Department of Health whose approvals are attached; and within ten (10) days after the authorization of this Plan of Dissolution by a vote of the board, a certified copy of this Amended Plan shall be filed with the Attorney General of the State of New York pursuant to N-PCL § 1002(d).

WHEREAS, a Certificate of Dissolution shall be executed and all approvals required under Section 1003 of the Not-for-Profit Corporation Law shall be attached thereto.

Certification

I, Walter Parkes, Secretary of PLUTA CANCER CENTER, INC., do hereby certify under penalties of perjury that a Resolution approving the within Plan of Dissolution was duly submitted and adopted by unanimous vote of the Board of Directors of the PLUTA CANCER CENTER, INC. at a meeting duly called and held on December 11, 2013, and that such a Resolution is in full force and effect.

Walter Parkes, Secretary

Dated the ____ day of _____ 2014



PLUTA
Cancer Center

September 14, 2012

Gregory Young, MD
New York State Department of Health
584 Delaware Avenue
Buffalo, NY 14202

**Re: Plan of Closure of Pluta Cancer Center, Inc., 125 Red Creek Drive, Rochester,
New York 14623, Operating Certificate Number 2701233R, PFI Number 6317**

Dear Dr. Young,

We write this letter to formally advise the New York State Department of Health of our intent to surrender our operating license, No. 2701233R, on or about December 28, 2012, upon successful entrance into and closure of a definitive agreement with the University of Rochester's Strong Memorial Hospital ("SMH"). As we previously advised the Department of Health, our Board of Directors has committed to transfer the assets and operations of the Pluta Cancer Center, Inc. to SMH, effective said date. If all approvals have been received, including your approval of this Closure Plan, we may implement the transfer and surrender our license prior to that date.

Upon surrendering our license, the Pluta Cancer Center will continue to operate as an extension clinic of the Strong Memorial Hospital of the University of Rochester. (SMH submitted a CON application on August 31, 2012; CON Project Number 122118.) We anticipate that each of the physicians and other clinical staff that currently provide care at the Center will continue to do so, and that all current Pluta Cancer Center employees will become employees of the University as of the date of the transfer. Therefore, the transition should be seamless for our current patients and the community we serve.

As the Department knows, we have been working with SMH to execute a communication plan, a copy of which is included in this packet. This has included communications with our team (42 employees), patients, physicians, other service providers, elected officials, community leaders/representatives and vendors. We have also been working with SMH to communicate with our staff regarding their employment post-transfer and have met with all physicians, providers and staff to explain the transition plans for the facility and with respect to their affiliation with the Pluta Cancer Center. SMH will continue to work with our leadership team and our staff regarding transition issues. Media contacts are being handled as follows: Jean Van Etten, (585.487.1669, jvanetten@plutacancercenter.org) for Pluta Cancer Center and Michael Tedesco, (585.276.5788, Michael.Tedesco@URMC.Rochester.edu) for the University of Rochester Medical Center. Ongoing communications with elected officials, citizens and

Your Cancer.

community representatives continue through the communications plan developed by Pluta and SMH.

As URMC discussed on August 21, 2012 with NYSDOH leadership, SMH proposes to assume operations as a certified extension clinic effective on or about December 28, but implementation of the Closure Plan and the opening of the extension clinic will occur prior to that date, if all of the regulatory approvals have been received.

Critical to this process is a seamless transition of its current operations to SMH. We've included the implementation timeline for the closure plan, which we have been working diligently on with SMH.

We do not anticipate any interruption or discontinuation of services. Services will continue to be provided by SMH at Pluta's current site. Telephone numbers will remain the same. Each patient or his/her next of kin, where appropriate, will be notified of the transfer of services by letter (a draft of which is attached) on or about November 1, 2012. Verbal notifications have already occurred for active patients. There will be no need to notify the patients' physicians, because the Pluta provider staff will remain the same. We do not anticipate the need to cancel or change any appointments as a result of the transfer.

Pluta and SMH will ensure that any patient who decides not to stay with Pluta Cancer Center for their care prior to or after transfer will have his or her complete medical records transferred to the provider of his or her choice on a timely basis. Our notification letter to patients advises them of the process for requesting such a record transfer. If patients request guidance in selecting an alternate facility or provider, they will be referred to their primary care physician or health insurance for advice. There are several other providers in the area offering the same services.

Pluta and SMH will ensure proper documentation is maintained for all patients involved in the transfer of services. Records, including all patient medical records, will be maintained by SMH after the transfer, pursuant to all required retention laws.

Final notification will also be provided to:

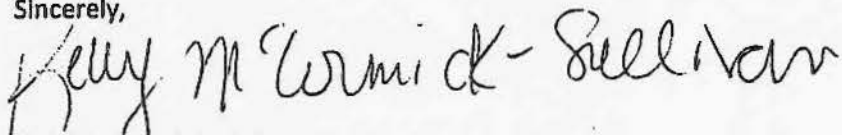
- Managed care organizations
- Bureau of Environmental Radiation Protection
- Referring physicians, vendors and contractors.

Should you have any questions, you may reach me at the address, telephone number and e-mail set forth in this letter. If you cannot reach me, please feel free to contact Jamie Bishop, our CFO, at the following contact information: 585.486.0573 or JBishop@plutacancercenter.org.

Your Cancer.

We thank the Department for all of its assistance in this matter.

Sincerely,



Kelly McCormick-Sullivan

President and CEO

KMcCormick-Sullivan@plutacancercenter.org

585.487-0674

cc.

New York State Department of Health

Rochester Office

Triangle Building

335 East Main Street

Rochester, NY 14604-2127

Your Cancer.



PLUTA
Cancer Center

Communication Plan: URMC Merger

07/23/2012 Announcement

Audience	Message	Delivery	Timing
	CONFIDENTIAL UNTIL MOU SIGNED		
PCC Staff	<ul style="list-style-type: none"> Process and rationale Benefits to patients and staff 	Meeting	7:30 a.m.
Key Referring Physicians	<ul style="list-style-type: none"> Process and rationale Benefits to physician and patients 	Phone	Begin at 8:30 a.m.
Healthcare and Community Agencies	<ul style="list-style-type: none"> Potential impact on current relationship 	Phone	Begin at 8:30 a.m.
Key Supporters/Donors	<ul style="list-style-type: none"> Fundraising efforts to continue to support Pluta patients 	Phone	Begin at 8:30 a.m.
Emerald Ball Committee /Sponsors	<ul style="list-style-type: none"> Foundation/fundraising plans 	Phone	Begin at 8:30 a.m.
Patient Advisory Board	<ul style="list-style-type: none"> Expect board to continue 	Phone, Email	Begin at 8:30 a.m.
Elected Officials	<ul style="list-style-type: none"> Reinforce will continue to operate at current location, employment remain same and could grow 	Phone	Begin at 8:30 a.m.
Key Vendors	<ul style="list-style-type: none"> Status quo for now; future TBD 	Phone, In-person meetings	Begin at 8:30 a.m.
PATIENTS	<ul style="list-style-type: none"> Key points: no change in staff, location, name; easier access to services 	Handouts, lobby and room signs, staff talking points, website, Facebook	10:00 with press release
Designated in treatment; deemed fragile	<ul style="list-style-type: none"> Reinforce key points and availability if questions 	Phone	Begin at 8:30 a.m.
Designative in follow-up and inactive	<ul style="list-style-type: none"> Reinforce key points and availability if questions 	Letter	Begin at 8:30 a.m.
Support group	<ul style="list-style-type: none"> Reinforce key points and availability if questions 	Phone, email	Begin at 8:30 a.m.
Media		Electronic	10:00 a.m.

Your Cancer.

125 Red Creek Drive | Rochester, NY 14623 | Phone: 585-486-0600 | Fax: 585-486-0649 | PlutaCancerCenter.org

Ongoing: When Key Milestones Achieved

Audience	Message	Delivery	Timing
Referring MDs	<ul style="list-style-type: none">• Update	Mail	TBD
Managed Care Organizations	<ul style="list-style-type: none">• Update	Mail/Email	TBD
Bureau of Environmental Radiation Protection	<ul style="list-style-type: none">• Update	Mail	TBD
Vendors/Other Providers	<ul style="list-style-type: none">• Update	Mail/Phone	TBD
Patients	<ul style="list-style-type: none">• Transfer of services information• Procedure	Mail	TBD

Your Cancer.

125 Red Creek Drive | Rochester, NY 14623 | Phone: 585-486-0600 | Fax: 585-486-0649 | PlutaCancerCenter.org

NEW YORK
state department of
HEALTH

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

Sue Kelly
Executive Deputy Commissioner

November 21, 2012

Ms. Kelly McCormick-Sullivan
Chief Executive Officer
Pluta Cancer Center
125 Red Creek Drive
Rochester, New York 14623

Re: Decertification of Operator and site
acquisition by Strong Memorial Hospital of:
The Pluta Family Cancer Center
125 Red Creek Drive, Rochester
Operating Certificate: 2701233R
Facility ID: 6317

Dear Ms. McCormick-Sullivan:

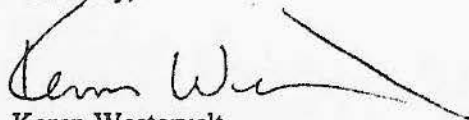
In response to your request of September 14, 2012, staff from the Division of Certification and Surveillance and the Western Regional Office reviewed the closure plan for the site listed above.

The closure plan is approved effective upon completion of CON 122118. The operating certificate should be surrendered immediately after that date to the Western Regional Office.

If you have any questions concerning this matter please contact Ms. Lynne Dey at 716-847-4357.

Thank you.

Sincerely,



Karen Westervelt
Interim Deputy Commissioner
Office of Health Systems Management

cc: Dr. Gregory Young
Ms. Kathy Owens
Closure File 913

At a Special Term of the Supreme Court of the State of New York held in and for the County Of Monroe, at the Hall of Justice in Rochester, New York on the 30 day of November 2012

STATE OF NEW YORK
SUPREME COURT : MONROE COUNTY

In the Matter of the Application
of

PLUTA CANCER CENTER, INC.
Petitioner,

For an Order Approving the Transfer of Substantially All
Assets Under Section 510 of the Not-for-Profit
Corporation Law

ORDER

Index No.

RECEIVED
2012 NOV 21 PM 2:48

Upon reading the Petition of Pluta Cancer Center, Inc. dated October 19, 2012, and duly verified by the Petitioner on October 22, 2012, and the exhibits attached thereto, including the affidavits of Kelly McCormick-Sullivan sworn to on October 22, 2012 and Ronald A. Pluta sworn to on October 23, 2012, and the Attorney General having waived notice and hearing and certified no objection to the entry of this Order, and this court having given due consideration hereto, and it appearing to the satisfaction of this court that the provisions of Section 511 of the Not-for-Profit Corporation Law have been complied with, and that the public interests would not be adversely affected by the transfer of assets as described in the Petition,

Now, on motion of Hiscock & Barclay, LLP, attorneys for the Petitioner, it is hereby

ORDERED, that the Petitioner, Pluta Cancer Center, Inc., be and hereby is authorized to transfer substantially all of its assets to Strong Memorial Hospital, and unincorporated division of the University of Rochester, to wit:

1. all leasehold improvements and fixtures constituting real property located at 125 Red Creek Drive, Rochester, New York 14623; and

2. all of the tangible and intangible personal property and rights of any kind whatsoever, including without limitation, goodwill and going concern value, owned by Pluta Cancer Center, Inc. and used in or useful to its diagnostic and treatment facility located at 125 Red Creek Drive, Rochester, New York, 14623, including:
- a. all accounts receivable, whether or not collected as of the date of the transfer, Effective Date, and all other monies due and payable to Pluta resulting from professional services rendered on or prior to the Effective Date, including insurance company "risk pool" funds; and
 - b. all service marks, trademarks, trade names, and copyright to the "Pluta Cancer Center", including all logos associated with the "Pluta Cancer Center"; and
 - c. all other tangible and intangible property owned by Pluta Cancer Center, Inc. and reflected in its balance sheet as of the date of transfer; and
 - d. all assets described in Exhibit 1 of the Asset Purchase Agreement attached to the Petition

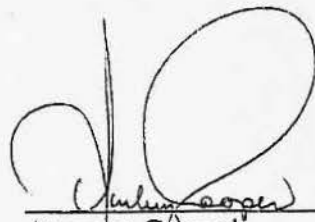
upon the following terms: assumption by Strong of all of the Petitioner's liabilities as stated on the audited balance sheet of the Petitioner as of the effective date of the transfer.

Enter,

J.S.C.

W. P. Polito 12/30/12
William P. Polito

The Attorney General of the State of New York hereby certifies that he has no objection to the entry of the foregoing order and hereby waives notice of the application therefore, or notice of settlement thereof, or any hearing herein.



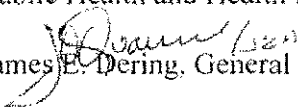
Attorney General



STATE OF NEW YORK - DEPARTMENT OF HEALTH

MEMORANDUM

TO: Public Health and Health Planning Council

FROM:  James E. Dering, General Counsel

DATE: June 30, 2014

SUBJECT: Proposed Amendment to the Certificate of Incorporation for Allegany/Western Steuben Rural Health Network, Inc.

Allegany/Western Steuben Rural Health Network, Inc. requests Public Health and Health Planning Council approval of its Certificate of Amendment to its Certificate of Incorporation, in accordance with the requirements of Not-For-Profit Corporation Law § 803.

According to the Corporation's counsel, the Corporation is proposing to amend the first paragraph of the Certificate of Incorporation of Allegany/Western Steuben Rural Health Network, Inc., which sets the name of the corporation, to read "The Name of the Corporation is Ardent Solutions, Inc."

Attached is a copy of the proposed Certificate of Amendment, a letter from the Corporation's counsel requesting approval of the amendment, and the previous Certificate of Incorporation.

The Certificate of Amendment is in legally acceptable form.

Attachments

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
ALLEGANY/WESTERN STEUBEN RURAL HEALTH NETWORK, INC.

Pursuant to Section 803 of the Not-for-Profit Corporation Law

FIRST: The name of the corporation is: ALLEGANY/WESTERN STEUBEN RURAL HEALTH NETWORK, INC.

SECOND: The Certificate of Incorporation was filed by the Department of State on the 27th day of June, 2005.

THIRD: The law the corporation was formed under is Section 402 of the Not-for-Profit Corporation Law.

FOURTH: The corporation is a Type B corporation as defined in Section 102(a)(5) of the Not-for-Profit Corporation Law.

FIFTH: The amendment of the certificate of corporation effected by this certificate is to change the name of the corporation.

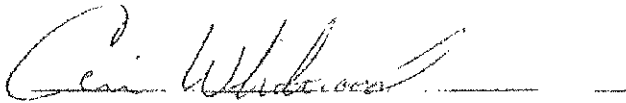
SIXTH: Paragraph First of the Certificate of Incorporation of Allegany/Western Steuben Rural Health Network, Inc., which sets forth the name of the corporation, is hereby amended to read as follows:

"The Name of the Corporation is Ardent Solutions, Inc."

SEVENTH: The Secretary of State is designated as agent of the corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the corporation is:

Ardent Solutions, Inc.
85 North Main, Suite 4
Wellsville, New York 14895

EIGHTH: The certificate of amendment was authorized by a vote of a majority of the entire board of directors. The corporation has no members.

A handwritten signature in cursive script, appearing to read "Carrie Whitwood", written over a horizontal line.

Carrie Whitwood

Allegheny/Western Steuben Rural Health Network, Inc.

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
ALLEGANY/WESTERN STEUBEN RURAL HEALTH NETWORK, INC.
Pursuant to Section 803 of the Not-for-Profit Corporation Law

Filed by:

*David J. Watson, Esq.
Watson & West, PLLC
272 Broadway
Albany, New York 12204*

CERTIFICATE OF INCORPORATION
OF
ALLEGANY/WESTERN STEUBEN RURAL HEALTH NETWORK, INC.

Under Section 402 of the Not-for-Profit Corporation Law

The undersigned, desiring to form a corporation pursuant to the Not-for-Profit Corporation Law of New York, does hereby certify:

FIRST: The name of the corporation shall be Allegany/Western Steuben Rural Health Network, Inc.

SECOND: The Corporation is a corporation as defined in subparagraph (a)(5) of section 102 of the New York Not-for-Profit Corporation Law, and shall be a Type B corporation under section 201 of the Not-for-Profit Corporation Law.

THIRD: This corporation is formed for the purpose of conducting activities which are exclusively charitable and educational within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1954, as may be amended from time to time, as follows:

- To operate a Rural Health Network as defined in Public Health Law Article 29A to improve the health and wellness of the residents of Allegany and Steuben Counties by collaboratively identifying unmet needs and gaps in healthcare services and serving as a catalyst for development and improvement of systems of healthcare delivery;

FOURTH: Except for the corporation's operation as a rural health network, as defined in section 2951(2) of the Public Health Law, nothing contained in the Certificate of Incorporation shall authorized the Corporation to establish, operate or maintain a hospital, a home care services agency, a hospice, a health maintenance organization, or a comprehensive health services plan, as provided for by Articles 28, 36, 40, and 44, respectively, of the Public Health Law, to provide hospital service or health related service, to establish, operate or maintain an adult care facility, as provided for by Article 7 of the Social Services Law, or to solicit any funds, contributions or grants, from any source, for the establishment or operation of any hospital or adult care facility in the State of New York.

Notwithstanding anything herein to the contrary, the Corporation shall not operate as a rural health network unless and until all necessary approval, licenses and/or certificates are obtained from the Public Health Council and the Commissioner of Health.

Nothing herein shall authorize the corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in section 404(b) through (n), (q), (s), (u) through (v) of the Not-for-Profit Corporation Law

FIFTH: The office of the corporation is to be located in the County of Allegany and State of New York.

SIXTH: The names and addresses of the initial directors are:

Robert Anderson	45 Broad Street Wellsville, New York 14895
Helen Evans	County Office Complex Belmont, NY 14813
Kathy Gallant	3 East Pulteney Square Bath, New York 14810
Madeline Gasdik	240 O'Conner Street Wellsville, New York 14895
Ann Gilpin	191 North Main Street Wellsville, New York 14895
William Hall	Saxon Drive Alfred, New York 14802
Julie Hart	191 North Main Street Wellsville, New York 14895
Bryan Karl	102 North Main Street Wellsville, New York 14895

Gary Ogden	County Office Complex Belmont, NY 14813
Gary Pruyn	3 East Pulteney Square Bath, New York 14810
Patrick Rogers	6666 County Road 11 Bath, NY 14810
Patricia Schmelzer	County Court Complex Belmont, New York 14813
Reita Sobeck-Lynch	4192A Bolivar Road Wellsville, NY 14895
Teresa Stever-Gary	3 East Pulteney Square Bath, NY 14810
Kimberly Toot	County Office Complex Belmont, NY 14813

SEVENTH: In furtherance of its purposes, the Corporation shall have all of the general powers enumerated in section 202 of the Not-for-Profit Corporation Law, together with the power to solicit grants and contributions for any corporate purpose and the power to maintain a fund or funds of real or personal property for any corporate purposes. The Corporation shall have the right to exercise such other powers as now are, or hereafter may be, conferred by law upon a corporation organized for the purposes hereinabove set forth or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof.

EIGHTH: The Secretary of State is herein designated as agent of the corporation upon whom process against it may be served and the address to which the Secretary of State shall mail a copy of such process served upon him is 85 North Main Street, Suite 4, Wellsville, New York 14895.

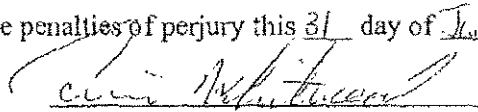
NINTH: No part of the net earnings of the corporation shall inure to the benefit of, or be distributed to, its members, trustees, officers, or other private persons, except that the

corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of its purposes.

TENTH: No substantial part of the activities of the corporation shall be carrying on of propaganda, or otherwise attempting to influence legislation (except as otherwise provided by Internal Revenue Code Section 501(h)) and the corporation shall not participate in, or intervene in (including publishing or distribution of statements) any political campaign on behalf of any candidate for public office.

ELEVENTH: Upon dissolution of the corporation, the governing body of the corporation shall, after paying or making provision for the payment of all of the liabilities of the corporation, dispose of all of the assets of the corporation exclusively for religious, charitable, scientific, testing for public safety, literary or education purposes, or for the prevention of cruelty to children or animals; or to such organization organized and operated exclusively for one or more such purposes as shall at the time qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code of 1954; or to the federal government, a state and local government for a public purpose.

IN WITNESS WHEREOF, the undersigned as signed this Certificate and affirmed as true the statements made herein under the penalties of perjury this 31 day of January, 2005.



Incorporator, Carrie Whitwood

191 North Main Street.
Wellsville, NY 14895

FILING RECEIPT

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ENTITY NAME: ALLEGANY/WESTERN STEUBEN RURAL HEALTH NETWORK, INC.

DOCUMENT TYPE: INCORPORATION (NOT-FOR-PROFIT)

TYPE: B COUNTY: ALLE

SERVICE COMPANY: ** NO SERVICE COMPANY **

SERVICE CODE: 00

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FILED:06/27/2005 DURATION:PERPETUAL CASH#:050627000529 FILM #:050627000508

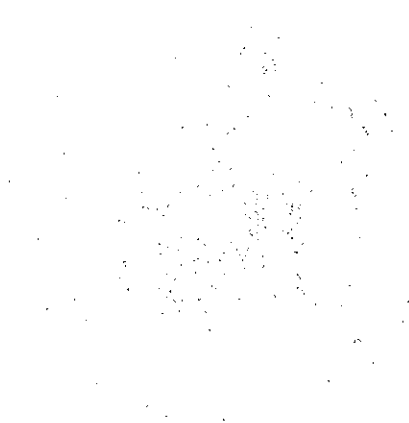
ADDRESS FOR PROCESS

EXIST DATE

THE CORPORATION
85 NORTH MAIN SUITE 4
WELLSVILLE, NY 14895

06/27/2005

REGISTERED AGENT



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FILER	FEES		PAYMENTS	
-----	-----	100.00	-----	100.00
	FILING	75.00	CASH	0.00
	TAX	0.00	CHECK	100.00
DAVID J WATSON ESQ	CERT	0.00	CHARGE	0.00
WATSON & WEST ATTORNEYS AT LAW PLLC	COPIES	0.00	DRAWDOWN	0.00
272 BROADWAY	HANDLING	25.00	OPAL	0.00
MENANDS, NY 12210			REFUND	0.00

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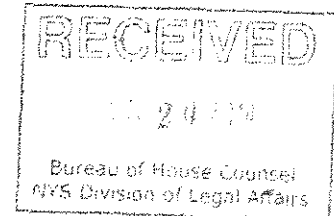
Watson & West

Attorneys at Law

David J. Watson, Esq.
Michael West, Esq.

June 16, 2014

Justin Pfeiffer
Senior Attorney
Bureau of House Counsel
New York State Department of Health
Corning Tower, Room 2482
Albany, NY 12237-0026



Re: Request for Approval of Certificate of Amendment to the Certificate of Incorporation for Allegany/Western Steuben Rural Health Network, Inc.

Dear Mr. Pfeiffer:

Pursuant to § 404 of the Not-for-Profit Corporation Law of the State of New York, the New York State Department that will regulate the affairs of a nonprofit corporation organized under the laws of the State of New York must approve the relevant Certificate of Incorporation, or waive said approval in the case where continuing regulation will not be forthcoming. Please find enclosed Certificate of Amendment of the Certificate of Incorporation of Allegany/Western Steuben Rural Health Network, Inc., which will effectuate the corporate name change upon filing by the Department of State, for your review and approval. Kindly return either your office's permission for the Certificate of Amendment of the Certificate of Incorporation or the waiver thereto.

Pursuant to the Certificate of Incorporation of Allegany/Western Steuben Rural Health Network, Inc., a copy of which is enclosed for your reference, the corporation was formed for the purpose of conducting activities which are exclusively charitable and educational within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1954, as may be amended from time to time, to operate a Rural Health Network as defined in Public Health Law Article 29A to improve the health and wellness of the residents of Allegany and Steuben Counties by collaboratively identifying unmet needs and gaps in healthcare services and serving as a catalyst for development and improvement of systems of healthcare delivery.

Should you need additional information or have any questions regarding the above, please contact me at 689-3298, ext. 2, or Cheryl Quagliana, Senior Paralegal, at 689-3298, ext. 4.

272 Broadway, Albany NY 12204 Tel 518.689.3298
205 South Avenue, Suite 101, Poughkeepsie, NY 12601 Tel 845.625.2135
Fax 866.351.1318

www.watsonandwest.com

Thank you for your cooperation and courtesies in this regard.
Sincerely,

A handwritten signature in black ink, appearing to read "David J. Watson". The signature is written in a cursive, flowing style.

David J. Watson, Esq.
Managing Partner

Enclosures

cc: Carrie Whitwood, Executive Director, Allegany/Western Steuben Rural Health Network,
Inc. (via email)

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: 7 Day Home Care, Ltd.
Address: Lake Success
County: Nassau
Structure: For-Profit Corporation
Application Number: 2151-L

Description of Project:

7 Day Home Care, Ltd., a for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock, which are owned as follows:

Sheri T. Manson – 25 Shares

175 Shares remain unissued.

The Board of Directors of 7 Day Home Care, Ltd. is comprised by the following individual:

Sheri T. Manson - Director
President, 7 Day Home Care, Ltd. (companion care)

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 1979 Marcus Avenue, Suite 210, Lake Success, New York 11042:

Nassau Queens

The applicant proposes to provide the following health care services:

Nursing Home Health Aide Personal Care Homemaker

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: June 26, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Constellation Private Duty, LLC
Address: Lynbrook
County: Nassau
Structure: Limited Liability Company
Application Number: 2245L

Description of Project:

Constellation Private Duty, 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 membership of Constellation Private Duty, LLC is comprised of the following individuals:

Marvin Ostreicher, NHA, Managing Member – 16.8%

Supervisor of Operations of:

Belair Care Center, Inc.
Bloomfield Health Care Center of Connecticut, LLC
Catskill Crossings
Glens Falls Crossings
Huntington Hills Center for Health and Rehabilitation
Maple View Manor of Connecticut, LLC
Marlborough Health Care Center
Milford Health Care Center, Inc.
Poughkeepsie Crossings
Regency House of Wallingford, Inc.
Riverside Health Care Center, Inc.
Ross Health Care Center, Inc.
Sands Point Center for Health & Rehabilitation
Utica Crossings
Water's Edge Center for Health and Rehabilitation d/b/a Harbor Hill Care Center

Affiliations:

New York State

Ross Health Care Center, Inc. (1996 – present)
Belair Care Center, Inc. (1996 – present)
River Manor Care Center (1986 – 2010)
Sands Point Center for Health & Rehabilitation (1986 – present)
Montclair Care Center d/b/a Marquis Rehabilitation and Nursing Center (1998 – present)
Forest Manor Care Center, Inc. d/b/a Glen Cove Center for Nursing & Rehabilitation (1998 – present)

State of Connecticut

Cambridge Manor of Fairfield, LLC (2001- present)
Maple View Manor of Connecticut, LLC (1999 – present)
Regency House of Wallingford, Inc. (1991- present)
Bloomfield Health Care Center of Connecticut, LLC (1999 – present)
Water's Edge Center for Health and Rehabilitation (1980 – present)
Riverside Health Care Center, Inc. (1980 – present)
Marlborough Health Care Center, Inc. (1984 – present)
Milford Health Care Center, Inc. (1984- present)
Ludlowe Center for Health & Rehabilitation, LLC (2006 – present)
New Milford Crossings, LLC (2008 – present)
Bristol Crossings, LLC (2008 – present)
Sterling Manor, Inc. (1991 – 2009)
Constellation Health Services, LLC (2008 – present)

State of Vermont

Rutland Crossings, LLC d/b/a The Pines at Rutland Center for Nursing & Rehabilitation (2008 – present)
Brattleboro Crossings, LLC d/b/a Pine Heights at Brattleboro Center for Nursing & Rehabilitation
(2008 – present)

Michelle Ostreicher, Member – 16.6%

Unemployed

Affiliations

Hopkins Center for Rehabilitation and Health Care (3/24/11 – 12/31/12)

Rebecca Lopiansky, Member – 16.6%

Assistant Administrator, Belair Nursing and Rehabilitation Center

Affiliations:

New York State

Catskill Crossings, LLC d/b/a The Pines at Catskill Center for Nursing and Rehabilitation (2008-
present)

Poughkeepsie Crossings, LLC d/b/a The Pines at Poughkeepsie Center for Nursing and
Rehabilitation (2008- present)

Utica Crossings, LLC d/b/a The Pines at Utica Center for Nursing & Rehabilitation (2008- present)

Glens Falls Crossings, LLC d/ba/ The Pines at Glens Falls Center for Nursing & Rehabilitation
(2008- present)

State of Connecticut

Constellation Health Services, LLC (CHHA) (2008-present)

State of Vermont

Rutland Crossings, LLC d/b/a The Pines at Rutland Center for Nursing & Rehabilitation (2008 –
present)

Brattleboro Crossings, LLC d/b/a Pine Heights at Brattleboro Center for Nursing & Rehabilitation
(2008- present)

Ilana Ostreicher, Member– 20.0%

Unemployed

Shayna Steg, Member – 20.0%

Unemployed

Barry Bokow, Member – 10.-%

Vice President, National Health Care Associates

Affiliations:

New York State

Huntington Hills Center for Health and Rehabilitation (2001- present)

State of Connecticut

Cambridge Manor of Fairfield, LLC (2001- present)

New Milford Crossings, LLC (2008 – present)

Bristol Crossings, LLC (2008 – present)

Regency House of Wallingford, Inc. (1991 – present)

Ludlowe Center for Health & Rehabilitation, LLC (2006 – present)

The applicant proposes to serve the residents of the following counties from an office located at 46 Stauderman Avenue, Lynbrook, New York 11563

Nassau Suffolk Westchester Queens

The applicant intends to propose a second office to be located at 3220 Henry Hudson Parkway, Bronx, New York to serve the following counties:

New York Bronx

The applicant proposes to provide the following health care services:

Nursing Home Health Aide Personal Care

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Bureau of Professional Credentialing has indicated that Marvin Ostreicher holds a NHA license in good standing and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or his license.

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

New York State

- Belair Care Center, Inc.
- Catskill Crossings, LLC d/b/a The Pines at Catskill Center for Nursing and Rehabilitation (2008-present)
- Forest Manor Care Center, Inc. d/b/a Glen Cove Center for Nursing & Rehabilitation
- Glens Falls Crossings, LLC d/b/a The Pines at Glens Falls Center for Nursing & Rehabilitation (2008- present)
- Hopkins Center for Rehabilitation and Health Care (3/24/11 – 12/31/12)
- East Northport Residential Health Care Facility, Inc. d/b/a Huntington Hills Center for Health and Rehabilitation (2001- present)
- Montclair Care Center d/b/a Marquis Rehabilitation and Nursing Center
- Poughkeepsie Crossings, LLC d/b/a The Pines at Poughkeepsie Center for Nursing and Rehabilitation (2008- present)
- River Manor Care Center (2007 – 2010)
- Ross Health Care Center, Inc.
- Sands Point Center for Health & Rehabilitation
- Utica Crossings, LLC d/b/a The Pines at Utica Center for Nursing & Rehabilitation (2008- present)

State of Connecticut

- Bloomfield Health Care Center of Connecticut, LLC
- Bristol Crossings, LLC
- Cambridge Manor of Fairfield, LLC
- Constellation Health Services, LLC (2008-present)
- Ludlowe Center for Health & Rehabilitation, LLC
- Maple View Manor of Connecticut, LLC
- Marlborough Health Care Center, Inc.
- Milford Health Care Center, Inc.
- New Milford Crossings, LLC
- Regency House of Wallingford, Inc.
- Riverside Health Care Center, Inc.
- Sterling Manor, Inc.
- Water's Edge Center for Health and Rehabilitation

State of Vermont

Rutland Crossings, LLC d/b/a The Pines at Rutland Center for Nursing & Rehabilitation (2008 – present)
Brattleboro Crossings, LLC d/b/a Pine Heights at Brattleboro Center for Nursing & Rehabilitation
(2008 – present)

The Bureau of Quality Assurance and Surveillances has indicated the following:

KFG Operating, 1 LLC d/b/a Hopkins Center for Rehabilitation and Healthcare was fined four thousand dollars (\$4,000) pursuant to a stipulation and order dated August 24, 2012 for surveillance findings of April 11, 2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents and 415.26 Administration.

Ross Health Care Center, Inc. was fined ten thousand dollars (\$10,000) pursuant to a stipulation and order dated March 1, 2011 for surveillance findings of June 14, 2010. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents and Supervision.

East Northport Residential Health Care Facility, Inc. d/b/a Huntington Hills Center for Health and Rehabilitation was fined four thousand dollars (\$4,000) pursuant to a stipulation and order dated March 23, 2009 for surveillance findings of July 30, 2008. Deficiencies were found under 10 NYCRR 415.12 Quality of Care and 415.15(a) Medical Services: Medical Director.

Glens Falls Crossings, LLC d/b/a The Pines at Glens Falls Center for Nursing and Rehabilitation was fined \$2,000 pursuant to a stipulation and order dated April 20, 2012 for surveillance findings of March 3, 2011. Deficiencies were found under 10 NYCRR 415.12 Quality of Care Highest Practicable Potential.

Glens Falls Crossings, LLC d/b/a The Pines at Glens Falls Center for Nursing and Rehabilitation was fined \$10,000 pursuant to a stipulation and order dated March 1, 2011 for surveillance findings of May 26, 2010. Deficiencies were found under 10 NYCRR 415.12(c)(1) Quality of Care: Pressure Sores.

Utica Crossings, LLC d/b/a The Pines at Utica Center for Nursing and Rehabilitation was fined \$12,000 pursuant to a stipulation and order dated February 13, 2013 for surveillance findings of July 27, 2011. Deficiencies were found under 10 NYCRR 415.12 Quality of Care Highest Practicable Potential and 415.26(a) Administration.

The Information provided by the Bureau of Quality Assurance has indicated that the residential health care facilities reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information supplied by the State of Vermont indicates that the facilities were in substantial compliance with applicable state laws and regulations.

The State of Connecticut did not supply any information that indicated that that the health care facilities were not in substantial compliance with the applicable state laws and regulations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: July 2, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Cottrill's Pharmacy, Inc.
Address: Arcade
County: Wyoming
Structure: Proprietary Corporation
Application Number: 2199-L

Cottrill's Pharmacy, Inc., a proprietary corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 1,500 shares of stock of which 1,225 shares of common stock remain unissued. 275 shares of stock are owned as follows:

David J. Obrochta – 225 Shares	Michelle Dominessy, RPh – 50 Shares
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The Board of Directors of Cottrill's Pharmacy, Inc. is comprised of the following individuals:

David J. Obrochta – President President/COO, Cottrill's Pharmacy, Inc.	Thomas Nuttle – Vice President Vice President, Business Development, Cottrill's Pharmacy, Inc.
Randall A. Brown, RPh – Director President/Owner, Anthony-Brown Pharmacy, Inc.	Michelle Dominessy, RPh – Director Pharmacist, Cottrill's Pharmacy, Inc.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department, the Office of Professional Medical Conduct, indicates no issues with the license of the medical professionals associated with this application.

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.

The applicant proposes to serve the residents in the following counties from an office located at 255 Main Street, Arcade, New York 14009.

Chautauqua	Cattaraugus	Allegany
Erie	Wyoming	Genesee
Niagara	Orleans	Monroe

The applicant proposes to provide the following health care service:

Nursing

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency:

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: June 19, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Detty Home Care Service, LLC
Address: Laurelton
County: Queens
Structure: Limited Liability Company
Application Number: 1828-L

Description of Project:

Detty Home Care Service, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Detty Home Care Service, LLC is composed of the following member:

Marie Laguerre Jean-Louis, R.N., 100%
Nursing Consultant, Emunah Services, Inc. (employment agency)

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the healthcare professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 139-27 228th Street, Laurelton, New York 11413:

New York	Bronx	Queens
Nassau	Richmond	Kings

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: June 9, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Good Help at Home, Inc.
Address: Bronx
County: Bronx
Structure: Not-For-Profit Corporation
Application Number: 1574-L

Description of Project:

Good Help at Home, Inc., a not-for-profit corporation, requests approval for a licensed home care services agency under Article 36 of the Public Health Law.

The Board of Directors of Good Help at Home, Inc. and Bon Secours New York Health System, Inc. is comprised of the following individuals:

Sr. Pauline Sweeney – Chairman Retired	Br. Aurthur Caliman – President Sr. VP of Sponsorship, Bon Secours Health System, Inc.
John Corcoran, CPA – Board Member Partner, Owen J. Flanagan & Co.	Ralph Dimpel – Board Member Retired
Catherine A. Gasteyer – Board Member Manager External Affairs, Verizon	Sr. Frances Gorsuch – Board Member Mission Vice President /Director of Community Initiatives, Good Samaritan Hospital
Monica Higgins, RN – Board Member Clinical Documentation Specialist, NYU Langone Medical Center Affiliation: Schervier Nursing Care Center (2009 – present)	Howard Malatsky, Esq. – Board Member Retired
Sr. Patricia Mennor, LCSW – Board Member Assistant Director of Sponsorship and Mission Services, Sisters of Charity of St. Elizabeth	Frank Maselli, MD – Board Member President/Physician, Riverdale Family Practice & PC Affiliation: Schervier Nursing Care Center (2004 – present)
Marlon Priest, MD – Board Member Executive VP/Chief Medical Officer, Bon Secours Health System, Inc.	

The Board of Directors of Bon Secours Health System is comprised of the following individuals:

Donald Seitz, MD – Board Chair Retired	Chris Allen – Executive Director/CEO CEO, Detroit Wayne County Health Authority
Richard Blair, CPA – Board Member Retired	Sr .Mary Elaine Davia, RN, RN, Bon Secours Hospital – Baltimore RN, Access Carroll Clinic RN, Esperanza Center

Marcia Dush – Board Member Consulting Actuary, Buck Consultants	Stephanie Ferguson, PhD, RN – Board Member Associate Professor, Virginia Commonwealth University, School of Nursing Consulting Associate Professor, Stanford University President, Stephanie L. Ferguson and Associates, LLC Director, Leadership for Change Programme, International Council of Nurses
A. David Jimenez – Board Member Retired	Gerard Kells – Board Member Retired
Robert Kuramoto, MD – Board Member Physician Partner, Christie Clinic Managing Partner, Quidi Leonard Kieffer	Peter Maddox – Board Member Retired
Jennifer O'Brien, Esq. – Board Member Chief Compliance Officer/Government Programs United Healthcare	Susan M. H. Sandlund, Ph.D. – Board Member Co-Founder Vertas Partners, LLC
Richard Serafini – Board Member Retired	Sr. Mary Shimo, RN – Board Member Manager of Volunteers and Student Programs, Bon Secour Baltimore Health System, Inc.
Richard Statuto – CEO/President, Bon Secours Health System	Sr. Alice Talone, CBS, RN – Board Member RN, Sisters of Bon Secours
Carol Taylor, RN – Board Member Professor of Nursing, Georgetown University	

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department, the New York Physician Profile and the Office of Professional Medical Conduct, where appropriate, indicates no issues with the license of the medical professionals associated with this application.

As individuals who are physicians sit on the boards of directors, the applicant assessed the proposed financial/referral structure in light of anti-kickback and self-referral laws and has concluded that proceeding with the proposal is appropriate.

The applicant proposes to serve the residents of the following counties from an office located at 2975 Independence Avenue, Bronx, New York 10463.

Bronx	New York
Westchester	

The applicant proposes to serve the residents of the following counties from a second office to be located at One Crosfield Avenue, 2nd Floor, West Nyack, New York 10994.

Dutchess	Orange
Rockland	Ulster

The applicant proposes to provide the following health care services:

Nursing	Personal Care	Home Health Aide	Speech-Language Pathology
Physical Therapy	Respiratory Therapy	Nutrition	Medical Social Services
Homemaker	Housekeeper	Occupational Therapy	

A 7 year review of the operations of the following facilities and health systems were performed as part of this review:

- Bon Secours Charity Health System, Inc.
 - Good Samaritan Hospital Home Care Department (CHHA)
 - Good Samaritan Hospital of Suffern
 - Bon Secours Community Hospital
 - St. Anthony Community Hospital
 - St. Joseph's Place (RHCF)
- Bon Secours Health System, Inc. – Maryland
- Bon Secours St. Petersburg Health System, Inc. – Florida
- Bon Secours St. Francis Health System, Inc. – South Carolina
- Bon Secours Kentucky Health System, Inc.
- Bon Secours Hampton Road Health System, Inc. – Virginia
- Bon Secours Richmond Health System, Inc. – Virginia

The State of Florida reported that they fined Bon Secours St. Petersburg Home Care Services, Inc. \$5,000 on July 21, 2010 for non-reporting of the 1st quarter 2010 quarterly report.

The information received from the States of Kentucky, Maryland, and Virginia included no reports of enforcement actions taken against health care agencies/facilities in the above referenced health systems. No information was received from the State of South Carolina.

The information provided by the Division of Home and Community Based Services indicated that the certified home health agency reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Bureau of Quality Assurance for Nursing Homes indicated that the residential health care facility reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents

The information provided by the Division of Hospitals and Diagnostic & Treatment Centers indicated that the hospitals reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: July 8, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: High Standard Home Care, Inc.
Address: Brooklyn
County: Kings
Structure: For Profit Corporation
Application Number: 2110-L

Description of Project:

High Standard Home Care, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

High Standard Home Care, Inc. has authorized 200 shares of stock which are owned as follows: Ludmila Varobey owns 43 shares, Marina Adelman owns 42 shares and Petar Muncan owns 15 shares. The remaining 100 shares are unissued.

The members of the Board of Directors of High Standard Home Care, Inc. comprise the following individuals:

Ludmila Varobey, R.D.H., President
Dental Hygienist, Dr. Stuart Feintuch

Marina Adelman, Vice President
Owner/President, Ultimate Billing

Jeffry Varobey, Secretary/Treasurer
Unemployed

Petar Muncan, R.N., Director
R.N., Jewish Community Council Services Commission

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 535 Neptune Avenue, Apt. 23-E, Brooklyn, New York 11224:

New York Kings Queens Bronx Richmond

The applicant proposes to provide the following health care services:

Nursing Home Health Aide Personal Care

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: June 2, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Lincolns Heart & Associates, Inc.
Address: Webster
County: Monroe
Structure: For Profit
Application Number: 2102-L

Description of Project:

Lincolns Heart & Associates, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Lincolns Heart & Associates, Inc. has authorized 200 shares of stock which are owned as follows: Judianne C. Slish owns 100 shares and the remaining 100 shares are unissued.

The Board of Directors of Lincolns Heart & Associates, Inc. comprises the following individual:

Judianne C. Slish, Pharm.D., President
Per Diem Pharmacist, Walgreens Pharmacy
Associate Professor, St. John Fisher College Pharmacy School
Affiliation:
Palmyra Pharmacy, LLC

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

A review of the following establishment was performed as part of this review:

Palmyra Pharmacy, LLC

The Office of the Professions of the State Education Department indicates no issues with the license of the health care establishment associated with this application.

The applicant proposes to serve the residents of Monroe and Wayne Counties from an office located at 777 Webster Road, Webster, New York 14580.

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
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Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: June 24, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Westchester Family Care, Inc.
Address: Mamaroneck
County: Westchester
Structure: For-Profit Corporation
Application Number: 2458L

Description of Project:

Westchester Family Care, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. This application amends and supersedes LHCSA application number 2027L which was contingently approved by the Public Health and Health Planning Council on April 11, 2013. At that time, the applicant had authorized 200 shares of stock with Eric T. Johnson owning 7 shares and Ralph Delgais owning 3 shares. The remaining 190 shares were unissued.

Westchester Family Care, Inc. has authorized 200 shares of stock. Ralph Del Gais owns 100 shares as the sole shareholder. The remaining 100 shares are unissued.

The Board of Directors of Westchester Family Care, Inc. comprises the following individuals:

Gary Ferone, Chairman/President Manager, Fairfield Family Care	Ralph Delgais, Vice Chairman/Vice President Office Manager, Fairfield Family Care (CT) (non-medical companion care agency) Owner/Operator, Quality Enterprises (printing)
Denice Filc, R.N., Treasurer Case Manager, Stamford Hospital (CT)	

The applicant proposes to serve the residents of the following counties from an office located at 1 Depot Plaza, Suite 203, Mamaroneck, New York 10803:

Westchester Rockland Putnam Dutchess

The applicant proposes to provide the following health care services:

Nursing Personal Care Home Health Aide Homemaker Housekeeper

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.

Ralph Delgais disclosed that he plead guilty to Grand Larceny in the 3rd Degree on March 6, 1985 and was sentenced to 5 years probation. The Department's recommendation for approval has been made after consideration of the statutory factors found in the New York State Correction Law Sections 752 and 753.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: June 30, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Valley Residential Services, Inc. d/b/a Valley Home Care
 Address: Herkimer
 County: Herkimer
 Structure: Not-for-Profit Corporation
 Application Number: 2021L

Description of Project:

Valley Residential Services, Inc. d/b/a Valley Home Care, a not-for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. The licensed home care services agency will be affiliated with an assisted living program to be operated by the applicant.

Valley Health Services, Inc. will be the sole member of Valley Residential Services, Inc. The sole member of Valley Health Services, Inc. is Bassett Regional Corporation and the sole member of Bassett Regional Corporation is Thurston Corporation d/b/a Bassett Healthcare Network.

The Board of Directors of Valley Residential Services, Inc. is comprised of the following individuals:

Mary (Marty) L. Smith, President Retired	John B. Militello, Vice-President Retired
Charlotte M. Szarejko, RN, Secretary Retired	Harry J. Enea, Jr, Treasurer CEO, President, Enea Family Funeral Home
Robert L. DeCarlo, DPM, Director Podiatric Physican, Slocum Dickson Medical Group	Marguerite M. Lynch, Director Community & Regional Affairs Manager, Excellus BlueCross BlueShield
Laura E. O'Donnell, Director Unemployed	Gary W. Ruff, Director Retired Affiliations: Herkimer Area Resource Center (2001- present)
Carolyn M. Torcia, Director Retired	Jeffrey J. Woepfel, Director Vice President, Mary Imogene Bassett Hospital Affiliations: At Home Care, Inc. (1988 – present) Cobleskill Regional Hospital (1995 – present) O'Connor Hospital (1998 – present) Little Falls Hospital (2005 -- present) First Community Care of Bassett (1996 -- present) Tri Town Regional Healthcare (2007 -- present)

The Board of Directors of Valley Health Services, Inc. is comprised of the following individuals:

Mary (Marty) L. Smith, President Disclosed above	John B. Militello, Vice -President Disclosed above
Charlotte M. Szarejko, Secretary Disclosed above	Harry J. Enea, Jr, Treasurer Disclosed above
Robert L. DeCarlo, Director	Marguerite M. Lynch, Director Disclosed above
Laura E. O'Donnell, Director Disclosed above	Gary W. Ruff, Director Disclosed above
Carolyn M. Torcia, Director Disclosed above	Jeffrey J. Woeppel, Director Disclosed above

The Board of Directors of Bassett Regional Corporation, Inc. is comprised of the following individuals:

Thomas Q. Morris, MD, Chairman of the Board Retired Affiliations: Mary Imogene Bassett Hospital (1980 – present)	William F. Streck, MD, President Chief Executive Officer, Bassett Healthcare Network Affiliations: Pathfinder Village (1984-present)
Bertine C. McKenna Ph.D., Vice-President Executive Vice President, Chief Operating Officer, Mary Imogene Bassett Hospital Affiliations: Mary Imogene Bassett Hospital (2002 – present)	Jeffrey J. Woeppel, Vice President Disclosed above
William T. Burdick, Secretary Corporate Secretary, The Clark Estates, Inc. Affiliations: Mary Imogene Bassett Hospital (1992 – present)	Nicholas J. Nicoletta, Treasurer Corporate Vice President & Chief Financial Officer, Mary Imogene Bassett Hospital Affiliations: Cobleskill Regional Medical Center (1995-present) O'Connor Hospital (1998 – present) At Home Care, Inc. (1988 – present) First Community Care of Bassett, LLC (1996-present) Little Falls Hospital (2006-present) Aurelia Osborn Fox Memorial Hospital Society (2010-present) Tri Town Regional Healthcare (2008 – present)

<p>John D. Bullis, Director Executive Director – Organizational Development, Mohawk Valley Community College</p> <p>Affiliations: Mary Imogene Bassett Hospital (2010 – present) Little Falls Hospital (2002 – present)</p>	<p>Barbara DiCocco, Director Retired</p> <p>Affiliations: Mary Imogene Bassett Hospital (2004 – present) Cobleskill Regional Hospital (1994- present)</p>
<p>Peter J. Hamilton, Director President, Delhi Motor Co., Inc.</p> <p>Affiliations: Mary Imogene Bassett Hospital (1994 – present) O’Connor Hospital (1998 – present)</p>	<p>Scott McLean, Director President, Tieco-Unadilla Corporation Customer Care Manager, Finger Lakes Business Services</p> <p>Affiliations: Tri-Town Regional Healthcare (2007 – present)</p>
<p>Kevin S. Moore, Director President, Clark Estates, Inc.</p> <p>Affiliations: Mary Imogene Bassett Hospital (1991- present)</p>	<p>Laura E. O’Donnell, Director Disclosed above</p>
<p>Edward W. Stack, Director Retired</p> <p>Affiliations: Mary Imogene Bassett Hospital (1973 – present)</p>	

The Board of Directors of Thurston Corporation d/b/a Bassett Healthcare is comprised of the following individuals:

<p>Thomas Q. Morris, MD, Chairman of the Board Disclosed above</p>	<p>Kevin S. Moore, Vice Chairman Disclosed above</p>
<p>Timothy A. Pedley, MD, Vice Chairman Professor of Neurology, Columbia University Medical Center</p> <p>Affiliation: Mary Imogene Bassett Hospital (2007 to present)</p>	<p>Barbara DiCocco, Director Disclosed above</p>
<p>Ralph H. Meyer, Director Retired</p>	<p>Katherine G. Nickerson, MD, Director Professor of Clinical Medicine, Columbia University, College of Physicians & Surgeons</p> <p>Affiliations: Mary Imogene Bassett Hospital (2004 to present)</p>
<p>Edward W. Stack, Director Disclosed above</p>	

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 Herkimer County from an office located at 323 Pine Grove Road, Herkimer, New York 13350.

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech-Language Pathology

The Office of the Professions of the State Education Department, the New York Physician Profile and the Office of Professional Medical Conduct, where appropriate, indicates no issues with the license of the medical professionals associated with this application.

As several physicians sit on the board of directors, it has been confirmed that in accordance with the Omnibus Budget Reconciliation Act of 1993, 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 seven (7) year review of the operations of the following health care facilities/ agencies was performed as part of this review (unless otherwise noted):

At Home Care, Inc.
Aurelia Osborn Fox Memorial Hospital (RHCF)
Aurelia Osborn Fox Memorial Hospital (Hospital)
Cobleskill Regional Hospital
Little Falls Hospital
Mary Imogene Bassett Hospital
O'Connor Hospital
Tri-Town Regional Hospital
Valley Health Services, Inc. (RHCF)
Herkimer Area Resource Center (OPWDD)
Pathfinder Village (OPWDD)

The information provided by the Division of Home and Community Based Services has indicated that the Certified Home Care Agency has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Bureau of Quality Assurance for Nursing Homes has indicated that the residential health care facilities have provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

Mary Imogene Bassett Hospital was fined \$42,000 on January 27, 2014 based on the investigation of two complaints. The first complaint involved the inappropriate discharge of a suicidal patient who was found dead and the second involved infections caused by retained foreign bodies following surgery.

The information provided by the Division of Hospitals and Diagnostic and Treatment Centers has indicated that the hospitals have provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Office for Persons with Developmental Disabilities (OPWDD) indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: June 24, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Oceanview Manor Home for Adults, Inc.
 Address: Brooklyn
 County: Kings
 Structure: For Profit Corporation
 Application Number: 2425-L

Description of Project:

OceanView Manor Home for Adults, Inc., a business corporation, requests approval for a change of ownership under Article 36 of the Public Health Law.

Oceanview Manor Home for Adults, Inc. was previously approved as a home care services agency by the Public Health and Health Planning Council at its December 2012 meeting and subsequently licensed as 2011L001. At that time, Benjamin Landa and Lisa Vider (Rosenfeld) each owned an equal number of shares of stock.

The applicant is requesting a change in stock ownership of Oceanview Manor Home for Adults, Inc. in which NOFYAM, LLC will own 100 shares and Lisa Vider will continue to own 100 shares.

This LHCSA will continue to be associated with Oceanview Manor Home for Adults, Inc. which is currently licensed as an Adult Home (AH) with an Assisted Living Program (ALP). The ownership structure will be identical for the LHCSA and the AH/ALP.

The members of the NOFYAM, LLC comprise the following individuals:

<p>Leon Hofman – Secretary – 33.33% Administrator, Queens Adult Care Center</p> <p>Affiliations: New Brookhaven Town House for Adults Gefen ACF, LLC d/b/a Brooklyn Adult Care Center Prime Home Health Services, LLC MZL Home Care Agency, LLC QACC ALP Home Care Agency Mountainview Home Care Services Agency Hedgewood Home for Adults, LLC</p>	<p>Martin Hofman, RPh – Managing Member – 33.33% Administrator, New Brookhaven Town House for Adults</p> <p>Affiliations: New Brookhaven Town House for Adults Gefen ACF, LLC d/b/a Brooklyn Adult Care Center Hofgur LLC d/b/aQueens Adult Care Center Prime Home Health Services, LLC MZL Home Care Agency, LLC QACC ALP Home Care Agency</p>
<p>Zvi (Harry) Gurevich – Member – 33.33% Administrator, Hedgewood Home for Adults, LLC</p> <p>Affiliations: New Brookhaven Town House for Adults Gefen ACF, LLC d/b/a Brooklyn Adult Care Center Hofgur LLC d/b/aQueens Adult Care Center Prime Home Health Services, LLC MZL Home Care Agency, LLC QACC ALP Home Care Agency Mountainview Home Care Services Agency Hedgewood Home for Adults, LLC</p>	

Lisa Vider (Rosenfeld) is exempt from a character and competency review due to the fact that she was previously approved by the Public Health and Health Planning Council for this operator.

A search of the individuals (and entities, where appropriate) named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department, the New York Physician Profile and the Office of Professional Medical Conduct, where appropriate, indicates no issues with the license of the medical professionals associated with this application.

The applicant proposes to serve the residents of Kings County from an office located 3010 West 33rd Street, Brooklyn, NY 11224

The applicant proposes to continue providing the following health care services:

Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech Language Pathology	Housekeeper	Medical Social Service
Nutrition	Personal Care Aide	Nursing
Home Health Aide		

A 7 year review of the operations of the following agencies was performed as part of this review:

- Oceanview Manor Home for Adults, Inc. (AH/ALP)
- Hofgur, LLC d/b/a Queens Adult Care Center (AH)
- New Brookhaven Town House for Adults (AH)
- Gefen ACF, LLC d/b/a Brooklyn Adult Care Center (AH)
- Hedgewood Home for Adults, LLC (AH/ALP)
- Prime Home Health Services, LLC (CHHA)
- MZL Home Care Agency, LLC (LHCSA)
- QACC ALP Home Care Agency, LLC (LHCSA)
- Mountainview Home Care Services Agency (LHCSA)

Oceanview Manor Home for Adults, Inc. was fined seven thousand dollars (\$7,000.00) pursuant to a stipulation and order dated July 1, 2012 for surveillance findings of December 6, 2010 and June 1, 2011. Deficiencies were found under 10 NYCRR 487.7(f)(5) – Resident Services and 487.7(f)(12) – Resident Services.

Oceanview Manor Home for Adults, Inc. was fined nine thousand dollars (\$9,000.00) pursuant to a stipulation and order dated September 5, 2013 for surveillance findings of May 16, 2012 and October 23, 2012. Deficiencies were found under 10 NYCRR 487.7(f)(5) - Resident Services/Medication Management, 487.8(e)(1) - Food Services and for 487.11(j)(1-3) - Environmental Standards.

The information provided by the Adult Care Facility Policy and Surveillance unit has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: June 24, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Sachem Adult Home and ALP, LLC d/b/a Sachem Licensed Home Care Service Agency
Address: Holbrook
County: Suffolk
Structure: Limited Liability Company
Application Number: 2310-L

Description of Project:

Sachem Adult Home and ALP, LLC d/b/a Sachem Licensed Home Care Service Agency, a limited liability company, requests approval for a change in organizational structure of a licensed home care services agency under Article 36 of the Public Health Law. This LHCSA is associated with Sachem Adult Home and ALP, LLC and their licensed Assisted Living Program (ALP).

Sachem ALP, a sole proprietorship owned by Ardis Honohan was previously approved as a home care services agency by the Public Health Council at its November 19, 1993 meeting and subsequently licensed as 9450L001.

The purpose of this proposal is to change the organizational structure from a sole proprietorship to a limited liability company. The new Licensed Home Care will continue to serve the patients of Sachem Adult Home which is also going under the same type of change in organizational structure and will be called Sachem Adult Home and ALP, LLC

The sole member and manager of Sachem Adult Home and ALP, LLC d/b/a Sachem License Home Care Service Agency will be:

Ardis Honohan – 100%

Affiliations:

- Owner/Operator, South Bay Adult Home and ALP
- Owner/Operator, South Bay Adult Home and ALP LLC d/b/a South Bay LHCSA
- Owner/Operator, Sachem Adult Home and ALP
- Owner/Operator, Sachem Adult Home and ALP LLC d/b/a Sachem LHCSA

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A 7 year review of the operations of the following facilities was performed as part of this review (unless otherwise noted):

- South Bay ALP
- South Bay Adult Home
- Sachem ALP
- Sachem Adult Home

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Adult Care Facility Policy and Surveillance unit has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The applicant proposes to continue to serve the residents of the following counties from an office located at 1298 Coates Avenue, Holbrook, New York 11741.

Nassau Suffolk

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

Nursing Home Health Aide Personal Care

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: June 19, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: South Bay Adult Home and ALP LLC d/b/a South Bay Licensed Home Care Services Agency
Address: Center Moriches
County: Suffolk
Structure: Limited Liability Company
Application Number: 2311-L

Description of Project:

South Bay Adult Home and ALP LLC d/b/a South Bay Licensed Home Care Services Agency, a limited liability company requests approval for a change in organizational structure of a licensed home care services agency under Article 36 of the Public Health Law. This LHCSA is associated with South Bay Adult Home and their licensed Assisted Living Program (ALP).

South Bay ALP, a sole proprietorship owned by Ardis Honohan was previously approved as a home care services agency by the Public Health Council at its November 19, 1993 meeting and subsequently licensed as 9476L001.

The purpose of this proposal is to change the organizational structure from a sole proprietorship to a limited liability company. The new Licensed Home Care will continue to serve the patients of South Bay Adult Home which is also going under the same type of change in organizational structure and will be called South Bay Adult Home and ALP, LLC

The sole member and manager of South Bay Adult Home and ALP, LLC d/b/a South Bay Licensed Home Care Services Agency will be:

Ardis Honohan – 100%

Affiliations:

- Owner/Operator, South Bay Adult Home and ALP
- Owner/Operator, South Bay Adult Home and ALP LLC d/b/a South Bay LHCSA
- Owner/Operator, Sachem Adult Home and ALP
- Owner/Operator, Sachem Adult Home and ALP LLC d/b/a Sachem LHCSA

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A 7 year review of the operations of the following facilities was performed as part of this review (unless otherwise noted):

- South Bay ALP
- South Bay Adult Home
- Sachem ALP
- Sachem Adult Home

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Adult Care Facility Policy and Surveillance unit has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The applicant proposes to continue to serve the residents of the following counties from an office located at 33 Cottantail Run, Box 601, Center Moriches, New York 11934.

Nassau

Suffolk

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

Nursing

Home Health Aide

Personal Care

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: June 19, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: InCare Home Health Care Group, LLC d/b/a InCare Home Health Care
 Address: Brooklyn
 County: Kings
 Structure: Limited Liability Company
 Application Number: 2385L

Description of Project:

InCare Home Health Care Group, LLC d/b/a InCare Home Health Care, a limited liability company, requests approval for a change in ownership of Ageless Home Health Care, LLC, a licensed home care services agency under Article 36 of the Public Health Law.

Ageless Home Health Care, LLC was previously approved as a home care services agency by the Public Health Council at its May 2, 2008 meeting and subsequently licensed as 1644L001.

The members of InCare Home Health Care Group, LLC consist of the following individuals:

Martin Schlosser, Managing Member – 50% Administrator, Ageless Home Health Care Administrator, True Care Home HealthCare Assistance	Baruch Wolhendler – 25% Post Graduate Fellow, Yale Child Study Center
Chanie Wolhendler – 25% Director of Operations, Ageless Home Health Care	

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 1820 Gravesend Neck Road, Brooklyn, New York 11229.

Bronx	Kings	Queens
New York	Richmond	Westchester

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	Medical Social Services	Nutrition
Homemaker	Housekeeper	

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
 Date: July 14, 2014

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[.]; and

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

Section 7-2.24 is amended to read as follows:

Variance; waiver.

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

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

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

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

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

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

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

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

(i) Reporting.

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

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

(1) Prior to hiring anyone who will or may have direct contact with campers, or approving credentials for any camp staff, the operator shall follow the procedures established by the Justice Center in regulations or policy, to verify that such person is not on the Justice Center's staff exclusion list established pursuant to section 495 of the Social Services Law. If such person is not on the Justice Center's staff exclusion list, the operator shall also consult the Office of Children and Family Services State Central Registry of Child Abuse and Maltreatment as required by section 424-a of the Social Services Law. Such screening is in addition to the requirement that the operator similarly verify that a prospective camp staff is not on the sexual abuse registry, as required by section 7-2.5(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 (1)(2)(iv) of this subdivision.

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

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

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

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

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

Regulatory Impact Statement

Statutory Authority:

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

Legislative Objectives:

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

Needs and Benefits:

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

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

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

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

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

Compliance Costs:

Cost to Regulated Parties:

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

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

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

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

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

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

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

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

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

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

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

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

Cost to State and Local Government:

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

Cost to the Department of Health:

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

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

Local Government Mandates:

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

Paperwork:

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

Duplication:

This regulation does not duplicate any existing federal, state, or local regulation. The regulation is 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 involve capital improvements.

Minimizing Adverse Economic Impact on Rural Area:

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

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

Rural Area Participation:

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

Job Impact Statement

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

Emergency Justification

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

Among the facilities covered by Chapter 501 are children's camps having enrollments with 20 percent or more developmentally disabled campers. These camps are regulated by the Department and, in some cases, by local health departments, pursuant to Article 13-B of the Public Health Law and 10 NYCRR Subpart 7-2. Given the effective date of Chapter 501 and its relation to the start of the camp season, these implementing regulations must be promulgated on an emergency basis in order to assure the necessary protections for vulnerable persons at such camps. Absent emergency promulgation, such persons would be denied initial coordinated protections until the 2015 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.

REVISED SUMMARY OF EXPRESS TERMS

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

Section 425.1

Amendments are made to the definitions of “Registrant,” “Operating hours for an adult day health care program,” and “Visit,” and new definitions of “Care coordination model,” “Comprehensive assessment,” “Care plan,” and “Unbundled Services/Payment Option” are added.

Section 425.3

Amended to allow operators of approved ADHC programs to elect the Unbundled Services/Payment Option.

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

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

Section 425.23

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

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

Part 425

Adult Day Health Care

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

Sec.

425.1 Definitions

425.2 Application

425.3 Changes in existing program

425.4 General requirements for operation

425.5 Adult day health care services

425.6 Admission and registrant assessment

425.7 Registrant care plan

425.8 Registrant continued-stay evaluation

425.9 Medical services

425.10 Nursing services

425.11 Food and nutrition services

425.12 Social services

425.13 Rehabilitation therapy services

425.14 Activities

425.15 Religious services and counseling

425.16 Dental services

425.17 Pharmaceutical services

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

425.19 General records

425.20 Clinical records

425.21 Confidentiality of records

425.22 Program evaluation

425.23 Payment

425.1 Definitions. As used in this Part:

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

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

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

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

(3) who has been [admitted to] accepted by an adult day health care program based on an

authorized practitioner's order or a referral from a managed long term care plan or care coordination model and [the adult day health care program's interdisciplinary] a comprehensive assessment conducted by the adult day health care program or by the managed long term care plan or care coordination model.

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

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

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

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

coordination model will receive services as ordered by those entities in conformance with those entities' comprehensive assessment after discussion and consultation with the adult day health care program.

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

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

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

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

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

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

(l) *Comprehensive assessment* means an interdisciplinary comprehensive assessment of a registrant completed in accordance with Section 425.6 of this Part by the adult day health care program, or an interdisciplinary comprehensive assessment, approved by the Department, completed by the managed long term care plan or care coordination model that referred the registrant to the adult day health care program.

(m) *Care plan* means the care plan developed in accordance with section 425.7 of this Part by the adult day health care program.

(n) *Unbundled Services/Payment Option* means the ability of an adult day health care program to

provide less than the full range of adult day health care services to a functionally impaired individual referred by a managed long term care plan or care coordination model based on the registrant's comprehensive assessment. The full range of adult day health care services as described in Part 425 will be available to all registrants enrolled in the adult day health care program.

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

- (1) the need for the program, including a statement on the philosophy and objectives of the program;
- (2) the range of services to be provided;
- (3) the method(s) of delivery of services;
- (4) physical space to be utilized and planned use thereof;
- (5) number and expected characteristics of registrants to be served;
- (6) a description of a typical registrant's program;
- (7) personnel to be employed in the program, including qualifications;
- (8) intended use of and coordination with existing community resources;
- (9) financial policies and procedures;
- (10) program budget;
- (11) methods for program evaluation; and
- (12) proximity to an identified number of potential registrants.

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

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

425.3 Changes in existing program.

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

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

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

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

(2) receiving written approval from the commissioner in accordance with Part 710 of this

Chapter. The application to discontinue services must set forth the specific intended date of discontinuance and the intended plans for alternate services to registrants.

(d) The operator of an approved adult day health care program must [apply in writing to the Department for approval to run a session in which the majority of the registrants are or will be attending for fewer than five hours] notify the Department of the program's election of the Unbundled Services/Payment Option in writing thirty days before commencement of this option.

425.4 General requirements for operation

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

- (1) provide services to registrants consistent with the requirements of this Title and Part and other applicable statutes and regulations;
- (2) provide appropriate staff, equipment, supplies and space as needed for the administration of the adult day health care program in accordance with the requirements of this Part; and
- (3) provide each registrant with a copy of a Bill of Rights specific to operation of the adult day health care program.

These rights include, but are not limited to:

- (i) confidentiality, including confidential treatment of all registrant records;
- (ii) freedom to voice grievances about care or treatment without discrimination or reprisal;
- (iii) protection from physical and psychological abuse;
- (iv) participation in developing the care plan; [and]
- (v) written notification by the program to the registrant at admission and following the continued-stay evaluation of the services the registrant shall receive while attending the adult day health care program: and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

425.5 Adult day health care services.

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

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

(2) health education;

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

[(3)] (4) nursing services;

[(4)] (5) nutrition;

[(5)] (6) social services;

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

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

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

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

(b) The following services may also be provided:

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

(2) religious services and pastoral counseling.

425.6 Admission, continued stay and registrant assessment.

(a) The operator must:

(1) select, admit and retain in the adult day health care program only those persons for whom adequate care and needed services can be provided and who, according to [their] the

[interdisciplinary needs] comprehensive [assessments] assessment conducted by the operator or by the managed long term care plan or care coordination model that referred the applicant to the adult day health care program, can benefit from the services and require a minimum of at least one (1) visit per week to the program;

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

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

(ii) use of medication and required treatment;

(iii) nursing care needs;

(iv) functional status;

(v) mental/behavioral status;

- (vi) sensory impairments;
 - (vii) rehabilitation therapy needs, including a determination of the specific need for physical therapy, occupational therapy, speech language pathology services, and rehabilitative, restorative or maintenance care;
 - (viii) family and other informal supports;
 - (ix) home environment;
 - (x) psycho-social needs;
 - (xi) nutritional status;
 - (xii) ability to tolerate the duration and method of transportation to the program; and
 - (xiii) evidence of any substance abuse problem.
- (3) register an applicant only upon appropriate recommendation from the applicant's practitioner after completion of a personal interview by appropriate program personnel;
- (4) register an applicant only after determining that the applicant is not receiving the same services from another facility or agency.
- (b) An individual may be registered in an adult day health care program only if his/her [admission] comprehensive assessment indicates that the program can adequately and appropriately care for the physical and emotional health needs of the individual.
- (c) No individual suffering from a communicable disease that constitutes a danger to other registrants or staff may be registered or retained for services on the premises of the program.
- (d) The operator may admit, on any given day, up to ten percent over the approved capacity for that program. The average annual capacity, however, may not exceed the approved capacity of the operator's program.

425.7 Registrant care plan.

(a) The operator must ensure that [:(a) a] an adult day health care program care plan based on the comprehensive [interdisciplinary] assessment required by this Part, and, when applicable, a transfer or discharge plan, is developed for each registrant and is in place within five visits [, not to exceed] or within 30 days [, from] after registration, whichever is earlier [;] . The adult day health care program and the referring managed long term care plan or care coordination model must be sure to coordinate with each other regarding the development of a registrant's care plan.

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

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

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

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

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

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

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

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

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

(2) modify the care plan accordingly;

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

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

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

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

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

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

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

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

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

(1) developing and amending clinical policies;

(2) supervising medical services;

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

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

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

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

(c) provide or arrange for the personal, staff or other designated practitioner to obtain a medical history and a physical examination of each registrant, including diagnostic laboratory and x-ray services, as medically indicated, within six weeks before or seven days after admission to the program;

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

(e) ensure that orders for treatment include orders for medication, diet, permitted level of

physical activity and, when indicated, special orders or recommendations for rehabilitative therapy services and other adult day health care services.

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

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

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

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

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

(e) ensure that appropriate health education is provided to registrants and family members to

provide support for the registrant and family in understanding and dealing with the registrant's health condition as it relates to his/her continued ability to reside in the community.

With respect to registrants referred to the adult day health care program by a managed long term care plan or care coordination model, the managed long term care plan or care coordination model shall be responsible for compliance with the requirements of this section.

425.11 Food and nutrition services. The operator must:

- (a) provide nutritional services for each registrant;
- (b) provide meals and nutritional supplements, including modified diets when medically prescribed, to registrants who are on the premises at scheduled meal times and, where appropriate, to registrants in their homes in accordance with the identified needs included in registrant care plans;
- (c) ensure that the quality and quantity of food and nutrition services provided to registrants are in conformance with section 415.14 of this Subchapter, exclusive of the requirements specified in section 415.14(f);
- (d) ensure that nutrition services are under the direction of a qualified dietitian, as defined in section 415.14 of this Subchapter; and
- (e) ensure that dietary service records for the adult day health care service are maintained in conformance with sections 415.14(c)(1) and (2) of this Subchapter.

425.12 Social services. The operator must:

- (a) provide social services in conformance with section 415.5(g) of this Subchapter except that the use of a full or part time social worker in an adult day health care program must be in

conformance with the approved application for operation and, with respect to section 415.5(g)(2)(ii) and (iii), regular access may be directly with a master's prepared or certified social worker or through a contract which meets the provisions of section 415.26(e);

(b) either directly or through the managed long term care plan or care coordination model that referred the registrant to the adult day health care program, ensure that psycho-social needs are assessed, evaluated and recorded, and that services are provided to meet the identified needs as part of the coordinated care plan; and

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

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

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

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

425.14 Activities. The operator, directly or through the managed long term care plan or care

coordination model that referred the registrant to the adult day health care program, must:

- (a) ensure that activities are an integral part of the program, are age appropriate, and reflect the registrants' individual interests and cultural backgrounds;
- (b) ensure that activities are designed to enhance registrant participation in the program, home life and the community;
- (c) involve appropriate volunteers and volunteer groups in the program, unless prohibited by law;
- (d) provide sufficient equipment and supplies for the operation of the activity program;
- (e) provide or arrange for transportation to and from community events and outings; and
- (f) ensure that activities are included as part of each [registrant's] care plan.

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

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

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

425.17 Pharmaceutical services. The operator must:

- (a) develop and implement written policies and procedures governing medications brought to the

program site by registrants;

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

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

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

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

(a) Applicability.

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

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

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

- (1) case management services,
 - (2) substance abuse services, if appropriate,
 - (3) mental health services,
 - (4) HIV prevention and counseling services,
 - (5) pastoral counseling,
 - (6) TB screening and on-going follow up, and
 - (7) specialized medical services including gynecology, as needed.
- (c) Staffing requirements. The operator must provide or make arrangements for:
- (1) specialty oversight of the AIDS program by a practitioner who has experience in the care and clinical management of persons with AIDS; and
 - (2) nursing services for the AIDS program under the supervision of a registered professional nurse with experience in the care and management of persons with AIDS.

425.19 General records. The operator must:

- (a) maintain on the premises of the program or facility the following written records, which must be easily retrievable and must include, but not be limited to, the following:
 - (1) a chronological admission register consisting of a daily chronological listing of registrants admitted by name with relevant clinical and social information about each, including as a minimum, name, address, next of kin, attending practitioner, principal diagnosis, and the place from which each registrant was admitted;
 - (2) a chronological discharge register consisting of a daily chronological listing of registrants discharged by name, the reason for discharge and the place to which the registrant was discharged;

- (3) a daily census record consisting of a summary report of the daily registrant census with cumulative figures for each month and each year; and
 - (4) general records in conformance with sections 415.30(e) - (o) of this Subchapter.
- (b) ensure that each record includes non-medical information consisting of:
- (1) all details of the referral and registration;
 - (2) identification of next of kin, family and sponsor;
 - (3) the person or persons to be contacted in the event of emergency;
 - (4) accident and incident reports;
 - (5) non-medical correspondence and papers pertinent to the registrant's participation in the program; and
 - (6) a fiscal record including copies of all agreements or contracts.
- (c) Maintain as public information, available for public inspection, records containing copies of all financial and inspection reports pertaining to the adult day health care services that have been filed with or issued by any governmental agency for six years from the date such reports are filed or issued.

425.20 Clinical records. The operator must:

- (a) provide a clinical record for each registrant in accordance with the clinical records requirements of section 415.22 of this Subchapter;
- (b) ensure that all reports and information pertaining to registrant care and planning are entered promptly;
- (c) ensure that all entries are dated and authenticated by the person making the entry or ordering the services;

(d) ensure that all clinical records for registrants referred by a managed long term care plan or care coordination model are made available to the referring managed long term care plan or care coordination model:

[(d)] (e) ensure that the record is kept in a place convenient for use by authorized staff; and
[(e)] (f) retain intact clinical records and all other records of registrants and keep them readily accessible in a safe and secure place. Such records shall be retained safely and securely for a period of six years following discharge or cessation of operation of services. In the case of a minor, retention shall be for three years after reaching majority (18 years of age).

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

425.22 Program evaluation.

(a) Quality improvement. The operator must develop and implement a quality improvement process that provides for an annual or more frequent review of the operator's program. Such evaluation must include a profile of the characteristics of the registrants admitted to the program, the services and degree of services most utilized, the length of stay and use rate, registrant need for care and services, and disposition upon discharge. The process must:

- (1) include an evaluation of all services in order to enhance the quality of care and to identify actual or potential problems concerning service coordination and clinical performance;
- (2) review accident and incident reports, registrant complaints and grievances and the actions taken to address problems identified by the process;

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

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

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

425.23 Payment

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

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

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

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

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

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

REVISED REGULATORY IMPACT STATEMENT

Statutory Authority:

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

Legislative Objective:

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

Needs and Benefits:

The amendments provide that the MLTC plan or CCM that refers an enrollee to an ADHC program will be responsible for meeting certain Part 425 requirements that are currently

the responsibility of the ADHC program operator, consistent with the MLTC plan's or CCM's responsibility to manage and coordinate the enrollee's health care needs. This will avoid having the ADHC program operator duplicate services that are required to be provided by MLTC plans and CCMs to their enrollees.

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

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

Finally, the amendments allow ADHC programs to elect the Unbundled Services/Payment Option, which permits a program to admit and serve functionally impaired individuals who may need less than the full range of adult day health care services. This gives these programs flexibility in their operations and permits them to more effectively contract with managed long term care (MLTC) plans.

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

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

Local Government Mandates:

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

Paperwork:

The rule will not impose any additional paperwork for ADHC programs.

Duplication:

There are no duplicative or conflicting rules identified.

Alternative:

No alternatives were proposed to the Department or considered.

Federal Standards:

The regulations do not exceed any minimum federal standards.

Compliance Schedule:

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

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REVISED REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS

Effect of Rule:

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

Compliance Requirements:

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

Professional Services:

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

Compliance Costs:

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

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

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

Small Business and Local Government Participation:

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

REVISED RURAL AREA FLEXIBILITY ANALYSIS

Types and Estimated Numbers of Rural Areas:

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

Reporting, Recordkeeping and Other Compliance Requirements; Professional Services:

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

Costs:

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

Minimizing Adverse Impact:

There will be no adverse impact on rural areas. Implementation of this rule will benefit managed long term care plans expanding to rural areas that will need to include medical and social model programs in the benefit package. By allowing ADHC programs to provide less than the full range of adult day health care services to functionally impaired individuals, the rule enables the programs to serve a larger population. This may prevent program closures and the displacement of registrants to nursing facilities, while providing continuity of care as registrants may receive different levels of treatment in one setting.

Rural Area Participation:

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

REVISED JOB IMPACT STATEMENT

Nature of Impact:

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

Categories and Numbers Affected:

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

Regions of Adverse Impact:

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

Minimizing Adverse Impact:

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

Pursuant to the authority vested in the Public Health and Health Planning Council and 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 (HANYYS)). 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 the Commissioner of Health by Public Health Law Sections 225, 2800, 2803, 3612, and 4010, Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, is amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Section 2.59 is amended as follows:

§ 2.59 Prevention of influenza transmission by healthcare and residential facility and agency personnel

(a) Definitions.

(1) "Personnel," for the purposes of this section, shall mean all persons employed or affiliated with a healthcare or residential facility or agency, whether paid or unpaid, including but not limited to employees, members of the medical and nursing staff, contract staff, students, and volunteers, who engage in activities such that if they were infected with influenza, they could potentially expose patients or residents to the disease.

(2) "Healthcare and residential facilities and agencies," for the purposes of this section, shall include:

(i) any facility or institution included in the definition of "hospital" in section 2801 of the Public Health Law, including but not limited to general hospitals, nursing homes, and diagnostic and treatment centers;

(ii) any agency established pursuant to Article 36 of the Public Health Law, including but not limited to certified home health agencies, long term home health

care programs, acquired immune deficiency syndrome (AIDS) home care programs, licensed home care service agencies, and limited licensed home care service agencies; and

(iii) hospices as defined in section 4002 of the Public Health Law.

(3) "Influenza season," for the purposes of this section, shall mean the period of time during which influenza is prevalent as determined by the Commissioner.

(4) "Patient or resident," for the purposes of this section, shall mean any person receiving services from a healthcare or residential facility or agency, including but not limited to inpatients and outpatients, overnight residents, adult day health care participants, and home care and hospice patients, as well as any person presenting for registration or admission at a healthcare or residential facility or agency.

(5) "Influenza vaccine" or "vaccine," for the purposes of this section, means a vaccine currently licensed for immunization and distribution in the United States by the Food and Drug Administration (FDA), for active immunization for the prevention of influenza disease caused by influenza virus(es), or authorized for such use by the FDA pursuant to an Emergency Use Authorization (EUA) or as an Emergency Investigational New Drug (EIND).

(b) All healthcare and residential facilities and agencies shall determine and document which persons qualify as "personnel" under this section.

(c) All healthcare and residential facilities and agencies shall document the influenza vaccination status of all personnel for the current influenza season in each individual's personnel record or

other appropriate record. Documentation of vaccination must include [the name and address of the individual who ordered or administered the vaccine and the date of vaccination]:

(1) a document, prepared by the licensed healthcare practitioner who administered the vaccine, indicating that one dose of influenza vaccine was administered, and specifying the vaccine formulation and the date of administration; or

(2) for personnel employed by a healthcare employer other than the healthcare or residential facility or agency in which he or she is providing service, an attestation by the employer that the employee(s) named in the attestation have been vaccinated against influenza for the current influenza season, and that the healthcare employer maintains documentation of vaccination of those employees, as described in paragraph (1) of this subdivision; or

(3) for student personnel, an attestation by the professional school that the student(s) named in the attestation have been vaccinated against influenza for the current influenza season, and that the school maintains documentation of vaccination of those students, as described in paragraph (1) of this subdivision.

(d) During the influenza season, all healthcare and residential facilities and agencies shall ensure that all personnel not vaccinated against influenza for the current influenza season wear a surgical or procedure mask while in areas where patients or residents [may be] are typically present, except that:

(1) when personnel provide services outside the home of a patient or resident, and not inside a healthcare or residential facility, mask wear shall not be required by this section, provided that this paragraph shall not be interpreted as eliminating any requirement that

personnel wear a mask pursuant to standard and transmission-based precautions not addressed by this section;

(2) personnel required to wear a mask by this subdivision, but who provide speech therapy services, may remove the mask when necessary to deliver care, such as when modeling speech; and

(3) for any person who lip reads, personnel required to wear a mask by this subdivision may remove the mask when necessary for communication.

[Healthcare and residential facilities and agencies shall supply such masks to personnel, free of charge.]

(e) Upon the request of the Department, a healthcare or residential facility or agency must report the number and percentage of personnel that have been vaccinated against influenza for the current influenza season.

(f) All healthcare and residential facilities and agencies shall develop and implement a policy and procedure to ensure compliance with the provisions of this section. The policy and procedure shall include, but is not limited to, identification of those areas where unvaccinated personnel must wear a mask pursuant to subdivision (d) of this Section.

(g) Healthcare and residential facilities and agencies shall supply surgical or procedure masks required by this section at no cost to personnel.

(h) Nothing in this section shall be interpreted as prohibiting any healthcare or residential facility or agency from adopting policies that are more stringent than the requirements of this section.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The authority for the promulgation of these regulations is contained in Public Health Law (PHL) Sections 225 (5), 2800, 2803 (2), 3612 and 4010 (4). PHL 225 (5) authorizes the Public Health and Health Planning Council (PHHPC) to issue regulations in the State Sanitary Code pertaining to any matters affecting the security of life or health or the preservation and improvement of public health in the state of New York, including designation and control of communicable diseases and ensuring infection control at healthcare facilities and any other premises.

PHL Article 28 (Hospitals), Section 2800 specifies that “Hospital and related services including health-related service of the highest quality, efficiently provided and properly utilized at a reasonable cost, are of vital concern to the public health. In order to provide for the protection and promotion of the health of the inhabitants of the state, pursuant to section three of article seventeen of the constitution, the department of health shall have the central, comprehensive responsibility for the development and administration of the state's policy with respect to hospital and related services, and all public and private institutions, whether state, county, municipal, incorporated or not incorporated, serving principally as facilities for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition or for the rendering of health-related service shall be subject to the provisions of this article.”

PHL Section 2803 (2) authorizes 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. PHL Section 3612 authorizes PHHPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, with respect to certified home health agencies and providers of long term home health care programs. PHL Section 4010 (4) authorizes PHHPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, with respect to hospice organizations.

Legislative Objectives:

PHL 225 empowers PHHPC to address any issue affecting the security of life or health or the preservation and improvement of public health in the state of New York, including designation and control of communicable diseases and ensuring infection control at healthcare facilities and any other premises. PHL Article 28 specifically addresses the protection of the health of the residents of the State by assuring the efficient provision and proper utilization of health services of the highest quality at a reasonable cost. PHL Article 36 addresses the services rendered by certified home health agencies. PHL Article 40 declares that hospice is a socially and financially beneficial alternative to conventional curative care for the terminally ill. The requirement of surgical or procedure masks of unvaccinated healthcare and residential facility and agency personnel in these facilities promotes the health and safety of the patients and residents they serve and support efficient and continuous provision of services.

Needs and Benefits:

In general, section 2.59 of Title 10 of the NYCRR requires healthcare personnel who have not been vaccinated against influenza to wear a mask during the influenza season. These

amendments clarify certain provisions of the existing regulation and make one substantive change.

The clarifying amendments codify the Department's interpretation of section 2.59, as published by the Department in a document entitled "Frequently Asked Questions (FAQ) Regarding Title 10, Section 2.59 'Regulation for Prevention of Influenza Transmission by Healthcare and Residential Facility and Agency Personnel'", dated September 24, 2013. The amendments clarify that the masking requirement applies in those areas where patients or residents are "typically" present, rather than "may be" present. The amendments also define "influenza vaccine" to mean a vaccine approved as an influenza vaccine by the Food and Drug Administration (FDA), or pursuant to an Emergency Use Authorization (EUA), or as an Emergency Investigational New Drug (EIND). This clarification is important because, in the event of a novel influenza virus outbreak, such as H1N1 in 2009, new vaccines and emergency use of existing vaccines may be available or necessary to meet the requirements of the regulation.

The amendments also clarify that the regulation is not intended to require mask wear while a patient or resident is receiving services outside the home or regulated facility. This regulation is based on the reasonable expectation that patients and residents should not be exposed to influenza in their homes or in medical care facilities, by the personnel who they rely upon to care for them. However, when they choose to leave the home or facility and interact with the general public in the community, they are potentially exposing themselves to influenza from any number of sources. The risk of exposure from the healthcare provider is essentially

subsumed by the risk of general community exposures. For this reason, unvaccinated healthcare personnel who are accompanying patients are not required to wear masks while away from patient homes and off facility grounds—for example, while on public transportation, at community events, and in shops.

The final clarification amendment provides that the regulation should not be interpreted as requiring mask wear by unvaccinated personnel who provide speech therapy services, during the time that such personnel are providing care. Similarly, for any person who lip reads, unvaccinated personnel may remove the mask when necessary to communicate.

These amendments also include one important substantive change, in that they revise the documentation requirement for healthcare and residential facilities and agencies. The intent of this change is to create a more flexible system for documenting vaccination status, thereby easing the regulatory burden on regulated parties. Specifically, required documentation would include only the date of vaccination and information specifying the vaccine formulation administered. Further, where the personnel of a healthcare or residential facility or agency includes contract staff and students, the facility or agency may accept an attestation from the employer or school, stating that specified persons have been vaccinated and that the employer or school maintains the required documentation.

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

These amendments do not create any new costs for regulated entities. The revised documentation requirements are expected to ease the regulatory burden on healthcare and residential facilities and agencies.

Cost to State and Local Government:

These amendments do not create any new costs for State or local government. To the extent that State or local governments operate healthcare and residential facilities and agencies, the revised documentation requirements are expected to ease the regulatory burden on these entities.

Cost to the Department of Health:

There are no additional costs to the State or local government. Existing staff will be utilized to educate healthcare and residential facilities and agencies about the revised reporting requirements.

Local Government Mandates:

There are no additional programs, services, duties or responsibilities imposed by this rule upon any county, city, town, village, school district, fire district or any other special district.

Paperwork:

These amendments will not result in any additional paperwork or electronic reporting. The revised documentation requirements are expected to ease the regulatory burden on regulated entities.

Duplication:

This regulation will not conflict with any state or federal rules.

Alternative Approaches:

The alternative would be to leave the current regulation in its current form. However, doing so would continue documentation requirements for regulated parties that do not include the flexibility of this proposed amendment. There would also be no provision relating to persons who choose not to be vaccinated and who, for a medical reason, cannot wear a mask.

Federal Requirements:

There are no minimum standards established by the federal government for the same or similar subject areas.

Compliance Schedule:

This proposal will go into effect upon a Notice of Adoption in the New York *State Register*.

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REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESS AND LOCAL GOVERNMENTS

Effect of Rule:

Any facility defined as a hospital pursuant to Article 28, a home services agency by PHL Article 36, or a hospice by PHL Article 40 will be required to comply. In New York State there are approximately 228 general hospitals, 1198 hospital extension clinics, 1239 diagnostic and treatment centers, and 635 nursing homes. There are also 139 certified home health agencies (CHHAs), 97 long term home health care programs (LTHHCP), 19 hospices and 1164 licensed home care services agencies (LHCSAs).

Of those, it is known that 3 general hospitals, approximately 237 diagnostic and treatment centers, 40 nursing homes, 69 CHHAs, 36 hospices and 860 LHCSAs are small businesses (defined as 100 employees or less), independently owned and operated, affected by this rule. Local governments operate 18 hospitals, 40 nursing homes, 42 CHHAs, at least 7 LHCSAs, and a number of diagnostic and treatment centers and hospices.

Compliance Requirements:

All facilities and agencies must comply with the revised documentation requirement regarding the vaccination status of personnel.

Professional Services:

There are no additional professional services required as a result of this regulation.

Compliance Costs:

These amendments do not create any new costs for small businesses or local governments. To the extent that small businesses and local governments operate healthcare and residential facilities and agencies, the revised documentation requirements are expected to ease the regulatory burden on these entities.

Economic and Technological Feasibility:

This proposal is economically and technically feasible, as it does not impose any additional burdens.

Minimizing Adverse Impact:

This amendment does not create any adverse effect on regulated parties that would require a minimization analysis.

Small Business and Local Government Participation:

Small businesses and local governments are invited to comment during the Codes and Regulations Committee meeting of the Public Health and Health Planning Council, as well as during the official comment period.

Cure Period:

Chapter 524 of the Laws of 2011 requires agencies to include a “cure period” or other opportunity for ameliorative action to prevent the imposition of penalties on the party or parties subject to enforcement when developing a regulation or explain in the Regulatory Flexibility

Analysis why one was not included. This regulation creates no new penalty or sanction. Hence, a cure period is not necessary.

RURAL AREA FLEXIBILITY ANALYSIS

Effect of Rule:

Any facility defined as a hospital pursuant to Article 28, a home services agency by PHL Article 36, or a hospice by PHL Article 40 will be required to comply. In New York State there are approximately 228 general hospitals, 1198 hospital extension clinics, 1239 diagnostic and treatment centers, and 635 nursing homes. There are also 139 certified home health agencies (CHHAs), 97 long term home health care programs (LTHHCP), 19 hospices and 1164 licensed home care services agencies (LHCSAs). Of those, it is known that 47 general hospitals, approximately 90 diagnostic and treatment centers, 159 nursing homes, 92 certified home health agencies, 19 hospices, and 26 LHCSAs are in counties serving rural areas. These facilities and agencies will not be affected differently than those in non-rural areas.

Compliance Requirements:

All facilities and agencies must document the vaccination status of each personnel member as defined in this regulation for influenza virus, in their personnel or other appropriate record.

Professional Services:

There are no additional professional services required as a result of this regulation.

Compliance Costs:

These amendments do not create any new costs for small businesses or local governments. To the extent that healthcare and residential facilities and agencies are located in rural areas, the revised documentation requirements are expected to ease the regulatory burden on these entities.

Economic and Technological Feasibility:

This proposal is economically and technically feasible, as it does not impose any additional burdens.

Minimizing Adverse Impact:

This amendment does not create any adverse effect on regulated parties that would require a minimization analysis.

Public and Local Government Participation:

The public and local governments are invited to comment during the Codes and Regulations Committee meeting of the Public Health and Health Planning Council, as well as during the official comment period.

JOB IMPACT STATEMENT

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

SUMMARY OF EXPRESS TERMS

Public Health Law § 206(18-a)(d) gives the Department broad authority to promulgate regulations, consistent with federal law and policies, that govern the Statewide Health Information Network for New York (SHIN-NY).

This regulation codifies certain requirements that have already been incorporated into grant contracts between the Department and grantees under Phases 1, 5, 10, 17 and 22 of the Health Care Efficiency and Affordability Law for New Yorkers (HEAL NY) Capital Grant Program. Under HEAL NY, the Department has provided over \$400 million for health information technology (“health IT”) projects. Grantees include: a Not-for-Profit corporation called New York eHealth Collaborative, Inc. (“NYeC”), which is currently New York’s State-designated entity to promote health IT; and a number of Regional Health Information Organizations (RHIOs), which facilitate interoperability among the disparate electronic health record systems that contain patient information.

Under this regulation, certain policies that have already been incorporated into the HEAL NY grant contracts will continue to be updated under a statewide collaboration process that results in SHIN-NY Policy Standards. An organization such as NYeC will be the State designated entity. Existing RHIOs and other such health information exchange organizations may apply to become qualified health IT entities (QEs). To become a QE and to maintain that designation, an organization must adhere to policies, such as the SHIN-NY Policy Standards, that enable widespread interoperability among disparate health information systems, including electronic health records, personal health records and public health information systems, while protecting privacy and security.

This regulation makes clear that, consistent with 42 USC § 17938, QEs may make it possible, without patient authorization, to make patient information available among disparate health care providers so long as the QEs enter into and adhere to participation agreements with their participants that comply with federal requirements under HIPAA and 42 CFR Part 2 for business associates and qualified service organizations. This regulation creates a general rule that a written authorization is required to access patient information made available through the QEs. When an emergency condition exists, however, and a health care provider is authorized to provide treatment without the consent of the patient, the health care providers may also “break the glass” and access information as needed to provide such treatment. This regulation incorporates legal requirements related to disclosure of patient information without consent, as well as laws that specifically authorize disclosure of patient information for health care purposes, including public health and health oversight purposes, without the type of written, signed authorization that contains all of the elements that would be required for a health care provider to get permission to disclose patient information to a third party for purposes other than health care.

This regulation establishes the structure for the SHIN-NY after the HEAL NY program winds down and the State loses the ability to enforce requirements solely through grant contracts. The Department will continue to partner with a state designated entity, whose functions are set out. In order to participate in the SHIN-NY, health information exchange organizations will need to be certified under a QE certification process and satisfy certification requirements on an ongoing basis under the procedures established by this regulation.

Pursuant to the authority vested in the Commissioner of Health and the Public Health and Health Planning Council by sections 201, 206(1) and (18-a)(d), 2800, 2803, 2816, 3600, 3612, 4000, 4010, 4400, 4403, 4700 and 4712 of the Public Health Law, a new Part 300 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is added to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Part 300

Statewide Health Information Network for New York (SHIN-NY)

Sec.

300.1 Definitions

300.2 Contract with state designated entity.

300.3 Statewide collaboration process and SHIN-NY Policy Standards.

300.4 Qualified health IT entities (QEs).

300.5 Sharing of patient information.

300.6 Patient rights.

300.7 Contracts between state designated entity and QEs.

300.8 Participation of health care facilities.

300.9 Financing of SHIN-NY.

§ 300.1 Definitions. For the purposes of this Part, these terms shall have the following meanings:

(a) “Statewide Health Information Network for New York” or “SHIN-NY” means a set of agreements (and the transactions, relations and data that are created by and through

such set of agreements) between the department, the state designated entity, QEs and QE Participants to make possible the exchange of clinical information among QE Participants for authorized purposes to improve the quality, coordination and efficiency of patient care, reduce medical errors and carry out public health and health oversight activities, while protecting privacy and security. Pursuant to such agreements, the state designated entity, the QEs and the QE Participants agree to be bound by policy and technical requirements in SHIN-NY policy standards that has been created through the statewide collaboration process.

(b) “SHIN-NY stakeholders” means the department, the state designated entity, the QEs, the QE Participants, health care providers, health plans, State and local health departments and health care consumers.

(c) “Commissioner” means the New York State Commissioner of Health.

(d) “Department” means the New York State Department of Health.

(e) “State designated entity” means the single entity that:

(1) Has been designated by the Governor as eligible to receive from the federal government grants to promote health information technology and conforms to federal requirements to receive such awards, or that has been certified by the Commissioner as meeting the requirements of this Part;

(2) Is a not-for-profit entity that includes on its board of directors representation from a broad range of SHIN-NY stakeholders;

(3) Demonstrates that its principal purpose is to serve the people of the State of New York by using, creating and obtaining information technology to create and maintain the SHIN-NY; and

(4) Adopts nondiscrimination and conflict of interest policies that demonstrate a commitment to open, fair, and nondiscriminatory participation by SHIN-NY stakeholders.

(f) “Qualified health IT entity” or “QE” means a not-for-profit entity that has been certified as a QE under section 300.4 of this Part and has executed a contract with the state designated entity under section 300.7 of this Part, pursuant to which it has agreed to be bound by SHIN-NY policy standards.

(g) “QE Participant” means any health care provider, health plan, State or local health department, or other type of person or entity authorized to be a QE Participant under the SHIN-NY policy standards that has executed a participation agreement with a QE, pursuant to which it has agreed to participate in the SHIN-NY and be bound by SHIN-NY policy standards.

(h) “Health care provider” means a health care facility as defined in paragraph (c) of subdivision one of section 18 of the Public Health Law or a private practice of one or more health care practitioners licensed under Title 8 of the Education Law or otherwise authorized to practice in New York State.

(i) “Statewide collaboration process” means an open, transparent process to which multiple SHIN-NY stakeholders contribute, that is administered by the state designated entity for the development of SHIN-NY policy standards as provided in section 300.3 of this Part.

(j) “SHIN-NY policy standards” means the set of policies and procedures, including technical standards and SHIN-NY services and products, that are developed through the statewide collaboration process and adopted by the department as provided in section

300.3 of this Part, including the SHIN-NY policy standards incorporated by reference in subdivision (c) of that section. Any reference to “Statewide Policy Guidance” in SHIN-NY documents executed prior to the effective date of this regulation are deemed to refer to the SHIN-NY policy standards.

(k) “Patient information” means health information that is created or received by a QE Participant and relates to the past, present, or future physical or mental health or condition of an individual or the provision of health care to an individual and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

(l) “Minor consent patient information” means patient information relating to medical treatment of a patient under 18 years of age for which the patient provided his or her own consent as permitted by law, without a parent’s or guardian’s permission.

(m) “Dial Tone Services / Service Requirements” means the technical services that a Qualified Entity is required to provide, as described in “Qualified Entity (QE) Dial Tone Service Requirements.”

(n) “SHIN-NY certified application” means application software that has been approved by the department after demonstrating, through a certification process, the ability to interface with the SHIN-NY as permitted by this Part. To become certified through the certification process, the application software shall be tested to ensure that it meets established technical standards, including standards for privacy and security, restrictions on access, protection against malicious software, data encryption and user authentication. SHIN-NY certified application includes application software that makes it possible for patients to access their own personal health records.

§ 300.2 Contract with state designated entity. The department shall enter into a contract with the state designated entity that shall govern the relationship between the department and the state designated entity and set minimum standards for the relationship between the state designated entity and QEs as follows:

(a) Obligations of the state designated entity. The contract shall provide that the state designated entity shall:

- (1) Oversee the implementation and ongoing operation of the SHIN-NY.
- (2) Administer the statewide collaboration process, facilitate the development, regular review and updating of SHIN-NY policy standards, and periodically propose SHIN-NY policy standards for adoption by the department pursuant to section 300.3 of this Part.
- (3) Develop and implement the process by which organizations become certified and recertified as QEs under section 300.4 of this Part.
- (4) Protect patient rights enumerated in section 300.6 of this Part.
- (5) Contract with the QEs pursuant to section 300.7 of this Part, to ensure compliance with applicable SHIN-NY policy standards.
- (6) Produce and make available to consumers and health care providers outreach and education materials related to the SHIN-NY to promote and increase adoption of interoperable electronic health record technology. As appropriate, collaborate with QEs to develop the materials.
- (7) Working with the QEs, develop and disseminate best practices for outreach to health care providers to facilitate the adoption of electronic health records and enrollment of

health care providers as QE Participants, and provide assistance upon request to QEs with such outreach, adoption and enrollment efforts.

(8) Provide regular opportunities for public attendance, comments and feedback at meetings of its board of directors, and publish minutes of meetings.

(9) Perform regular audits, either directly or through contract, of QE functions and activities as necessary to ensure ongoing data quality, security, confidentiality and integrity of the SHIN-NY.

(10) Provide such technical services, either directly or through contract, that the state may deem necessary to ensure the ongoing data quality, security, confidentiality and integrity of the SHIN-NY.

(11) Report to the department on a regular basis concerning the quality, security and integrity of the SHIN-NY.

(12) Enforce contracts with QEs, including provisions allowing the suspension of a QE's access to or use of the SHIN-NY to the extent that the state designated entity reasonably determines that the QE is the cause of any event that creates an immediate threat of, or is likely to cause, irreparable harm to the SHIN-NY or any person accessing or using the SHIN-NY or any person whose information is accessed or transmitted through the SHIN-NY.

(13) Submit to audits and ongoing monitoring, as determined by the department.

(14) Perform such other roles and responsibilities as may be required of the state designated entity by applicable law, the SHIN-NY policy standards or the department.

(b) Obligations of the QEs. The contract shall provide that the state designated entity executes contracts with QEs as provided in section 300.7 of this Part.

§ 300.3 Statewide collaboration process and SHIN-NY policy standards.

(a) Statewide collaboration process. The state designated entity shall develop and propose SHIN-NY policy standards in accordance with the statewide collaboration process in this subdivision, and as further specified in the contract between the department and the state designated entity.

(1) Workgroups, forums and committees established and facilitated by the state designated entity may develop and approve recommendations on policies, technical standards and SHIN-NY services and products.

(2) Such recommendations may be submitted for approval to the board of directors of the state designated entity, which may formally propose SHIN-NY policy standards.

(3) The department may accept or reject proposed SHIN-NY policy standards at its sole discretion.

(4) Proposed SHIN-NY policy standards shall be submitted to the department by the state designated entity on a periodic basis, but in no event less than annually. Upon approving SHIN-NY policy standards, the department shall take such action as appropriate to incorporate it by reference into this section.

(b) Minimum contents of SHIN-NY policy standards. SHIN-NY policy standards shall include, but not be limited to, policies and procedures on privacy and security, monitoring and enforcement, dial tone service requirements, member facing service requirements, organizational characteristics and QE certification. SHIN-NY policy standards shall include explicit protections for the patient rights enumerated in section 300.6 of this Part.

(c) SHIN-NY policy standards incorporated by reference into this section. QEs, QE Participants and the state designated entity shall comply with the following SHIN-NY policy standards, published on the website of New York eHealth Collaborative, Inc. in June 2014, which shall be posted on the websites of the state designated entity and the department and is available for public inspection and copying at the department's records access office, Corning Tower, Empire State Plaza, Albany, NY 12237:

- (1) "Privacy and Security Policies and Procedures for Qualified Entities and their Participants in New York State," Version 3.1, June 2014.
- (2) "Oversight & Enforcement Policies and Procedures for QEs," Version 1.2, June 2014.
- (3) "Qualified Entity (QE) Minimum Technical Requirements," Version 1.2, June 2014.
- (4) "Qualified Entity (QE) Member Facing Services Requirements," Version 1.2, June 2014.
- (5) "Qualified Entity (QE) Organizational Characteristics Requirements," Version 1.2, June 2014.

§ 300.4 Qualified health IT entities (QEs).

(a) A QE certification process shall be established in the contract between the department and the state designated entity that specifies the documentation QE applicants must provide, and review to which they will be subject, to receive certification that the requirements of section 300.3 and this section have been met. DOH may, in its sole discretion, select a certification body to review the applications and make recommendations to the department regarding the applications for certification. The

department shall make the final determination to certify QEs. To receive certification, a QE applicant must demonstrate that it meets the following requirements:

(1) The QE will support and advance the use of health IT in the public interest and attests to having a board of directors and officers with such character, experience, competence and standing as to give reasonable assurance of its abilities in this respect;

(2) The QE has organizational characteristics as described in “Qualified Entity (QE) Organizational Characteristics Requirements.”

(3) The QE has the infrastructure to operationalize the SHIN-NY requirements including dial-tone services, policies and practices for exchange of data, system performance, member-facing services, business plans, audit procedures and participation in SHIN-NY policy standards development;

(4) The QE has privacy and security policies in place that comply with statewide policies regarding: patient consent for access to health information; the authorization and authentication of users in order to access the system; patient engagement; and the processes to be undertaken relating to audit of system use notification and remedies for breaches of health information and sanctions for any SHIN-NY policy standards violations, consistent with current laws and regulations;

(5) The QE has the capability to provide statewide dial-tone services as identified in the SHIN-NY policy standards.

(6) The QE will comply with the SHIN-NY policy standards and will require its QE Participants to do so as well;

(7) The QE will be each QE Participant’s “business associate” as defined in 42 USC § 17921 or, if a QE Participant is not a “covered entity” thereunder, the QE will enter into

a written agreement with the QE Participant comparable to the agreement the QE is required to enter into with covered entities.

(8) The QE will contribute to the overall development of a SHIN-NY that includes participation as defined in the SHIN-NY policy standards policies and procedures.

(b) The department shall periodically require QEs to demonstrate continued compliance with certification standards through a process of self-audit and re-certification by the department or a certification body designated by the department.

(c) The department shall establish procedures for monitoring and enforcement through periodic audits of QEs and other activities to ensure ongoing compliance with criteria, financial requirements and standards.

§ 300.5 Sharing of Patient Information.

(a) General standard. Pursuant to the contract between the department and the state designated entity, contracts between the department and QEs, contracts between the state-designated entity and QEs, and participation agreements between the QEs and QE Participants, QE Participants shall exchange patient information with other QE Participants for authorized purposes consistent with the SHIN-NY policy standards. The standards for such exchange shall be consistent with applicable SHIN-NY policy standards identified in subdivision (c) of section 300.3 of this Part. Individuals who work for the QE are personnel under contract with the QE Participant under subdivision six of section 18 of the Public Health Law, and a QE Participant may disclose patient information necessary in light of the reason for disclosure without a written authorization from the patient of the QE Participant. Except as set forth in subdivision (b)(2) or (c) of

this section, a QE shall only allow access to patient information by other QE Participants with the written authorization of:

(1) the patient; or

(2) when the patient lacks capacity to consent, with the written authorization of:

(i) another qualified person under section 18 of the Public Health Law;

(ii) a person the patient has authorized to access records relating to the provision of health care under General Obligations Law Article 5, Title 15; or

(iii) a person authorized pursuant to law to consent to health care for the individual.

(b) Written authorization.

(1) In general. Written authorizations must specify to whom disclosure is authorized.

Patient information may not be disclosed to entities becoming QE Participants subsequent to the execution of a written authorization unless and until such entities are specified in a new authorization. Any written authorization shall remain in effect until it is revoked in writing or explicitly superseded by a subsequent written authorization. A patient shall be entitled to revoke a written authorization in writing at any time.

(2) Minor consent patient information. A minor's patient information other than minor consent patient information may be disclosed when authorized by the minor's parent or legal guardian. Minor consent patient information may be disclosed to a QE Participant if the minor's parent or legal guardian has provided authorization for the QE Participant to access the minor's other patient information through the SHIN-NY; provided, however, if federal law or regulation requires the minor's authorization for such disclosure, the disclosure may not be made without the minor's authorization.

Notwithstanding the foregoing, in no event may a QE Participant disclose minor consent

patient information to the minor's parent or guardian without the minor's authorization.

Minor consent patient information includes, but is not necessarily limited to patient information concerning:

- (i) treatment of such patient for venereal disease or the performance of an abortion under section 17 of the Public Health Law;
- (ii) the diagnosis, treatment or prescription for a sexually transmitted disease under section 2305 of the Public Health Law;
- (iii) any patient who is married or is the parent of a child under section 2504 of the Public Health Law;
- (iv) prenatal care for a pregnant patient under section 2504 of the Public Health Law;
- (v) an HIV test under section 2781 of the Public Health Law;
- (vi) mental health services under section 33.21 of the Mental Hygiene Law;
- (vii) alcohol and substance abuse treatment under section 22.11 of the Mental Hygiene Law;
- (viii) a legally emancipated minor; and
- (ix) treatment that a minor has a Constitutional right to receive without a parent's or guardian's permission as determined by courts of competent jurisdiction.

(c) Access without written authorization. A QE shall where permitted by law allow access to patient information without written authorization when:

- (1) Prior consent has already been obtained for the disclosure under subdivision 23 of section 6530 of the Education Law, and no provision of law or SHIN-NY policy standards requires a written authorization.
- (2) Disclosure to the individual entity accessing the patient information is:

(i) required by law; or

(ii) authorized by law:

(a) to a public health authority for public health activities; or

(b) to a health oversight agency for health oversight activities;

(3) the health care provider treating the patient, a person acting at the direction of such health care provider, or other professional emergency personnel as authorized under the SHIN-NY policy standards, has documented a determination that an emergency condition exists and the patient is in immediate need of medical attention, and an attempt to secure consent would result in delay of treatment which would increase the risk to the patient's life or health.

(4) the disclosure is allowed during a declared state disaster emergency, when the governor issues an Executive Order pursuant to executive law Section 29-a.

(d) Implementation. In conformance with SHIN-NY policy standards, QEs must have procedures and technology to be able to exchange patient information for patients of any age, consistent with all applicable state laws and regulations regarding minor consent patient information, and must have appropriate procedures and technology to allow patients to deny access to specific QE Participants. A minor's consent or revocation of consent to access minor consent patient information must be honored.

§ 300.6 Patient rights. The State designated entity, the QE and the QE participants shall ensure the following patient rights are afforded. In addition, SHIN-NY policy standards, the contract between the department and the state designated entity, contracts between the department and QEs, contracts between the state designated entity and QEs, and

participation agreements between QEs and QE Participants shall each provide explicit protections for the following patient rights, as described in more detail in the SHIN-NY policy standards.

(a) Entities other than the department, the state designated entity, QEs or QE Participants shall not have access to patient information through the SHIN-NY, except as otherwise required by law.

(b) Each patient may determine which QE Participants may access that patient's information through the SHIN-NY and which may not, as described in "Privacy and Security Policies and Procedures for QEs and their Participants in New York State."

(c) Each patient and/or the patient's legally authorized representative shall have access to that patient's own patient information, except as otherwise prohibited by law. The state designated entity and the QEs shall permit access using any SHIN-NY certified application.

(d) Each patient shall have access to information identifying who has obtained access to that patient's patient information through the SHIN-NY and under what authority the disclosure was made.

(e) Each patient shall have the right to revoke the access of any QE Participant to that patient's patient information through the SHIN-NY in writing at any time.

§ 300.7 Contracts between state designated entity and QEs.

Each QE entering into a contract with the state designated entity shall agree upon the terms and conditions governing the QE's participation in the SHIN-NY. A QE may only

disclose patient information to the state designated entity where the state designated entity is the QE's "business associate" as defined in 42 USC § 17921. Each contract shall include provisions requiring the QE to:

- (a) Act as an intermediary between the state designated entity and QE Participants.
- (b) Build, maintain and operate a network of QE Participants seeking to exchange information.
- (c) Provide network services in accordance with the SHIN-NY policy standards.
- (d) Adhere to minimum standards applicable to QEs in accordance with the certification requirements established in the SHIN-NY policy standards pursuant to section 300.4 of this Part.
- (e) Organize and promote adoption, marketing and education related to the SHIN-NY.
- (f) Submit to regular audits of QE functions and activities by the department and/or the state designated entity as necessary to ensure the ongoing quality, security and integrity of the SHIN-NY.
- (g) Perform self-audits and report to the department and/or the state designated entity on a regular basis concerning the quality, security and integrity of the SHIN-NY, in a format determined by the department
- (h) Perform such other roles and responsibilities as may be required of the QE by applicable law or SHIN-NY policy standards.
- (i) Ensure that data from QE Participants is made available through the SHIN-NY in accordance with applicable laws and regulations.

- (j) Participate in the statewide collaboration process.
- (k) Comply with SHIN-NY policy standards.
- (l) Require the QE to enter into QE participation agreements with its participants, containing components acceptable to the department and the state designated entity, that, among other things, requires the participants to comply with SHIN-NY policy standards.
- (m) Suspend or terminate its participation in the SHIN-NY under specified conditions.
- (n) Carry appropriate types and amounts of insurance.
- (o) Provide explicit protections for the patient rights enumerated in section 300.6 of this Part.

§ 300.8 Participation of health care facilities

- (a) Two years from the effective date of this regulation, health care facilities, as defined in paragraph (c) of subdivision one of section eighteen of the Public Health Law, utilizing certified electronic health record technology under the federal Health Information Technology for Economic and Clinical Health Act (HITECH) must connect to the SHIN-NY through a QE and allow private and secure bi-directional access to patient information by other QE Participants authorized by law to access such patient information. Bi-directional access means that a QE participant uploads its patient information to the QE so that it is accessible to other QE participants authorized to access the information and the QE participant has the technical capacity to access the patient information of other QE participants from the QE when authorized to do so.

(b) The requirement in subdivision (a) of this section may be waived for health care facilities that meet criteria established by the commissioner, such as economic hardship, technological limitations that are not reasonably within control of the provider or other exceptional circumstances demonstrated by the provider to the department.

§ 300.9 Financing of SHIN-NY.

(a) The state designated entity shall develop, in collaboration with SHIN-NY stakeholders, a sustainability plan for the SHIN-NY that shall be submitted to the department for its approval, and that:

(1) Ensures the financial soundness of the network, including maintenance of operations by QEs;

(2) Keeps the cost of statewide services as low as possible and distributed equitably among users; and

(3) Ensures that health care providers who serve medically underserved populations have access to the SHIN-NY dial-tone and member facing services regardless of the provider's ability to pay.

(b) The department retains all legal authority to determine how public funds are distributed; provided, however, that the department may enter into an agreement under which a contractor administers the distribution of public funds to QEs utilizing a formula specified by the department.

SUMMARY OF THE REGULATORY IMPACT STATEMENT

Statutory Authority:

Public Health Law Section 206(18-a)(d) authorizes the Commissioner of Health to make rules and regulations to promote the development of a self-sufficient Statewide Health Information Network for NY (SHIN-NY) to enable widespread, non-duplicative interoperability among disparate health information systems, including electronic health records (EHRs), personal health records (PHRs) and public health information systems while protecting privacy and security. Part G of Chapter 57 of the Laws of 2006 established the “office of Health e-Links” to implement health information technology across the state.

Purpose of Regulation:

This regulation will formalize and update the current governance structure and process for operation of the SHIN-NY in order to advance health information technology adoption and use on a statewide basis for the public good.

- The Department of Health (DOH) would enter into a contract to establish a state-designated entity (SDE) that manages development and operation of the SHIN-NY.
- DOH and the SDE, utilizing the statewide collaboration process, would develop and adopt policies to regulate health information exchange using the SHIN-NY.
- The policies would be implemented by Qualified health IT Entities (QEs) (including RHIOs) through participation agreements with providers and patient consent. The policies also comply with federal and State laws, including the very strict laws regarding the confidentiality of alcohol and drug abuse treatment

records under 42 CFR Part 2, confidential HIV-related information under PHL Article 27-F and mental health records under Mental Hygiene Law Article 33.

- The regulations would allow for the exchange of health information about minors of any age in a way that complies with current state and federal laws and regulations related to minor consented services.
- DOH would create a certification process for QEs/RHIOs that ensures standard criteria are met for providing services to its members and that the number of QEs is sufficient to provide access to health information exchange services statewide.
- A financial commitment is necessary to ensure the development and operation of the SHIN-NY. As part of the State's 2014/15 budget, the SHIN-NY was appropriated \$55 million via the Covered Lives Assessment. Additionally, via an Implementation Advance Planning Document Update (IAPD-U) approved from the Centers for Medicare and Medicaid Services (CMS), matching funding for ongoing and planned health information exchange (HIE) projects and Federal Financial Participation (FFP) will provide approximately \$31 million to be utilized to support the achievement of the goals and objectives established for the SHIN-NY. A sustainability plan for the continued development and operation of the SHIN-NY shall be developed and submitted to the Department for its approval.

Benefits of Regulation:

The regulation is intended to support the triple aim of improving the patient care experience (including quality and cost), improving the health of populations, and

reducing the per capita cost of health care through the broad adoption of health information exchange by: :

- increasing patient record availability on a statewide basis;
- establishing the core set of health information exchange (HIE) services that provide clinical and administrative value to the healthcare system and are available to all providers and all patients in New York State;
- reducing barriers for EHR integration with HIE services;
- establishing a mechanism for state and local public health and health oversight activities through a more streamlined and timely process;
- expanding the use of EHRs, which should improve health care for underserved populations in the state, including rural areas.

Through its agreement with DOH, the state designated entity is responsible for implementing the key components of the state strategy and business plan specified by the Department which includes:

- increasing adoption of the SHIN-NY by hospitals, physician practices, clinics and long-term care facilities with patient consent for sharing personal health information in a secure, protected manner;
- increasing utilization of the SHIN-NY for public health and health oversight activities including disaster preparedness and response;
- engaging health plans to connect to the SHIN-NY; and
- managing operating costs.

State and Local Cost:

To date, the development of the SHIN-NY and expansion of EHR adoption has been funded through a combination of federal and state funds distributed through grant programs, as well as private contributions from participating health plans, providers and other stakeholders. Currently, over 170 hospitals and over 8200 primary care providers qualify for “meaningful use” incentives under Medicaid and Medicare. In addition, through HEAL NY funding, it is expected that over 7800 primary and specialty care providers were supported to have adopted EHRs and be connected to the SHIN-NY by the end of 2013. Over 70% of hospitals in New York State participate in RHIOs, and over 50% of Federally Qualified Health Centers (FQHCs). In order to ensure that New York continues to reap the value of its health IT investments, it is critical to identify ongoing and sustainable funding for its key HIE infrastructure – the SHIN-NY.

Investment in the operation of the SHIN-NY will also generate a substantial return through the elimination of wasted expenditures and promoting better quality health care at a lower cost. Three studies conducted in Rochester by the Health Information Technology Evaluation Collaborative (HITEC), an academic research consortium with contracts with the State Department of Health to perform evaluation activities for the HEAL NY Program identified improved quality and reduction in duplicative testing and in readmission rates for a two year study period for events in 2009-2010. Use of the Rochester RHIO by five Emergency Departments (EDs) resulted in 6 averted admissions per 100 patients who came to the ED, resulting in \$9 million projected savings annually across the adult community. Extrapolating the cost savings across the state would result in an annual savings of \$52 million. During the same study period, image exchange use through the Rochester RHIO within 90 days following an initial imaging procedure

reduced the probability of repeat imaging by 35%. Finally, use of the Rochester RHIO after hospital discharge resulted in a 55% reduction in readmission within 30 days. These highly significant findings with important financial implications further demonstrate the value of the SHIN-NY.

An 18-month study in the Buffalo region looked at the number of multiple CT scans ordered for the same body part, for the same patient, over a six-month period. During the period 2,763 CT scans were deemed to be potentially unnecessary, duplicative tests. 90% of the potentially duplicative tests were ordered by physicians who never or infrequently access the local health information exchange. By local calculations, that amounts to a potential additional cost of \$1.3 million over a six-month period for one test in one region of the state.

It is estimated that operating support for the State's Health Information Exchange Network will require an annual commitment of approximately \$70 million for technical operations, development, member services and statewide policy work.

Costs to Regulated Entities:

The proposed regulation will require that health care facilities defined in PHL Section 18, and practitioners in the private practice of medicine that utilize certified EHRs, connect to the SHIN-NY. In New York State there are 228 general hospitals, 1198 hospital extension clinics, 1239 diagnostic and treatment centers, and 635 nursing homes. There are also 139 certified home health agencies (CHHAs), 97 long term home health care programs (LTHHCP), 19 hospices and 1164 licensed home care services agencies (LHCSAs).

Average interface costs for hospitals are \$75,000 while interface costs for physician practices vary but generally average \$5,000 – 10,000 per practice. Interface costs for other types of facilities, such as nursing homes, home care agencies and hospice would fall in between physician practices and hospitals, depending on the size and complexity. Some RHIOs have established this functionality for their participants, and therefore, there are reduced associated interface costs for their participants, which include physician practices. In other areas, health plans have absorbed the interface costs for their network providers because they see the value of having their physicians connected to the SHIN-NY. Only health care providers, regulated by the Department of Health, using certified EHR technology need to comply with these requirements. Currently, adoption of certified EHR technology for health care facilities outside of hospitals and FQHCs is low because they are not eligible to receive meaningful use incentive payments.

The regulation is being put forth as a “public good” model, that is, a certain set of baseline services, both technical and administrative, will be made available to all providers within New York State, at no charge. The basic technical services will include; patient record look-up, secure messaging, consent management, notifications and alerts, identity management and security, provider and public health clinical viewer, public health integration and results delivery.

Local Government Mandates:

The State Enterprise Health Information Exchange as part of the SHIN-NY is designed to streamline how providers interact with the many public health information

systems that currently exist, to decrease reporting burdens, promote bidirectional information exchange, and advance public health priorities. Article 28 facilities operated by local governments will be required to comply with these regulations in the same manner as other Article 28 facilities. Should local health departments need to make expenditures to comply with the regulatory requirements, they have opportunities to request funding through Article 6 Local Assistance Grant Program, and possibly other sources.

Paperwork:

Entities that wish to become QEs will need to submit an application for review by DOH to determine if the criteria outlined in the regulation have been met as well as meeting other criteria as may be required under the QE certification process.

Any entity seeking certification as a QE, regardless the entity's organizational structure, origin or type, will be subject to the full certification process. This certification process incorporates criteria that fall into four broad categories including; Organizational Characteristics, Operational Requirements, Policies and Procedures and Technical Requirements. QEs would be subject to either biennial or triennial recertification, depending on their level of scoring and would also be subject to ongoing monitoring and enforcement activities between full certifications. This all being done to ensure that patient information is made available to all providers participating in a patient's care in a secure and confidential manner.

Duplication:

This regulation will not conflict with any state or federal rules.

Alternatives:

Because state funding for health IT infrastructure was provided through the HEAL NY program, the State Department of Health believed the best way to facilitate a standardized process for this purpose was through a formal public private partnership. Our private partner, through a contract with DOH, facilitated the statewide collaboration process of a governance and policy framework to allow health information sharing among disparate providers to improve quality, improve efficiency and reduce costs of health care on a statewide basis while ensuring the privacy and security of patient information.

Governor David A. Paterson designated the New York eHealth Collaborative as the state designated entity, and as such was able to receive federal funding for health information exchange activities. Based upon the state and federal funding, and the development of statewide policies through a statewide collaboration process, the logical next step was to develop regulations based on this framework. Since health IT is quickly evolving and the marketplace is rapidly changing with regard to new tools and services available, the implementation of regulations before now would have required amendments based on current knowledge.

While other states have different models for health information exchange, and NY considered the approaches and models used in other states through its statewide collaborative process, based on the size, complexity and diversity of New York and the

resources that were available, the State Department of Health determined that the current model was the best approach. The State Department of Health shall convene and consider the recommendations of the workgroup established by Public Health Law § 206(18-a)(b), and if the State Department of Health acts in a manner inconsistent with the recommendations of the workgroup, it shall provide the reasons therefor.

Federal Standards:

This rule aligns with current federal laws and regulations governing the adoption of interoperable exchange of health information and meaningful use requirements under the HITECH provisions of ARRA. State laws regarding the disclosure of personal health information to health care providers are more stringent than the federal standards for HIPAA.

Compliance Schedule:

Since RHIOs or QEs are largely operational in NYS and the majority of hospitals and federally qualified health centers are already participants, and the number of physicians practices participating continues to grow and the infrastructure for the SHIN-NY is already in development, the estimated time period needed for regulated persons or entities to achieve compliance with the rule has been staggered. One year from the time the rule becomes effective the RHIOs/Qes need to be fully compliant with the certification requirements and provide the basic technical and administrative services defined. Two years from the time the rule becomes effective health care facilities, utilizing certified health record technology must connect to the SHIN-NY through a QE

and allow private and secure bi-directional access to patient information by other QE
Participants authorized by law to access such patient information.

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REGULATORY IMPACT STATEMENT

Statutory Authority:

Public Health Law § 206(18-a)(d) authorizes the Commissioner to make such rules and regulations as may be necessary to implement federal policies and disburse funds as required by the American Recovery and Reinvestment Act of 2009 and to promote the development of a self-sufficient Statewide Health Information Network for New York (SHIN-NY) to enable widespread, non-duplicative interoperability among disparate health information systems, including electronic health records, personal health records, health care claims, payment and other administrative data and public health information systems, while protecting privacy and security. Such rules and regulations shall include, but not be limited to requirements for organizations covered by 42 USC 17938 or any other organizations that exchange health information through the SHIN-NY.

Meaning of “implement federal policies”

The federal government, through the Office of the National Coordinator for Health Information Technology (ONC), has been promoting and subsidizing the adoption of health IT for many years. According to the ONC-Coordinated Federal Health IT Strategic Plan: 2008-2012 (June 3, 2008), upon publication of Executive Order 13335 on April 27, 2004, President Bush set a target for the majority of Americans to have access to electronic health records (EHRs) by 2014. Under EO 13335 (3 CFR 13335), ONC is charged with directing “the nationwide implementation of interoperable health

information technology in both the public and private health care sectors that will reduce medical errors, improve quality, and produce greater value for health care expenditures.”

Meaning of “disburse funds as required by the American Recovery and Reinvestment Act of 2009”

The American Recovery and Reinvestment Act (ARRA) of 2009 (P.L. 111-5) includes within it the Health Information Technology for Economic and Clinical Health (HITECH) Act (HITECH is ARRA Division A, Title XIII-Health Information Technology and ARRA Division B, Title IV-Medicare and Medicaid Health Information Technology).

Under HITECH, ONC is providing billions of dollars for:

- Medicare and Medicaid incentive payments to health care providers that adopt “meaningful use” of certified electronic health record (EHR) technology. 42 USC §§ 299b-31, 299b-33, 1395w-4, 1395w-23, 1395ww, 1396b; 42 CFR Part 495.
- Grants to states to promote health IT. On September 9, 2009, under the State Health Information Exchange (HIE) Cooperative Agreement Program, Governor David A. Paterson designated New York eHealth Collaborative, Inc. (“NYeC”), a Type B corporation under Section 201 of New York’s Not-for-Profit Corporation Law, as New York’s “qualified state-designated entity.” NYeC is using New York State’s federal grant, with a matching grant from New York State, to prepare and submit to the federal government a statewide health IT plan to develop health information exchange across health care systems and to move New York State toward the meaningful use of certified EHR technology. 42 USC § 300jj-33.

- The creation and funding of health IT Regional Extension Centers (RECs) to assist health care providers in the selection, acquisition, implementation and meaningful use of certified EHR technology to improve health care quality and outcomes. Two RECs in New York have received federal grants. 42 USC § 300jj-32.

Meaning of “the development of a self-sufficient statewide health information network for New York (SHIN-NY)”

On the State level, New York is creating a Statewide Health Information Network for New York (SHIN-NY). Under the Health Care Efficiency and Affordability Law for New Yorkers (HEAL NY) Capital Grant Program (PHL § 2818) Phases 1, 5, 10, 17 and 22, New York is promoting broad adoption of EHRs and other health IT tools and is subsidizing the operations of Regional Health Information Organizations (RHIOs) that facilitate health information exchange between disparate providers and health systems. The creation of the SHIN-NY and the expenditure of federal and State funds for health IT is being coordinated by DOH’s Office of Quality and Patient Safety, Division of Health Information Technology Transformation (DHITT). The Legislature established DHITT (referred to in the law as “the office of Health e-Links New York”) “to enhance the adoption of an interoperable regional health information exchange and technology infrastructure that will improve quality, reduce the cost of health care, ensure patient privacy and security, enhance public health reporting including bioterrorism surveillance and facilitate health care research in the state of New York” (L. 2006, ch. 57, Part G, § 1), and the Legislature has continually appropriated money to fund the work of DHITT (again, referred to in the Chapter 54 appropriation laws as the office of Health e-Links or

“health e-link”). In the 2014-2015 budget, the Legislature appropriated \$55 million for the SHIN-NY (L. 2014, ch. 54).

Meaning of “organizations covered by 42 USC 17938”

Federal regulations implementing the privacy and security provisions of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 are in 45 CFR Parts 160 and 164, and HITECH made a number of amendments to those federal regulations. One such amendment is a section of HITECH codified in 42 USC § 17938 (“Business associate contracts required for certain entities”). Under 42 USC § 17938: “Each organization, with respect to a [HIPAA-]covered entity, that provides data transmission of protected health information to such entity (or its business associate) and that requires access on a routine basis to such protected health information, such as a Health Information Exchange Organization, Regional Health Information Organization, E-prescribing Gateway, or each vendor that contracts with a covered entity to allow that covered entity to offer a personal health record to patients as part of its electronic health record, is required to enter into a written contract (or other written arrangement) described in section 164.502(e)(2) of title 45, Code of Federal Regulations and a written contract (or other arrangement) described in section 164.308(b) of such title, with such entity and shall be treated as a business associate of the covered entity for purposes of the provisions of this subtitle and subparts C and E of part 164 of title 45, Code of Federal Regulations, as such provisions are in effect as of the date of enactment of this title [enacted Feb. 17, 2009].”

Prior to the enactment of HITECH, on December 15, 2008, ONC had already published a guidance document called “The HIPAA Privacy Rule and Electronic Health

Information Exchange in a Networked Environment.” That guidance made clear the federal government’s view that under HIPAA, RHIO participants may disclose health information to RHIOs without any authorization from patients provided that the RHIOs enter into appropriate “business associate” agreements with the RHIO participants.

<http://www.hhs.gov/ocr/privacy/hipaa/understanding/special/healthit/>;

<http://www.hhs.gov/ocr/privacy/hipaa/understanding/special/healthit/introduction.pdf>; 45

CFR § 164.502(e). 42 USC § 17938 codified this guidance into law.

In 2010, the federal Substance Abuse and Mental Health Services Administration (SAMHSA) likewise issued guidance (which was supplemented on December 8, 2011) explaining that under 42 CFR Part 2, RHIO participants may disclose alcohol and substance abuse patient records to RHIOs without patient consent provided that the RHIOs enter into appropriate Qualified Service Organization agreements with the RHIO participants. <http://www.samhsa.gov/healthprivacy/docs/ehr-faqs.pdf>; December 8, 2011, FAQs (available upon request); 2 CFR § 2.12(c)(4).

This regulation implements federal policies, including the federal policies effected by the HITECH provisions of ARRA to enable widespread interoperability among disparate health information systems, while protecting privacy and security. These regulations include the requirements for organizations such as RHIOs, which under 42 USC § 17938 make it possible, without patient authorization, to exchange patient information among disparate health care providers so long as those organizations comply with federal requirements for business associates and qualified service organizations.

Public Health Law Sections 201, 206(1), 2800, 2803, 2816, 3600, 3612, 4000, 4010, 4400, 4403, 4700 and 4712 authorize the Commissioner to make such rules and

regulations as may be necessary to effectuate the provisions and purposes of Public Health Law Articles 28, 36, 40, 44 and 47 and provide additional authority for the Commissioner to create and make use of the SHIN-NY.

Legislative Objectives:

This regulation will establish a formal governance structure and process for operation of the SHIN-NY in order to advance health information technology adoption and use statewide for the public good. The Department would develop and adopt policies to regulate people and entities in New York that exchange health information using the SHIN-NY, including Regional Health Information Organizations (RHIOs) and other such health IT entities.

Needs and Benefits:

This regulation facilitates the operation of a statewide interoperable health information infrastructure that will provide clinicians and consumers with access to health information in a timely, secure, efficient, and effective way.

Benefits of consistent policy implementation:

As the use of health information technology expands, the regulation will formalize a common policy framework across the entire health care system to maximize the use and benefits of the SHIN-NY. The SHIN-NY enables delivery of appropriate care at the appropriate time in a coordinated, patient-centered manner. RHIOs and QEs facilitate access to the SHIN-NY through participation agreements and technical services to connect health care providers to the network. A certification process has been

established by the State Department of Health for QE designation. In order to qualify to become a QE, a set of minimum criteria must be met as outlined in the regulation as well as other criteria as may be established by a QE certification process. Consistent implementation of statewide policies through the regulatory process leads to a common approach to education and training of providers and consumers and can lead to reduction in costs and creation of efficiencies across the state. A standardized approach also mitigates the need for local or regional policies that may not conform to state standards. The regulation will further promote adoption, usage and sustainability of health information exchange organizations and the SHIN-NY by:

- Increasing patient record availability on a statewide basis
- Establishing the core set of HIE services that provide clinical and administrative value to the healthcare system
- Reducing barriers for EHR integration with HIE services
- Increasing participation of all stakeholders including payers
- Creating opportunities for emerging health care payment, delivery and access reforms through new models of care such as health homes, patient centered medical homes and Accountable Care Organizations, among others.

In addition, HITECH established a program for incentive payments to Medicaid providers who demonstrate “meaningful use” of certified EHR technology with the ultimate goal of promoting health care quality and care coordination through state health information exchange (HIE) activities. Providers that achieve NCQA Patient Centered Medical Home designation qualify for meaningful use incentive payments. This

regulation will expand access to and use of the SHIN-NY to additional segments of the broader health care system (e.g., mental health, alcohol and substance abuse and social services agencies) to improve health, improve health care and reduce costs. The Department of Health needs clear regulatory authority to apply these policies more broadly.

State and Local Cost:

To date, the development of the SHIN-NY and expansion of EHR adoption has been funded through a combination of federal and state funds distributed through grant programs, as well as private contributions from participating health plans and providers. Currently, over 170 hospitals and over 8200 primary care providers qualify for meaningful use incentives under Medicaid and Medicare. In addition, through HEAL NY funding, it is expected that over 7800 primary and specialty care providers will have adopted EHRs and be connected to the SHIN-NY by the end of 2013. Over 70% of hospitals in New York State participate in RHIOs, and over 50% of Federally Qualified Health Centers (FQHCs). In order to ensure that New York continues to reap the value of its health IT investments, it is critical to identify ongoing and sustainable funding for its key HIE infrastructure – the SHIN-NY.

Investment in the operation of the SHIN-NY will also generate a substantial return through the elimination of wasted expenditures and promoting better quality health care at a lower cost. Three studies conducted in Rochester by the Health Information Technology Evaluation Collaborative (HITEC), an academic research consortium with contracts with the State Department of Health to perform evaluation activities for the

HEAL NY Program identified improved quality and reduction in duplicative testing and in readmission rates for a two year study period for events in 2009-2010. Use of the Rochester RHIO by five Emergency Departments (EDs) resulted in 6 averted admissions per 100 patients who came to the ED, resulting in \$9 million projected savings annually across the adult community. Extrapolating the cost savings across the state would result in an annual savings of \$52 million. During the same study period, image exchange use through the Rochester RHIO within 90 days following an initial imaging procedure reduced the probability of repeat imaging by 35%. Finally, use of the Rochester RHIO after hospital discharge resulted in a 55% reduction in readmission within 30 days. These highly significant findings with important financial implications further demonstrate the value of the SHIN-NY.

An 18-month study in the Buffalo region looked at the number of multiple CT scans ordered for the same body part, for the same patient, over a six-month period. During the period 2,763 CT scans were deemed to be potentially unnecessary, duplicative tests. 90% of the potentially duplicative tests were ordered by physicians who never or infrequently access the local health information exchange. By local calculations, that amounts to a potential additional cost of \$1.3 million over a six-month period for one test in one region of the state.

Across the country, states have used similar studies to project the value of statewide HIE. Based on estimates of 85% provider and patient participation in its statewide HIE, Rhode Island forecasted an annual savings of \$95 per person.¹ In a similar study of fully operational statewide HIE in Maine that factored in the total

¹ Boston Consulting Group. *Rhode Island Quality Institute Business case for Health Information Exchange*. December 5, 2009.

operational costs, researchers projected significant, but more modest net savings of \$35 per person per year.²

In addition to savings associated with reduction in unnecessary and duplicative testing, readmissions, and adverse drug events, participation in the SHIN-NY will also generate savings by minimizing the number of interfaces health care organizations need to access data. Currently, physician practices, hospitals, laboratories, public health agencies, and others must create and maintain costly and complex interfaces with every organization they wish to exchange data. In this point-to-point data exchange environment, a typical hospital with 10 interfaces can spend as much as \$200,000 in one-time development fees, and \$40,000 per year in maintenance fees.³ The SHIN-NY and its QEs, serving as utilities and consolidating services and interfaces, have been and will continue to reduce the per unit connectivity cost for all participants.

Finally, statewide adherence to the policies and procedures underpinning the SHIN-NY will create opportunities for common tool kits, education modules, and implementation guides that can be developed once and re-used across the state. This common framework will reduce the need for and expenses associated with the one-on-one negotiations, customized training, and costly work-arounds required to address local implementation variations in the current environment.

It is estimated that operating support for the State's Health Information Exchange Network will require an annual commitment of approximately \$70 million for technical

² Center for Health Policy and Research. *The Impact of Electronic Health Information Exchange (HIE) Services in Maine: Avoidable Service and Productivity Savings Estimates Related to HealthInfoNet Services*. November 2008.

³ Delaware Health Information Network. *Final Report: Delaware Health Information Network Evaluation Analysis*. August 2011.

operations, development, member services and statewide policy work. The Department wants to advance a state strategy and business plan that would make access to patient health information available to all providers, when and where it is needed. The cost of operating the SHIN-NY based on an annual budget of \$70 million would be about \$3.50/NY resident annually.

As part of the State's 2014/15 budget (L. 2014, ch. 54), the SHIN-NY was appropriated \$55 million via the Covered Lives Assessment (see Public Health Law § 2807-t). Additionally, via an Implementation Advance Planning Document Update (IAPD-U) approved from the Centers for Medicare and Medicaid Services (CMS), matching funding for ongoing and planned health information exchange (HIE) projects and Federal Financial Participation (FFP) will provide approximately \$31 million to be utilized to support the achievement of the goals and objectives established for the SHIN-NY.

While it is anticipated that State and Federal financial support will be required until the SHIN-NY reaches the critical mass of available data (estimated to be three years) to make it a tool that is critical to providing high-quality, cost effective patient care, a long term sustainability plan for the SHIN-NY is required as part of this regulation.

The state designated entity is responsible for implementing the key components of the state strategy and business plan specified by the Department which includes:

- Increasing adoption to the SHIN-NY by hospitals, physician practices, clinics and long-term care facilities including an increase in patient consent for sharing personal health information;

- Engaging health plans to connect to the SHIN-NY; and
- Managing operating costs.

The regulation is being put forth as a “public good” model. A defined set of baseline services, both technical and administrative, will be made available to all providers within New York State, at no charge. The basic technical services will include; patient record look-up, secure messaging, consent management, notifications and alerts, identity management and security, provider and public health clinical viewer, public health integration and results delivery. Administrative services will include establishing legal and information sharing agreements, marketing and recruitment, support for adoption and use, participant/authorized user training, end user support and alignment with stakeholder priorities.

The state designated entity will also work to standardize the application programming interface (API) platform, which provides access to the SHIN-NY, and will provide new tools and products for clinicians and patients that conform to state policies. New York has a strong technology community with many resources that early stage companies can get access to in order to thrive. There is a tremendous opportunity to work with the emerging health technology industry to secure New York as the hub of health IT innovation.

Costs to Regulated Entities:

The proposed regulation will require that health care facilities defined in PHL Section 18 that utilize certified EHRs, connect to the SHIN-NY through a QE and allow

private and secure bi-directional access to patient information by other QE participants authorized by law to access such patient information. In New York State there are 228 general hospitals, 1198 hospital extension clinics, 1239 diagnostic and treatment centers, and 635 nursing homes. There are also 139 certified home health agencies (CHHAs), 97 long term home health care programs (LTHHCP), 19 hospices and 1164 licensed home care services agencies (LHCSAs).

Average interface costs for hospitals are \$75,000 while interface costs for physician practices vary but generally average \$5000 – 10,000 per practice. Interface costs for other types of facilities, such as nursing homes, home care agencies and hospice would fall in between physician practices and hospitals, depending on the size and complexity. Some RHIOs have established this functionality for their participants, thereby reducing associated interface costs for their participants, which include physician practices. In other areas, health plans have absorbed the interface costs for their network providers because they see the value of having their physicians connected to the SHIN-NY. Only health care providers using certified EHR technology need to comply with these requirements. Currently, adoption of certified EHR technology for health care facilities outside of hospitals and FQHCs is low because they are not eligible to receive meaningful use incentive payments. This requirement, to connect a certified EHR to the SHIN-NY, may be waived for health care facilities that meet criteria established by the commissioner, such as economic hardship, technological limitations that are not reasonably in the control of the provider or other exceptional circumstances demonstrated by the provider to the department.

As described above, implemented as a “public good” model, minimum standardized baseline technical and administrative services will be made available to QE Participants, from the QE, at no charge to the participants.

Local Government Mandates:

The State Enterprise Health Information Exchange as part of the SHIN-NY is designed to streamline how providers interact with the many public health information systems that currently exist, to decrease reporting burdens, promote bidirectional information exchange, and advance public health priorities. Goals include:

- Creation of reusable core services that can be used to meet a variety of public health program needs and goals (exchange of identifiable patient data, exchange of hospital encounter data, provider data services, etc.)
- Improve the practice of State/Local public health and clinical care by returning health information of high clinical value to community providers and partners (Newborn Screening lab results, immunization history, Medicaid claims history, etc.)
- Utilize the SHIN-NY to facilitate efficient data exchange with providers via RHIO connections
- Improve timeliness and quality of data exchange (automation, common messaging standards, monitoring, etc.)
- Reduce the administrative burden to providers of reporting to multiple, disparate public health systems and programs, and reduce the cost burden to public health in maintaining these connections

- Create a single interface that can manage multiple data flows so providers and RHIOs will not have to implement multiple point to point reporting flows.
- Ensure flexibility to add new data flows or make changes without interrupting other data flows.
- Leverage the SHIN-NY architecture to support local and community information exchange through RHIOs

The State Enterprise Health information Exchange is based on a common set of policy and technology standards that have informed the development of services to be used for bi-directional exchange of data between healthcare providers and public health entities. These standards have been developed through a Statewide Collaborative Process, which provides policy guidance on technology architecture, data transmission and privacy and security standards.⁴

Article 28 facilities operated by local governments will be required to comply with these regulations in the same manner as other Article 28 facilities. Should local health departments need to make expenditures to comply with the regulatory requirements, they have opportunities to request funding through Article 6 Local Assistance Grant Program, and possibly other sources.

Paperwork:

⁴ Policies related to interoperable health information exchange via the Statewide Health Information Network for New York (“SHIN-NY”) are available at:
<http://www.nyehealth.org/index.php/resources/nys-policies>

Entities that wish to become QEs will need to submit an application for review by DOH to determine if the criteria outlined in the regulation have been met as well as meeting other criteria as may be required under the QE certification process.

Duplication:

This regulation will not conflict with any state or federal rules.

Alternatives:

Because state funding for Health IT infrastructure was provided through the HEAL NY program, the State Department of Health believed the best way to facilitate a standardized process for this purpose was through a formal public private partnership. Our private partner, the New York eHealth Collaborative, through a contract with DOH, facilitated the statewide collaboration process of a governance and policy framework to allow health information sharing among disparate providers to improve quality, improve efficiency and reduce costs of health care on a statewide basis while ensuring the privacy and security of patient information.

Then Governor David A. Paterson designated the New York eHealth Collaborative as the state designated entity, and as such was able to receive federal funding for health information exchange activities. Based upon the state and federal funding, and the development of statewide policies through a statewide collaboration process, the logical next step was to develop regulations based on this framework. Since health IT is quickly evolving and the marketplace is rapidly changing with regard to new tools and services available, the implementation of regulations before now would have required amendments based on current knowledge.

To ensure full participation and stakeholder input to the proposed regulations and documents incorporated by reference, a series of summits and input opportunities were incorporated into the development process.

In January of 2013 a summit of stakeholders, which included RHIO Executive Directors, Members of RHIO Board of Directors, the Board of Directors of the New York eHealth Collaborative, representatives for NYS DOH, NYC DOHMH and other stakeholders was conducted. The goal of the session was to establish the roles and responsibilities of Qualified Entities. Subsequent to the summit, a series of workgroups were launched to further define requirements and responsibilities.

Follow-up summits were held in May and September. These summits, attended by a similar list of stakeholders and participants, were specifically held to address issues associated with Statewide Health Information Network of New York (SHIN-NY) governance, barriers to provider adoption and establishing of minimal technical service requirements.

Throughout the evolution of the regulatory package, the Policy Committee and the Business and Operations Committee of the New York eHealth Collaborative's Board of Directors were actively engaged in recommending policies and operational requirements for the SHIN-NY. Simultaneously workgroups were convened to develop recommendations associated with member-facing services, to further define minimum technical requirements, address issues of insurance, participation agreements and indemnification.

As the various components of the regulatory package were developed, they were forwarded to and formally reviewed and approved by the NYeC Board of Directors.

Items were forwarded to the Department of Health who is ultimately responsible for review, approval and implementation.

On August 29, 2013, a draft regulatory package was distributed to a broader stakeholder community with a blank “comment matrix.” This resulted in over 500 comments being received for review and disposition. DOH, working in conjunction with NYeC, reviewed all input received and incorporated as appropriate. Larger issues, such as governance, adoption and dial-tone services were taken to the larger group summit in September 2013.

On September 4, 2013 a webinar was held to review the components of the DRAFT Regulatory Package and the documents incorporated by reference and to answer questions. This was repeated on September 10, 2013. Over 150 stakeholders participated in these webinars.

Draft regulatory documents were reviewed as part of in person meetings with the Business and Operations Committee and via webinars that were open on a statewide basis to stakeholders that would be potentially affected by the regulation. While associations had the opportunity to comment throughout the process, smaller group meetings were held directly with representatives from GNYHA, HANYS, MSSNY, ACP and NYSAFP. These associations presented comments and concerns that they had solicited from their membership.

A revised DRAFT Regulatory Package was distributed on October 29, 2013 reflecting edits and addressing many concerns raised by those reviewing the documents and submitting comments.

On November 14, 2013, subsequent to a second round of comments (n=180) a third version of regulatory package was distributed. It is that version which is currently being recommended to be advanced into the SAPA process.

Participants in the development and/or review of the SHIN-NY Regulatory package include over 200 individuals and associations (who brought with them comments from their constituents).

While other states have different models for health information exchange, and NY considered the approaches and models used in other states through its statewide collaborative process, based on the size, complexity and diversity of New York and the resources that were available, the State Department of Health determined that the current model was the best approach. The State Department of Health shall convene and consider the recommendations of the workgroup established by Public Health Law § 206(18-a)(b), and if the State Department of Health acts in a manner inconsistent with the recommendations of the workgroup, it shall provide the reasons therefor.

Federal Standards:

This rule aligns with current federal laws and regulations governing the adoption of interoperable exchange of health information and meaningful use requirements under the HITECH provisions of ARRA. State laws regarding the disclosure of personal health information to health care providers are more stringent than the federal standards for HIPAA.

Compliance Schedule:

Since RHIOs or QEs are largely operational in NYS and the majority of hospitals and federally qualified health centers are already participants, and the number of physician practices participating continues to grow and the infrastructure for the SHIN-NY is already in development, the estimated time period needed for regulated persons or entities to achieve compliance with the rule is two years from the time the rule becomes effective.

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REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS

The proposed rule will not have a substantial adverse impact on small businesses or local governments. Small businesses such as physician practices, that are not regulated by the Department, that adopt certified electronic record technology in order to qualify for meaningful use incentives, would not be required to exchange patient health information among disparate providers to facilitate care coordination and appropriate follow up. Although this exchange is encouraged, it is strictly optional for the group of practitioners. However, connection to the SHIN-NY will in fact facilitate these providers achievement of meaningful use requirements and eligibility to receive either Medicaid or Medicare Meaningful Use incentive payments. For local government agencies that report information to the state, the use of the SHIN-NY would be beneficial from an efficiency and cost perspective. Additionally, accessing the SHIN-NY to perform required local health department surveillance and case investigation activities has actually been documented to result in increased efficiency and decreased costs for the local health department.

Cure Period:

Chapter 524 of the Laws of 2011 requires agencies to include a “cure period” or other opportunity for ameliorative action to prevent the imposition of penalties on the party or parties subject to enforcement when developing a regulation or explain in the Regulatory

Flexibility Analysis why one was not included. This regulation creates no new penalty or sanction. Hence, a cure period is not required.

RURAL AREA FLEXIBILITY ANALYSIS

The proposed rule will not have a direct adverse impact on rural areas. Operation of the SHIN-NY and expanded use of certified EHR technology should improve health care, increase efficiency, reduce duplicative testing and reduce overall costs for underserved populations in the state, including rural areas.

JOB IMPACT STATEMENT

The proposed rule should not have any adverse impact on jobs and employment opportunities, but in fact have the reverse effect. The development and operation of the SHIN-NY will most likely result in opportunities for the development of new applications of health IT tools and services, such as the Accelerator Program launched by the New York eHealth Collaborative to support Medicaid Health Homes, and may result in new health IT jobs in New York State. It has been estimated that the SHIN-NY, and related initiatives that use the data from the SHIN-NY has the potential to create 1,500 health technology jobs across New York State over the next five years.