

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

AGENDA

December 4, 2014

*Full Council meeting will convene immediately following
the Special Establishment and Project Review Committee which is scheduled to begin
immediately following the Committee on Codes, Regulations and Legislation scheduled at
10:15 a.m.*

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

I. INTRODUCTION OF OBSERVERS

Jo Ivey Boufford, M.D., Council Member

II. APPROVAL OF MINUTES

October 2, 2014 Meeting Minutes

Exhibit #1

III. REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

A. Report of the Department of Health

Howard A. Zucker, M.D., J.D., Acting Commissioner of Health

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

Daniel Sheppard, Deputy Commissioner, Office of Primary Care and Health Systems Management

C. Report of the Office of Health Insurance Programs Activities

Elizabeth Misa, Medicaid Deputy Director, Office of Health Insurance Programs

D. Report of the Office of Quality and Patient Safety

Patrick Roohan, Director, Office of Quality and Patient Safety

E. Report of the Office of Public Health Activities

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

IV. PUBLIC HEALTH SERVICES

Report on the Activities of the Committee on Public Health

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

V. HEALTH POLICY

Report on the Activities of the Committee on Health Planning

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

VI. REGULATION

Report of the Committee on Codes, Regulations and Legislation

Exhibit #2

Angel Gutiérrez, M.D., Chair, Committee on Codes, Regulations and Legislation

For Adoption

12-03 - Section 710.1 of Title 10 NYCRR – Certificate of Need Requirements
TO BE DISTRIBUTED UNDER SEPARATE COVER

14-16 - Part 404 of Title 10 NYCRR – Integrated Outpatient Services
TO BE DISTRIBUTED UNDER SEPARATE COVER

For Information

11-02 - Sections 415.3 of Title 10 NYCRR –
Nursing Home Transfers and Discharge Rights

VII. AD HOC COMMITTEE ON FREESTANDING AMBULATORY SURGERY CENTERS AND CHARITY CARE

Report on the Activities of the Ad Hoc Committee on Freestanding Ambulatory Surgery Centers and Charity Care

Peter Robinson, Chair

VIII. PROJECT REVIEW AND RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

Christopher Booth, Vice Chair

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

NO APPLICATIONS

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services - Construction

Exhibit #3

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	142157 C	United Memorial Medical Center North Street Campus (Genesee County) Mr. Booth – Interest Ms. Hines – Recusal Mr. Robinson - Recusal	Contingent Approval

Hospice Services - Construction

Exhibit #4

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	142079 C	CareFirst/Southern Tier Hospice and Palliative Care/ Southern Tier Hospice (Steuben County) Mr. Booth - Interest	Contingent Approval

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Acute Care Services – Establish/Construct

Exhibit #5

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	142140 E	NYP Community Programs, Inc. (Westchester County)	Contingent Approval

Ambulatory Surgery Centers – Establish/Construct

Exhibit #6

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	132340 B	Richmond ASC, LLC d/b/a Richmond Pain Management (Richmond County)	Contingent Approval
2.	142077 E	Island Digestive Health Center (Suffolk County)	Contingent Approval

Residential Health Care Facilities – Establish/Construct

Exhibit #7

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	142056 E	Hope Center Operations, LLC d/b/a Hope Center For HIV and Nursing Care (Bronx County)	Contingent Approval
2.	142090 E	L&A Operations LLC d/b/a Adira at Riverside Rehabilitation (Westchester County)	Contingent Approval

Certified Home Health Agency – Establish/Construct

Exhibit #8

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	142060 E	Dominican Sisters Family Health Service, Inc. (Nassau County)	Contingent Approval
2.	142068 E	Royal Care Certified Home Health Care, LLC (Queens County)	Contingent Approval
3.	142100 E	A & T Certified Home Care, LLC (Rockland County)	Contingent Approval

Certificate of Amendment of the Application of Authority

Exhibit #9

Applicant

E.P.R.C. Recommendation

Fletcher Allen Partners, Inc.

Approval

The Debutante Cotillion and Christmas Ball, Inc.

Approval

Restated Certificate of Incorporation

Exhibit #10

Applicant

E.P.R.C. Recommendation

The Health Science Center Foundation at Syracuse, Inc.

Approval

HOME HEALTH AGENCY LICENSURES

Exhibit #11

Number

Applicant/Facility

E.P.R.C. Recommendation

2162L

24/7 Homecare Agency of NY, Inc.
(Bronx, Queens, Kings, Richmond, New York and Nassau Counties)

Contingent Approval

2172L

Able Body Homecare Agency of NY, Inc.
(Bronx, Kings, New York, Richmond, Queens and Westchester Counties)

Contingent Approval

2191L	Agincare Homecare Services, Inc. (Bronx, New York, Kings, Richmond, Queens, and Nassau Counties)	Contingent Approval
2161L	Allied Partners Home Care, LLC (Nassau and Queens Counties)	Contingent Approval
2236L	Anderson Care, LLC d/b/a Home Helpers/Direct Link (Albany and Schenectady Counties)	Contingent Approval
2187L	Angel Home Care Agency, Inc. (Kings, Richmond, New York, Queens, and Bronx Counties)	Contingent Approval
2174L	Angel's Touch Home Care, LLC (Kings, Richmond, Queens, Bronx, New York and Westchester Counties)	Contingent Approval
2252L	Axzon's Health System Corporation (Nassau, Westchester, Suffolk and Queens Counties)	Contingent Approval
2207L	Blissful Healthcare, Inc. (Bronx, New York, Kings, Richmond and Queens Counties)	Contingent Approval
2060L	Compassionate Home Health Care, LLC (New York, Bronx, Kings, Richmond, Queens, and Westchester Counties)	Contingent Approval
2257L	Customize Care, LLC (Bronx, Queens, Kings, Richmond, New York and Westchester Counties)	Contingent Approval

2164L	Eva Homecare Agency, Inc. (Bronx, Queens, Kings, Richmond, New York and Nassau Counties)	Contingent Approval
2230L	First Baana Corp. (New York, Bronx, Kings, Richmond, Queens and Westchester Counties)	Contingent Approval
2232L	Fun & Fit, LLC d/b/a Home Instead Senior Care (Westchester, Putnam, Dutchess and Bronx Counties)	Contingent Approval
2189L	Janette Homecare of NY, Inc. (New York, Bronx, Kings, Richmond, Queens and Nassau Counties)	Contingent Approval
2087L	Long Beach Home Care Services, Inc. (Bronx, Richmond, New York, Nassau, Kings, and Queens Counties)	Contingent Approval
2182L	Safe and Prudent, LLC (New York, Bronx, Kings, Richmond, Queens, and Nassau Counties)	Contingent Approval
2201L	SafeCare Home Care Agency, Inc. (Nassau, Suffolk and Queens Counties)	Contingent Approval
2208L	SHARE of New Square, Inc. (Rockland, Sullivan, Putnam, Westchester, Dutchess, Bronx, Orange and Ulster Counties)	Contingent Approval

2159L	Skilled Home Care Services of New York, LLC d/b/a Skilled Home Care Services of New York (Bronx, Queens, Kings, Richmond, New York and Westchester Counties)	Contingent Approval
1728L	Supreme Generation, Inc. (Bronx, Queens, Kings, New York and Richmond Counties)	Contingent Approval
2183L	The Heinlein Group, Inc. d/b/a Synergy HomeCare of Westchester (Westchester and Bronx Counties)	Contingent Approval
2197L	Visiting Nurse Service Care at Home, Inc. (Albany, Montgomery, Warren, Clinton, Rensselaer, Washington, Essex, Saratoga, Franklin, Schenectady, Fulton and Schoharie Counties)	Contingent Approval
2055L	Golden Eagle Homecare Agency, Inc. (Bronx, Queens, Kings, Nassau, New York, and Richmond Counties)	Contingent Approval
2391L	JS Homecare Agency of NY, Inc. (Bronx, Richmond, Kings, Nassau, New York and Queens Counties)	Contingent Approval
2127L	Premier Home Health Care Services, Inc. (Kings, New York, Queens, Richmond, and Bronx Counties)	Contingent Approval
2256L	Premier Home Health Care Services, Inc. (Westchester, Putnam, Rockland, and Bronx Counties)	Contingent Approval

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services – Establish/Construct

Exhibit 12

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	142108 E	Long Island Jewish Medical Center (Queens County) Br. Bhat – Interest Dr. Martin – Interest	Contingent Approval
2.	142105 E	Mount St Marys Hospital and Health Center (Niagara County) Mr. Booth - Interest	Contingent Approval

Ambulatory Surgery Centers – Establish/Construct

Exhibit #13

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	142039 E	North Country Orthopaedic Ambulatory Surgery Center, LLC (Jefferson County) Mr. Booth - Interest	Contingent Approval
2.	142073 E	Buffalo Surgery Center, LLC (Erie County) Mr. Booth – Interest	Contingent Approval

Dialysis Services – Establish/Construct

Exhibit #14

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	141210 B	Peninsula Continuum Services, LLC d/b/a Cassena Care Dialysis at Peninsula (Queens County) Dr. Bhat – Interest	Contingent Approval

2.	141280 E	Liverpool LD, LLC d/b/a FMS- Liverpool Dialysis Center (Onondaga County) Dr. Bhat – Interest Mr. Booth – Interest	Contingent Approval
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Residential Health Care Facilities – Establish/Construct

Exhibit #15

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	132128 B	DOJ Operations Associates, LLC d/b/a Triboro Center for Rehabilitation and Specialty Healthcare (Bronx County) Dr. Bhat - Recusal	Contingent Approval
2.	141213 E	Comprehensive at Williamsville, LLC d/b/a Comprehensive Rehabilitation and Nursing Center at Williamsville (Erie County) Mr. Booth - Interest	Contingent Approval

HOME HEALTH AGENCY LICENSURES

Exhibit #16

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
	2226L	Beech Development Corp. d/b/a ComForcare Senior Services – Rochester East (Monroe, Livingston, Ontario and Wayne Counties) Mr. Booth – Interest Ms. Hines - Interest	Contingent Approval
	2241L	New York Congregational Licensed Home Care Services Agency, Inc. (Bronx, Queens, Kings, Richmond, New York and Nassau Counties) Mr. Fassler – Interest	Contingent Approval

2316L	Rehekah Rehab Licensed Home Care Services Agency, Inc. (Bronx County) Mr. Fassler - Interest	Contingent Approval
2449L	The Gardens by Morningstar, LLC (Oswego, Onondaga and Cayuga Counties) Mr. Booth - Interest	Contingent Approval
2211L	UCSL, LLC d/b/a focus Home Care of Central New York (Herkimer, Oswego, Lewis, Oneida, Madison, and Onondaga Counties) Mr. Booth – Interest	Contingent Approval
2331 L	Shire Senior Living LLC (Monroe, Ontario, Schuyler, Yates, Chemung, Wayne, Seneca, Livingston, Genesee, and Steuben Counties) Ms. Hines - Interest	Contingent Approval

CATEGORY 3: Applications Recommended for Approval with the Following:

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

None

CATEGORY 4: Applications Recommended for Approval with the Following:

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

CON Applications

Ambulatory Surgery Centers – Establish/Construct

Exhibit #17

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	141290 B SOW Westside, LLC d/b/a Surgicare of Westside (New York County) Dr. Martin – Recusal Dr. Brown – Opposed at EPRC Dr. Torres – Opposed at EPRC	Contingent Approval

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

CON Applications

Ambulatory Surgery Centers – Establish/Construct

Exhibit #18

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	142061 E	East Side Endoscopy (New York County) Dr. Brown – Abstained at EPRC Mr. Levin – Opposed at EPRC	Contingent Approval

Dialysis Services – Establish/Construct

Exhibit #19

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	142058 E	Massena Center, LLC d/b/a Massena Dialysis Center (St. Lawrence County)	To be presented at the Special Establishment/Project Review Committee on 12/4/2/14 No Recommendation

IX. NEXT MEETING

January 29, 2015 – New York
February 12, 2015 – New York

X. ADJOURNMENT

State of New York
Public Health and Health Planning Council

Minutes
October 2, 2014

The meeting of the Public Health and Health Planning Council was held on Thursday, October 2, 2014 at the New York State Department of Health Offices at 90 Church Street, 4th Floor, Rooms 4A & 4B, NYC. Vice Chairman, Mr. Jeffrey Kraut presided.

COUNCIL MEMBERS PRESENT:

Dr. Howard Berliner	Mr. Thomas Holt
Dr. Jodumatt Bhat	Dr. Gary Kalkut
Mr. Christopher Booth	Mr. Jeffrey Kraut
Dr. Jo Ivey Boufford	Dr. Arthur Levin
Dr. Carla Boutin-Foster	Dr. Glenn Martin
Dr. Lawrence Brown	Dr. John Palmer
Ms. Kathleen Carver-Cheney	Mr. Peter Robinson
Mr. Michael Fassler	Dr. John Rugge
Dr. Ellen Grant	Dr. Theodore Strange
Dr. Angel Gutierrez	Dr. Anderson Torres
	Dr. Patsy Yang

DEPARTMENT OF HEALTH STAFF PRESENT:

Mr. Charles Abel	Ms. Lisa McMurdo
Dr. Guthrie Birkhead	Ms. Joan Cleary Miron
Mr. James Clancy	Ms. Elizabeth Misa - Albany via video
Ms. Barbara DelCogliano - Albany via video	Ms. Elizabeth Pirani
Mr. Christopher Delker - Albany via video	Ms. Lakia Rucker
Mr. James Dering	Ms. Linda Rush - Albany via video
Ms. Alejandra Diaz	Mr. Keith Servis
Ms. Celeste Johnson	Mr. Dan Sheppard - Albany via video
Ms. Yvonne Lavoie - Albany via video	Mr. Michael Stone - Albany via video
Ms. Colleen Leonard	Dr. Jill Taylor
Ms. Ruth Leslie - Albany via video	Ms. Lisa Ullman - Albany via video
Ms. Karen Madden	Dr. Howard Zucker

INTRODUCTION:

Mr. Kraut called the meeting to order and welcomed Commissioner Zucker along with Council members, meeting participants and observers. He then gave a brief overview of the Council meeting agenda.

APPROVAL OF THE MINUTES OF AUGUST 7, 2014:

Mr. Kraut asked for a motion to approve the August 7, 2014 Minutes of the Public Health and Health Planning Council meeting. Mr. Booth motioned for approval which was seconded by Dr. Gutierrez. The minutes were unanimously adopted. Please refer to page 9 of the attached transcript.

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES:

Mr. Kraut welcomed Dr. Zucker and introduced him to present the Department Activities.

Department Accreditation and Recognition

Dr. Zucker reported that the Department received national accreditation from the Public Health Accreditation Board, the national public health accrediting body which is funded jointly by the Centers for Disease Control and Prevention and the Robert Wood Johnson Foundation. Dr. Zucker stated that New York is the largest state to receive this accreditation out of the six total accredited states. Dr. Zucker stated that one of the new requirements was the development the Prevention Agenda 2013–2017, which is a blueprint for local communities and agencies to follow as they go about doing health assessments, identifying local priorities, and developing ways to improve the health of their communities. Commissioner Zucker thanked Dr. Birkhead and his entire team, Dr. Streck, former PHHPC Chairman, and Dr. Boufford, Chair of the Public Health Committee, for all of their tireless effort and participation in achieving this honor.

Dr. Zucker briefly mentioned that the Department also received the ASTHO America Health Ranking Champion Award which recognizes that DOH has used the United Health Foundation of America's Health Rankings to improve our state's population health and promote awareness of the report.

Enterovirus D68

Dr. Zucker advised that the Department has confirmed that children in New York have come down with Enterovirus D68 which is one of about 100 types of non-polio enteroviruses and also rare. He noted that it's most common in infants, children, and teenagers. The symptoms are runny nose, sneezing, coughing, and body aches, but can produce a febrile rash. Dr. Zucker stated that most infected people have no symptoms or only mild symptoms; however, it can be especially severe in children who have asthma or compromised immune systems. He stated that like many other viruses, there is no specific treatment or vaccination for enterovirus right now. The best prevention is good public health hygiene which includes washing your hands often with soap and water for 20 seconds; not touching your eyes, nose or mouth; avoid hugging, kissing, sharing cups or utensils with people who are sick; and frequently disinfecting touched surfaces, such as toys and doorknobs. Dr. Zucker explained that the Wadsworth Laboratory is now testing as many as 100 samples a day of suspected Enterovirus D68 and is the only lab in the state that can confirm the virus. The Department is working with CDC and partnering with local health departments and health care providers to monitor the spread of severe respiratory illnesses in New York, especially among patients with neurological illnesses and MRI abnormalities. Health care providers are being asked to report clusters or outbreaks of severe respiratory illness to local health departments or to the Department of Health. The Department is sharing all tracking data and testing results with the CDC to assist in monitoring the circulation of the virus nationally.

Ebola Preparation

Dr. Zucker informed that staff have been keeping a close eye on the Ebola outbreak in West Africa because New York is a hub for international travelers. The Department has been actively engaged in the planning efforts on how to care for a patient with Ebola in New York State. He stated that there is an Ebola Planning Working Group that meets regularly to discuss the various issues, including infection control, medical waste handling and disposal, emergency transport, and personal protective equipment (PPE). Several health advisories on these and other topics have been issued to both hospitals and primary care settings which were followed up with conference calls to go over the advisories. The work group has also worked with out-of-state hospitals to discuss what would happen if a severely ill Ebola patient needed to be referred to one of our hospitals and has engaged in that type of planning as well. This cooperative planning effort has enhanced the state's preparedness and helped develop statewide consistent protocols. He noted information about Ebola can be found on the DOH website.

Dr. Zucker reported that hospital preparedness efforts to deal with highly contagious infectious diseases is ongoing. The department has done a lot of preparing over the years for many different things, including the flu. These efforts of preparedness date back to 9/11 and include diseases such as small pox, SARS, and the Middle Eastern Respiratory Syndrome (MERS) which we have heard about as well in the news. He stated that these preparedness efforts also include issues for natural disasters, as well as man-made disasters. Hospitals and other health care providers run practice drills and training exercises so that if and when a real situation were to arise, the health system is ready and able to respond to whatever is put before it.

Flu Season

Dr. Zucker advised that with the start of October, the Department had officially started to conduct the surveillance for influenza which doesn't usually hit its peak until later in the year or early next year. The vaccines have already been made available and we're encouraging everyone to get immunized. All health care personnel who work in regulated settings such as hospitals, nursing homes, and other facilities, will be required to get vaccinated or wear a mask when flu is declared prevalent. He noted that more health care workers were immunized against the flu last year which he believes were a result of the Department's efforts.

New York State of Health Marketplace

Dr. Zucker reported that the Department just announced the health and dental insurance plans that it'll be offering to individuals and small businesses for 2015. A few are brand new to the marketplace, but many have expanded their offerings than what they had last year. All the plans will still be available in four easy-to-compare metal tiers: platinum, gold, silver, and bronze. He mentioned that each plan covers a minimum of eleven service types: doctor visits, hospital stays, emergency care, maternity and newborn care, mental health and substance abuse disorder services, prescription drugs, rehabilitative and habilitative services and devices, laboratory services, preventative and wellness services, chronic disease management, and pediatric dental and vision. Additionally, some plans will offer additional benefits, such as adult dental and vision.

Dr. Zucker stated that the influx of new customers, those previously uninsured, has helped drive down overall premium rates in this market significantly. The Department of Financial Services cut the proposed average premium rate by more than half in both the individual and small-group markets which has increased the health insurance requested for 2015. This will save policyholders an estimated one billion dollars next year. Some people may be eligible for financial assistance in the form of federal tax credits depending on income. Rates for individuals will continue to be more than 50 percent lower than before we established the exchange, even before adjusting for inflation or the federal financial assistance that's available to many consumers purchasing the insurance. He noted that the next enrollment period for individuals and families begins on November 15, 2014, and the coverage will start January 1, 2015. All year open enrollment is offered for Medicaid Child Health Plus and small businesses with fewer than 50 employees.

Dr. Zucker briefly mentioned that the Department recently launched a new version of its New York State Health Profiles, which can be found on the website: profiles.health.ny.gov. These profiles are part of a consumer-oriented portal that offers access to health care information in four areas: hospitals, nursing homes, home health agencies, and hospice programs. Users can view details about the quality of care and inspections conducted at health care facilities, and compare them to the national statewide averages. This transparent information empowers consumers and helps them make decisions about their health care. The initial launch included the fully redesigned hospital profile, enabling consumers to search for hospitals and clinics by county, region or service designations, such as trauma, perinatal care and stroke centers.

Delivery System Reform Incentive Payment Program

Dr. Zucker advised that DOH is continuing its work with the emerging PPSs throughout New York. The draft DSRIP project plan application was just released and applications are due December 16, 2014. The Department is soliciting public comment for the next 30 days and look forward to hearing what others have to say. Additional guidance documents and webinars will be released over the next several weeks and available at health.ny.gov/DSRIP, which also offers an incredible amount of information available there and answers almost every question that one could think up. Signing up for the list serve will allow interested parties to stay up to date on all the new developments and announcements.

The Health Innovation Challenge

Dr. Zucker stated that the Department will be announcing the winners of its Health Innovation Challenge in a couple of weeks. The Innovation Challenge builds on Governor Cuomo's Open Government Initiatives and provides a way for smart innovators to put the Department's extensive amounts of health data to good use. Coders and developers have created technological solutions that will make health data accessible and useful to consumers. These tools will enable consumers to assess and compare the quality, the cost, and the efficiency of health care services in New York State.

Dr. Zucker concluded his report. Mr. Kraut thanked Dr. Zucker and inquired if members had questions or comments. To see the complete report and comments from members, please see pages 10 to 35 of the attached transcript.

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

Next, Mr. Kraut introduced Mr. Sheppard to give the Report of Activities of the Office of Primary Care and Health Systems Management.

Appointments

Mr. Sheppard informed members that Mr. James Clancy was recently appointed Director of the Center for Health Care Financing, Planning, and Licensure. Mr. Charles Abel, who had served as Acting Director for several years, was appointed Deputy Director. Mr. Sheppard stated that Mr. Abel and Mr. Clancy are going to make a great team as DOH accelerates into DSRIP implementation, and the broader challenges and opportunities presented by a health care system that is increasingly being defined by outpatient, need-based care, and the regulatory reform and streamlining initiatives that are being pursued.

DSRIP

Mr. Sheppard advised that he and Ms. Lisa Ullman gave a presentation at the September 17, 2014, Health Planning Committee meeting. The presentation provided guidance on the implementation of the regulatory flexibility authority granted for DSRIP related projects which is posted on the DSRIP website. The website also provides an initial overview of the \$1.2-billion health care facility restructuring program that is state funds being rolled out in support of the federally funded core DSRIP program. The Facility Restructuring Program RFA will be out in November, concurrent with the official release date of the final application for DSRIP.

Health Facility Evacuation Center (HEC) Disaster Preparedness Training

Mr. Sheppard mentioned that on September 26, 2014, key executive staff recently attended a HEC Disaster Preparedness Training. The HEC coordinates the evacuation, shelter-in-place (as needed and approved), and repatriation of healthcare facilities during a regional multi-facility evacuation in New York City and surrounding region. This was a two-part tabletop exercise that brought together officials from the State Department of Health, the New York City Department of Health and Mental Hygiene, the New York City Office of Emergency Management, and emergency officials from Westchester, Suffolk, and Nassau Counties.

Mr. Sheppard stated that the overall exercise was a success because it provided an opportunity for staff at executive and other levels, multiple state, city, and county agencies to get to know each other and their roles in the context of a tabletop exercise. Additionally, it tested the processes, protocols, and computer systems themselves that would be used for a real HEC activation which identified both strengths and areas of improvement that will be addressed.

Mr. Sheppard concluded his report. Please see pages 36 to 39 of the attached transcript.

Report of the Office of Public Health Activities

Next, Mr. Kraut introduced Dr. Birkhead to give the Report of Activities of the Office of Public Health.

Dr. Birkhead noted that the Wadsworth Lab is the only lab in the Northeastern United States that's performing Enterovirus D68 testing, which highlights the excellence of the lab. He stated that the centennial of the Wadsworth Center Laboratory was approaching and hopes that PHHPC members received their invites to the celebration being held in Albany in April. Dr. Birkhead then turned the floor over to Dr. Jill Taylor, Director of the Wadsworth Laboratory.

Dr. Taylor advised that 2014 is the 100th anniversary of the founding of the Division of Laboratories and Research now known as Wadsworth Center. She stated that the original lab, which focused on antitoxins started in 1901 and was set up specifically for diphtheria. In 1906, it became the State Hygienic Laboratory, expanding its capabilities by producing antitoxins for tetanus, starting outbreak investigations, testing water, and a very extensive, in-depth examination of all the beer produced in New York State. In 1914, Dr. Herman Biggs, former Health Commissioner, established the Division of Laboratories and Research. The first director was Dr. Augustus Wadsworth, a young and well trained microbiologist. Dr. Wadsworth's tenure lasted 30 years and his vision of a public health focused on standardization, education, and investigation.

Dr. Taylor reported that Wadsworth now has four site in the Capital District and employs over 700 people. She noted that apart from CDC, Wadsworth is the largest state public health lab in the nation. One of its biggest programs, newborn screening, is the third largest in the country. The newborn screening program screens for 47 conditions; the last one added was adrenoleukodystrophy in January 2014. In-house genome sequencing of every baby is a future goal for the program which will decrease the number of false positives received from screened babies. A next generation screening confirmatory test for cystic fibrosis should be available next year which could reduce the number of screened positive babies from 800 or 900 down to less than 100.

Dr. Taylor stated that Wadsworth's public health work encompasses many things, such as test for SARS, MERS, Enterovirus D68; influenza surveillance and drug resistance testing; and look for environmental toxins, radiation spills, chemical spills. Wadsworth Center provides chemical threat detection, analysis, and radiation analysis in our BSL3 laboratories on many bioterrorist agents. The Center served as a backup lab to the CDC during the Anthrax attacks in 2001.

Dr. Taylor mentioned that the Center performs both basic and applied research looking to find cures for disease, while the research program supports the regulatory program. Staff have developed and validated between 200 and 300 diagnostic assays in the infectious disease area. Other successful research programs within the Center include a virology lab; a bio-monitoring program; brain mapping technologies and brain computer interface for methods of communication for stroke or ALS patients; a tissue/blood bank; and structural biology using high electron microscopy which looks at basic cell division events that lead to cancer. Research currently brings in approximately \$26 million a year, mostly from the federal government.

Dr. Taylor advised that Wadsworth offers a master's degree in laboratory science which was started in 2012 and the first graduation will take place in spring 2014. Additionally, the Center performs extramural funding for research in the following areas: spinal cord injury, breast cancer, and stem cell research.

Mr. Kraut thanked Dr. Taylor and inquired if members had questions or comments. To see the complete report and comments from members, please see pages 36 to 56 of the attached transcript.

Mr. Kraut introduced Dr. Ruge to give the Report on the Activities of the Health Planning Committee.

HEALTH POLICY

Report on the Activities of the Committee on Health Planning

Dr. Ruge began his report by advising that the Health Planning Committee met on September 17, 2014 and discussed DSRIP. He summarized the informational presentation given by Mr. Sheppard and Ms. Ullman which focused on waiver authority, how it may be extended by DOH and the other agencies, and potential considerations for the Council as those waivers become more permanent over time.

Dr. Ruge mentioned that the legislature took the opportunity to allow some waiver authority among multiple agencies including DOH, OASAS, OMH, and OPWDD. However, there are stipulations that patient safety must remain paramount and there must be evidence of protection of patient safety in the event of any given waiver. He briefly discussed some exceptions that are not subject to waivers, such as antitrust, which can be handled either through the issuance of certificates of public advantage or certification as an accountable care organization (ACO).

Dr. Ruge also highlighted three additional key points. First, the limits of waiver authority do not extend to the corporate practice of medicine, fraud and abuse statutes, or CMS rules. Secondly, with regard to information share, there can be no exemption from HIPPA requirements because this is a federal statute over the state. The Department is working on a standard and simple model consent reform to be used across the state. Lastly, all these waivers are only good for the life of the project. Only for the five years of DSRIP implying that we certainly are not going to be able to reverse everything in the works if indeed DSRIP proves to be successful in leveraging the changes we want. That is transforming the delivery system to improve the safety net, to have more robust primary care as a foundation and to leverage managed care payments to take us away from the balkanization of healthcare through fee-for-service modalities.

Dr. Ruge advised that the Committee is interested in developing criteria for the establishment of off-campus emergency departments where none currently now exist due to the lack of emergency care in the community. He requested that staff provide a model case and list of emergency department qualification criteria for future discussions of the Committee.

Dr. Ruge concluded his report. To review the complete discussion and comments, please see pages 56 through 64.

PUBLIC HEALTH SERVICES

Report on the Activities of the Committee on Public Health

Dr. Boufford briefly mentioned that the Public Health Committee met on March 27, 2014 and discussed maternal mortality in the State of New York. There was a panel on the issue of preconception care and primary care physicians as well as special OB/GYN's; they also discussed the barriers from both the fiscal and a policy perspective. The second area the Committee looked at was the early identification of the high risk pregnant woman and the availability of referral services and systems for her care.

Dr. Boufford reported that the Public Health Committee met again on September 10, 2014 and discussed pregnancy planning and effective use of contraception in various healthcare reform efforts. The highlights of the discussion were to add more explicitly the potential for assessment of future pregnancy plans and pregnancy prevention in the quality improvement plan; the integration of preconception and interconception care in the application on advanced primary care as one of the criteria and implementing a metric system to score performance; and health home care protocols. She noted that the Committee plans to analyze gaps in Medicaid eligibility and enrollment of women, identify and look at the communities who didn't select maternal mortality prevention as part of its goal, look at current health home enrollees that became pregnant and gave birth during the year, and methods to better train health home care managers on maternal health and family planning topics.

Dr. Boufford informed members that health disparities was also discussed. She stated that in response to the prevention agenda, relatively few communities identified interventions in metrics and many identified that as an area where technical assistance was needed. Additionally, many of the communities identified poverty and socio-economic status as a disparity, but didn't identify racial and ethnic disparities. Dr. Boufford stated that a work group on health disparities was created to address these issues which later met on September 23, 2014 at the New York Academy of Medicine. Attendees included Greater New York, HANYS, Dr. Boutin-Foster, Ms. Yvonne Graham from the Office of Minority Health, Ms. Sheryl Hilton from NYU, Ms. Cheryl Hunter Grant from the Perinatal Network, Ms. Lourdes Rodrigues from New York State Health Foundation, and Ms. Sylvia Pirani and her colleagues. The discussion highlighted disparities within the five prevention goals and what the attendees respective organizations are doing to try to tackle the issue of health disparities. Ms. Yvonne Graham and the Office of Minority Health and Health Disparities will be issuing a statutorily required report on health equity sometime in the near future which will provide a good platform for raising a set of action steps on this issue in regard to the prevention agenda. The workgroup hopes to have another meeting before the report comes out and have some recommendations.

Dr. Boufford noted that the Council has the opportunity over the next few months to look at the first year of the prevention agenda activities for the year, and crosswalk the prevention agenda plans with the community benefit investments. The community health improvement and community health building plans, along with the implementation of DSRIP which requires provider systems to select two of the prevention agenda objectives in their application, will create three data sets to use in aligning the activities of the hospitals with their local alliance, community alliances in support of the prevention agenda.

Dr. Boufford concluded her report. Mr. Kraut thanked her and inquired if members had questions or comments. To see the complete report and comments from members, please see pages 64 through 76 of the attached transcript.

REGULATION

Mr. Kraut introduced Dr. Gutierrez to give his Report of the Committee on Codes, Regulations and Legislation.

For Emergency Adoption

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

Dr. Gutierrez described Amendment of Subpart 7-2 of Title 10 NYCRR (Children's Camps) and motioned to adopt this regulation. Mr. Fassler seconded the motion. The adoption carried. Please see pages 77 through 85 of the attached transcript.

For Adoption

12-26 Amendment of Sections 600.3 and 710.5 of Title 10 NYCRR
(Amendment of Certificate of Need (CON) Applications)

Dr. Gutierrez described 12-26 Amendment of Sections 600.3 and 710.5 of Title 10 NYCRR (Amendment of Certificate of Need (CON) Applications) and motioned to adopt this regulation. Mr. Fassler seconded the motion. The adoption carried. Please see pages 85 through 88 of the attached transcript.

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

Dr. Gutierrez described 14-09 Amendment of Section 2.59 of Title 10 NYCRR (Prevention of Influenza Transmission by Healthcare and Residential Facility and Agency Personnel) and motioned to adopt this regulation. Dr. Grant seconded the motion. The adoption carried. Please see pages 88 through 85 of the attached transcript.

For Discussion

Sections of Title 10 NYCRR – Integrated Services Licensure

Dr. Gutierrez described a set of proposed regulations pertaining to the integration of primary care and behavioral healthcare outpatient services which would create a new part 404 of Title 10 NYCRR (Integrated Services Licensure) for discussion. Please see pages 92 to 99 of the attached transcript.

Dr. Gutierrez concluded his report. Mr. Kraut thanked him and introduced Mr. Robinson to give his Report of the Ad Hoc Committee on Freestanding Ambulatory Surgery Centers and Charity Care.

AD HOC COMMITTEE ON FREESTANDING AMBULATORY SURGERY CENTERS AND CHARITY CARE

Report on the Activities of the Ad Hoc Committee on Freestanding Ambulatory Surgery Centers and Charity Care

Mr. Robinson reported that the Committee identified issues with the application of sliding scales and the management of bad debt, both of which would be researched and analyzed at future meetings. Additionally, the review of SPARCS data revealed that self-pay became a category that was much more significant than charity care. He noted that self-pay is not people who fully pay for services but rather discounted care and potentially charity care in that grouping as well.

Mr. Robinson advised that the Committee heard several comments from the public with regard to access, specifically meeting charity care obligations by doing specialty screenings and procedures. He noted that other comments called for some kind of mandatory contracting by freestanding ambulatory surgery centers with Medicaid managed care plans which provided information pertaining to payer relationships and provider referrals.

Mr. Robinson mentioned that DSRIP will be looked at due to the broader new project which is designed to address the needs of the indigent care population. He noted that the Committee received plenty of good feedback for developing recommendations in the future and thanked Mr. Chris Delker and staff for the work that they had done.

Mr. Robinson concluded his report. Mr. Kraut thanked him and inquired if members had questions or comments. To see the complete report and comments from members, please see pages 99 through 101 of the attached transcript.

Mr. Kraut then returned the floor to Mr. Robinson to give his Report of the Committee on Establishment and Project Review.

PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

NO APPLICATIONS

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Cardiac Services– Construction

Exhibit #3

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 142005 C	Strong Memorial Hospital (Genesee County) Ms. Hines – Recusal (not present) Mr. Robinson – Recusal Mr. Booth – Interest	Contingent Approval

Mr. Kraut began the report and introduced application 142005 and noted for the record the Mr. Robinson is recusing and left the meeting room. He mentioned that Ms. Hines, although absent, had also declared a recusal and that Mr. Booth had declared an interest. Mr. Kraut motioned to approve the application. Dr. Gutierrez seconded the motion. The motion to approve carried with Mr. Robinson’s recusal. Mr. Robinson returned to the meeting room. Please see pages 102 and 103 of the attached transcript.

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Diagnostic and Treatment Centers – Establish/Construct

Exhibit #4

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	141060 E	Phoenix House Foundation, Inc. (New York County)	Contingent Approval
2.	141258 E	Harlem East Life Plan (New York County)	Contingent Approval

Residential Health Care Facilities – Establish/Construct

Exhibit #5

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	141044 E	Saratoga Center for Care, LLC d/b/a Saratoga Center for Rehab and Skilled Nursing Care (Saratoga County)	Contingent Approval
2.	141235 E	Safire Rehabilitation of Northtowns, LLC (Erie County) Mr. Booth – Interest	Contingent Approval
3.	141237 E	Safire Rehabilitation of Southtowns, LLC (Erie County) Mr. Booth - Interest	Contingent Approval
4.	142050 E	BTRNC, LLC d/b/a Beechtree Center for Rehabilitation and Nursing (Tompkins County) Mr. Booth - Interest	Contingent Approval

Certified Home Health Agency – Establish/Construct

Exhibit #6

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	141082 E	Eddy Visiting Nurse Association (Rensselaer County)	Contingent Approval

Certificate of Amendment of the Certificate of Incorporation

Exhibit #7

Applicant

The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc.

E.P.R.C. Recommendation

Approval

New York Foundling Hospital Center for Pediatrics, Medical and Rehabilitative Care, Inc.

Approval

Certificate of Merger

Exhibit #8

Applicant

Arnot Health Foundation, Inc.
Mr. Booth - Interest

E.P.R.C. Recommendation

Approval

Certificate of Incorporation

Exhibit #9

Applicant

The St. Joseph Hospital Foundation

E.P.R.C. Recommendation

Approval

HOME HEALTH AGENCY LICENSURES

Exhibit #10

Number

Applicant/Facility

E.P.R.C. Recommendation

2148 L

Apex Licensed Home Care Agency, LLC
(Bronx, Queens, Kings, Richmond, New York, Westchester Counties)

Contingent Approval

2000 L

Arvut Home Care, Inc.
(Bronx, Queens, Kings, Nassau, New York, and Richmond Counties)

Contingent Approval

2147 L

Attentive Licensed Home Care Agency, LLC
(Bronx, Queens, Kings, Richmond, New York and Nassau Counties)

Contingent Approval

2136 L

Beautiful Day Home Care, Inc.
(Cayuga, Tompkins, Onondaga, Cortland, Oswego, and Seneca Counties)
Mr. Booth – Interest

Contingent Approval

2134 L	Best Professional Home Care Agency, Inc. (Bronx, Kings, Queens, New York, and Richmond Counties)	Contingent Approval
2371 L	CNY Helpers, LLC d/b/a Home Helpers & Direct Link #58740 (Oneida, Madison, Onondaga and Oswego Counties) Mr. Booth - Interest	Contingent Approval
2123 L	EOM Service, Inc. d/b/a BrightStar of South Brooklyn (Kings, Bronx, Queens, Richmond, and New York Counties)	Contingent Approval
1980 L	Clear Waters Home Care Services, LLC (Bronx, Orange, and Westchester Counties)	Contingent Approval
2038 L	Gentle Hands Agency, Inc. (Bronx, New York, Queens, Kings and Richmond Counties)	Contingent Approval
2104 L	Joyful NY, LLC d/b/a Joyful Home Care Services (Suffolk, Nassau and Queens Counties)	Contingent Approval
2066 L	Reliance Home Care, Inc. (Kings, Bronx, Queens, Richmond, New York and Nassau Counties)	Contingent Approval
1614 L	Taconic Innovations, Inc. (Westchester and Dutchess Counties)	Contingent Approval
1787 L	The Terrance at Park Place, Inc. d/b/a The Terrance at Park Place Lansing (Tompkins County) Mr. Booth - Interest	Contingent Approval

2223 L	Alliance Nursing Staffing of New York, Inc. (Nassau, Putnam, Dutchess, New York, Rockland, Westchester, Suffolk, Sullivan and Orange Counties)	Contingent Approval
2294 L	Astra Home Care, Inc. d/b/a True Care (New York, Bronx, Kings, Richmond, Queens, and Westchester Counties)	Contingent Approval
2267 L	Bridgewood, LLC d/b/a New Fordham Arms Assisted Living LHCSA (Queens, Kings, New York, Bronx, and Richmond Counties)	Contingent Approval
2303 A	Baywood, LLC d/b/a Plan and Partner Home Healthcare (Richmond County)	Contingent Approval
2303 L	Baywood, LLC d/b/a Plan and Partner Home Healthcare (Queens, Kings, New York, and Richmond Counties)	Contingent Approval
2105 L	Healthy and Long Life Care, Inc. (New York, Bronx, Kings, Richmond, Queens and Nassau Counties)	Contingent Approval
1935 L	Supreme Homecare Agency of NY, Inc. (New York, Bronx, Kings, Richmond, Queens and Westchester Counties)	Contingent Approval
2212 L	Ameritech Homecare Solutions, LLC d/b/a PC Aide Plus (Bronx, Queens, Kings, Richmond, New York and Westchester Counties)	Contingent Approval
2496 L	A & T Healthcare, LLC (Dutchess, Rockland, Nassau, Suffolk, Orange, Westchester, Putnam, Bronx, Sullivan, Ulster, Kings, New York, Richmond, Queens, and Greene Counties)	Contingent Approval

2219 L	Healthwood Assisted Living at Williamsville, Inc. (Erie County)	Contingent Approval
2231 L	Intergen Health, LLC (Bronx, Queens, Kings, Nassau, New York, and Richmond Counties)	Contingent Approval
2309 L	Two K Management Corp. d/b/a Family Aides Home Care (Nassau, Suffolk, Queens, Westchester, Bronx, Kings, New York, Queens, Richmond, and Suffolk Counties)	Contingent Approval
2423 L	Senior Care Connection, Inc. d/b/a Eddy Senior Care (See Exhibit for Counties)	Contingent Approval
2424 L	Eddy Licensed Home Care Agency, Inc. (See Exhibit for Counties)	Contingent Approval

Mr. Robinson next grouped several applications listed above contained in Category 1. He noted that Mr. Booth had declared an interest for applications 141235, 141237, 142050, 2136, 2371, 1787, 2219, as well as the Certificate of Merger for Arnot Health Foundation Inc. and the Certificate of Incorporation for St. Joseph Hospital Foundation. Mr. Robinson motioned for approval and Dr. Gutierrez seconded the motion. The motion to approve carried. Please see pages 102 through 106 of the attached transcript.

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services – Establish/Construct

Exhibit #11

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	141248 E	White Plains Hospital Center (Westchester County) Mr. Fassler – Interest	Contingent Approval

Mr. Robinson introduced application 141248 and noted for the record that Mr. Fassler declared an interest. Mr. Robinson motioned for approval. Dr. Torres seconded the motion. The motion carried. Please see page 112 through 115 of the attached transcript.

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|-------------|--|---------------------|
| 2. 142009 E | RU System
(Ontario County)
Ms. Hines – Recusal
Mr. Robinson – Recusal
Mr. Booth – Interest | Contingent Approval |
| 3. 142041 E | RU System
(Genesee County)
Ms. Hines – Recusal
Mr. Robinson - Recusal
Mr. Booth – Interest | Contingent Approval |

Mr. Kraut called applications 142009 and 142041 and noted for the record that Mr. Robinson is recusing and had left the meeting room. Mr. Kraut also noted that Ms. Hines, although absent, had also declared a recusal and Mr. Booth had declared an interest. Mr. Kraut then motioned to approve the application. Dr. Gutierrez seconded the motion. The motion to approve carried with Mr. Robinson’s recusal. Mr. Robinson returned to the meeting room. Please see page 116 of the attached transcript.

Diagnostic and Treatment Center – Establish/Construct

Exhibit #12

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 142024 E	Charles Evans Health Center, Inc. (Nassau County) Mr. Kraut – Interest	Contingent Approval

Mr. Robinson introduced application 142024 and noted for the record that Mr. Kraut declared an interest. Mr. Robinson motioned to approve and Dr. Gutierrez seconded the motion. The motion to approve carried. Please see page 117 of the attached transcript.

2. 142031 B	LISH, Inc. d/b/a LISH at Central Islip (Suffolk County) Mr. Kraut – Interest	Contingent Approval
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Mr. Robinson introduced application 142031 and noted for the record that Mr. Kraut declared an interest. Mr. Robinson motioned to approve and Dr. Gutierrez seconded the motion. The motion to approve carried. Please see page 117 of the attached transcript.

Dialysis Services – Establish/Construct**Exhibit #13**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	141221 E	True North DC, LLC d/b/a Port Washington Dialysis Center (Nassau County) Dr. Bhat – Interest Mr. Kraut - Recusal	Contingent Approval

Mr. Robinson introduced application 141221 and noted for the record that Mr. Kraut was recusing and had left the room. Mr. Robinson also noted that Dr. Bhat had declared an interest. Mr. Fassler motioned to approve and Dr. Gutierrez seconded the motion. The motion to approve carried. Mr. Kraut returned to the room. Please see pages 118 to 119 of the attached transcript.

2.	142015 E	West Nassau Dialysis Center, Inc. (Nassau County) Dr. Bhat – Recusal	Contingent Approval
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Mr. Robinson introduced application 141221 and noted for the record that Dr. Bhat was recusing and had left the room. Mr. Robinson motioned to approve and Dr. Gutierrez seconded the motion. The motion to approve carried. Dr. Bhat returned to the room. Please see page 119 to 120 of the attached transcript.

HOME HEALTH AGENCY LICENSURES**Exhibit #14**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
	2150 L	Professional Assistance for Seniors, Inc. (Monroe, Livingston, Wayne, Genesee, and Ontario Counties) Ms. Hines – Interest (not present) Mr. Robinson - Interest	Contingent Approval
	2220 L	Healthwood Assisted Living at Penfield, Inc. (Monroe County) Ms. Hines – Interest (not present) Mr. Robinson - Interest	Contingent Approval

Mr. Robinson introduced applications 2150 and 2220 and noted that he, Mr. Booth, and Ms. Hines had declared interests on both applications. Mr. Robinson then motioned for approval, Dr. Gutierrez seconded the motion. The motion to approve carried. Please see pages 120 to 121 of the transcript.

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

CON Applications

Ambulatory Surgery Centers – Establish/Construct

Exhibit #15

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	141201 E	New York Endoscopy Center (Westchester County)	Contingent Approval

Mr. Robinson introduced application 141201 and motioned for approval. Dr. Gutierrez seconded the motion. The motion to approve carried. Please see pages 121 to 122 of the transcript.

2.	141300 B	Greenwich Village Ambulatory Surgery Center, LLC (New York County) Mr. Kraut – Recusal	Contingent Approval
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Mr. Booth introduced application 141300 and noted that Mr. Kraut was recusing and had left the room. Mr. Booth then motioned for approval. Dr. Gutierrez seconded the motion. The motion to approve carried. Please see pages 122 to 123 of the transcript.

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	132356 E	KPRH IV Operations, LLC (Queens County) Mr. Kraut - Recusal	Contingent Approval

Mr. Booth introduced application 132356 and noted that Mr. Kraut was recusing and had left the room. Mr. Booth then motioned for approval. Dr. Gutierrez seconded the motion. The motion to approve carried. Mr. Kraut returned to the room. Please see pages 123 to 124 of the transcript.

2.	141215 E	Dunkirk Operating, LLC d/b/a Chautauqua Nursing and Rehabilitation Center (Chautauqua County) Mr. Booth – Interest Mr. Holt - Interest	To be presented at the Special Establishment/Project Review Committee on 10/2/14 No Recommendation
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Mr. Booth introduced application 141215 and motioned for approval. Dr. Gutierrez seconded the motion. The motion to approve carried. Please see page 124 of the transcript.

Mr. Robinson concluded the report. Mr. Kraut thanked both Mr. Booth and Robinson.

ADJOURNMENT:

Mr. Kraut hearing no further business of the Council adjourned the public portion of the meeting.

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
OCTOBER 2, 2014
MEETING TRANSCRIPT

JEFF KRAUT: Good morning. I am Jeff Kraut. I am Vice Chair of the Public Health and Health Planning Council and I have the privilege to call to order the October 2nd meeting of the Public Health and Health Planning Council. I welcome Dr. Zucker, our members, participants, and observers. I want to remind the council members, staff, and the audience that this meeting is subject to the Open Meeting Law and is broadcast over the internet. The webcasts are accessible at the Department of Health's website, [http dot, you know, NewYorkHealth.gov](http://www.ny.gov). The on-demand webcast, it's you know—I got to see if I can make you. The on-demand webcasts are going to be available no later than seven days after the meeting for a minimum of thirty days, and then a copy will be retained in the Department for up to four months. There are some suggestion of ground rules to make this a more successful meeting. Because it's synchronized captioning, it's important that people don't talk over each other—captioning cannot be done correctly when two people speak at the same time. The first time you speak, please state your name and briefly identify yourself as a councilmember or a DOH staff. This will be of assistance to broadcasting, the company that is recording the meeting. And please note, and very importantly, that these

microphones are hot, meaning sometimes they pick up every sound. Try to not—avoid rustling of papers and also be sensitive about personal conversations or particularly pithy remarks as the microphones will pick up this chatter and any expressions of amazement that occurs here will kind of be recorded forever. As a reminder for our audience, there is a form that needs to fill out before you enter the meeting room which records your attendance. It's required by the Joint Commission on Public Ethics in accordance with the Executive Law, section 166. This form is also posted on the Department of Health's website under NewYorkHealth.gov, under the Certificate of Need. So in the future you could fill out the forms prior to your attendance at the council meetings. Thank you for your cooperation and we appreciate it. Today's meeting we're going to initially hear from Dr. Zucker, who will provide a report on the Department's activities. Is... Mr. Shepherd is not here—Mr. Shepherd will give his update from Albany. Mr. Helgerson is unable to be with him, since he is in the midst of the DSRIP application that was released 24 hours ago and he'll probably have his own cable channel, eventually, DSRIP 24-hours a day. Dr. Birkhead will give a report on the activities on the Office of Public Health, followed by Dr. Boufford who will give a report on the Committee on Public Health, and Dr. Rugge will give his Committee on Health Planning. Dr. Gutierrez will present regulations for our

review, and then the—Mr. Robinson will give the Ad Hoc Committee on Freestanding Ambulatory Surgery and Charity Care. And lastly, we'll conduct the project review and recommendations and establishment actions. Mr. Robinson will be reporting on a number of applications that were reviewed by the Committee at its previous meeting, and then Mr. Booth on this morning's special meeting. I want to just have a member discussion about conflicts for the Public Health and Health Planning Council members. Members of the Council and most of our guests who regularly attend the meetings are now familiar with the reorganization of the agenda by topics or categories, which captures the roles and responsibilities of the Council. The reorganization includes the batching of Certificate of Need applications—and members if you haven't done so, please do so before we get to that point—review the batched applications and you have thought about if you would like a project moved to a different category. This is particularly important if you had not declared an interest or recused yourself, but need to do so now because of something that subsequently occurred in the middle, in the interim, or you learned new things. So just, you have to let Lisa or Colleen know so we can move it to the right category when the time comes. You have the right to do that unilaterally without explanation. And so please do so. Our next

agenda item is the adoption of the minutes and I have a motion for the adoption of the August 7, 2014 minutes.

CHRIS BOOTH: So moved.

JEFF KRAUT: I have a motion by Mr. Booth, a second by Dr. Gutierrez, and the minutes are adopted. I would now like to turn over the microphone to Dr. Zucker, who is going to update the Council about the Department's activities since our last meeting.

HOWARD ZUCKER: Thank you. Thank you very much and good morning. It's a pleasure to be here. Let me start with some good news. The Department of Health has recently received national accreditation from the Public Health Accreditation Board. The Public Health Accreditation Board was established in 2007; it's the national public health accrediting body and it's funded jointly by the Centers for Disease Control and Prevention and the Robert Wood Johnson Foundation. And this is a big feather in our cap, because it confirms what we've already all known all along—that our Department is doing an excellent job at protecting and promoting the health of our state. I personally would like to thank Dr. Birkhead and his entire team who worked tirelessly in preparing for this. The accreditation from the

Public Health Accreditation Board means that we are meeting the national standards for public health agencies—the standards that are defined—all the expectations of all of those who are in the public health departments across the country it seeks to... an accreditation of this nature is quite complimentary to us. There are only two large states; we're one of the two large states that have been accredited so far. It demonstrates our effectiveness as we pursue our goal of improving the health of all New Yorkers. So we did receive a plaque for this, so I thought that Dr. Birkhead and I can unveil this plaque. Ta-da!

Yea! [applause]

So we will have that in our offices up in Albany. New York, as I was mentioning, is one of the two large states that have been approved for this; there are six states so far that have been accredited. Actually, we're the large—are we the largest state? We're the largest state. Yeah, we're the largest state that has been approved so far. Excellent. So we at DOH know it was an incredible, thank you. We at the Department of Health know that this has been a large task for us to do and we're proud of all the work of the team that had been doing this. One of the new requirements was the developments of the state health improvement plan, which we have called, obviously, the

Prevention Agenda 2013-2017. And the Prevention Agenda is a blueprint for local communities and agencies to follow as they go about doing health assessments, identifying local priorities, and developing ways to improve the health of their communities. Congratulations to all of the team at DOH who have worked on making this happen and I would like to especially thank the members of PHHPC who played a key role in making this happen, cause I do know that as we move forward there were many people from the PHHPC board who were involved in speaking to the accreditation committee and they were pleased about all the work that you have done, as well. The members also participated, as I mentioned the two-day accreditation process, and a special presentation was made by the former chairman, Bill Streck, and also Dr. Boufford, for all of your work as the Chair of the Public Health Committee. So, I thank everyone for this. In other big news, the Department of Health also received ASTHO America Health Ranking Champion Award, so we are doing well. We have had a good month. The award recognizes that DOH has used the United Health Foundation of America's Health Rankings to improve our state's population health and promote awareness of the report—and that is something which we all know we have worked very hard to achieve. So, we truly have achieved two great things in the course of the last two months, month-and-a-half. Now to some of the challenges that we do face. So the first one, I will get to

Ebola in a second, is the Enterovirus D68. So, that's something which you have heard a lot about in the news. We have confirmed that children in New York have come down with Enterovirus D68—it causes respiratory illnesses. It is the most common in infants, children, and teenagers. The symptoms are runny nose, sneezing, coughing, and body aches, but 68R, or Enterovirus 68 can also cause a febrile rash, unlike some of the other illnesses that have those symptoms that I mentioned before. Most infected people have no symptoms or only mild symptoms, but it can be especially severe in children, particularly children who have asthma or compromised immune systems, and we have heard these reports in the news. Enterovirus 68 is one of about 100 types of enteroviruses and it's a rare one, although enteroviruses in general are very common. They are estimated to cause about 10-15 million infections in the United States every year. And because it's a virus, and like many other viruses, there is no specific treatment or vaccination for enterovirus right now; so our best bet is prevention and vigilance about good public health, hygiene. These are the same tactics we have used for other respiratory infections and as we wait for flu to ramp up, this is exactly what we say with flu as well. So wash your hands often with soap and water for 20 seconds. Don't touch your eyes, your nose, your mouth. And avoid hugging, kissing, sharing cups or utensils with people who are sick at that time. And disinfect

frequently touched surfaces, such as toys and doorknobs. Obviously, as we said, this is an infection that obviously affects kids, and there are lots of toys that kids have, so we need to be careful about that, as well. Wadsworth is now testing as many as 100 samples a day of suspected Enterovirus 68. In fact, Wadsworth is the only lab in the state that can confirm EV68. DOH is working with CDC and partnering with local health departments and health care providers to monitor the spread of severe respiratory illnesses in New York. Unlike Colorado, New York has not received any reports of pediatric patients hospitalized with acute neurological illnesses, although we have been tracking this, there apparently is this neurological illness of undefined IDIOLOGY and there are some MRI abnormalities that have been seen. We're also asking health care providers to report clusters or outbreaks of severe respiratory illness to local health departments or to the Department of Health. And the Department is sharing its testing results with the CDC to assist in monitoring the circulation of the virus nationally. So that's Enterovirus 68. And then there is the bigger issue, which we have all heard about, which is that of Ebola. So we're keeping a close eye on the Ebola outbreak in West Africa. We are well aware that New York is a hub for international travelers with our airports and just in general we are a center for the world to come to visit and that New York

may eventually have a patient with the disease. To help us prepare, the Department of Health has been actively engaged in the planning efforts on how to care for a patient with Ebola in New York State. We have an Ebola Planning Working Group that meets regularly to discuss the various issues, including infection control, medical waste handling and disposal, emergency transport, and personal protective equipment, PPEs. We have issued a number of health advisories on these and other topics to New York hospitals and primary care settings. The Department has held conference calls with the hospitals, with primary care doctors to go over the advisories that we have put out. The work group has also worked with CHURCH STATE care hospitals throughout the state to discuss what would happen if a patient who is severely ill with Ebola need to be referred to one of our hospitals here. And the hospitals have engaged in their own planning, as well. So such cooperative planning efforts have enhanced our preparedness and have helped us to develop consistent protocols statewide. The planning is continuing in hospital preparedness efforts to deal with highly contagious infectious diseases. We have done a lot of preparing over the years for many different things, including flu. These efforts of preparedness date back to 9/11 and include diseases such as small pox, SARS, and more recently, MERS, the Middle Eastern Respiratory Syndrome, which we have heard about as well

in the news. Those preparedness efforts also include issues for natural disasters, as well as man-made disasters. Hospitals and other health care providers run practice drills and training exercise so that if and when a real situation were to arise, the health system is ready, able to respond to whatever is put before it. For information about Ebola, we have, you can visit the DOH website, which has a section on the disease and we'd be happy to provide any additional information that you may have specific to your concerns that may arise. Flu season. So, it seems like we're just really with the infectious diseases. With the start of October, we have officially started to conduct the surveillance for influenza. Flu doesn't usually, as you know, get going in a big way until later in the year, or sometime early next year. The vaccines are already made available. We're encouraging everyone to get immunized. Like last year, the health care personnel worked in regulated settings such as hospitals, nursing homes, at other facilities, will be required to get vaccinated or wear a mask when flu is declared prevalent. And this is something we did last year and I think it really had a major impact in getting people to get vaccinated. In general, more health care workers were immunized against the flu last year and I think that was related to what we put forth. So hopefully that trend will continue, as well. Leaving the infectious disease area for now, we have the New York State of

Health Marketplace. So in addition, we have some good news about New York State Health, or official health plan marketplace. Last week we announced the insurance that we'll be offering—health and dental plans to individuals and small businesses for 2015. A few are brand new to the marketplace, but many have expanded their offerings THAN what they had last year. And we are also offering many stand-alone dental plans. All the plans will still be available in four easy-to-compare metal tiers: there's platinum, there's gold, there's silver, and there's bronze. These plans cover many things. They cover the doctor visits, hospital stays, emergency care, maternity and newborn care, mental health and substance abuse disorder service, prescription drugs, rehabilitative and habilitative services and devices, laboratory services, preventative and wellness services, chronic disease management, and pediatric dental and vision. I think it's eleven. Eleven or twelve. Eleven. Some plans will offer additional benefits, such as adult dental and vision, as well. The influx of new, previously uninsured customers has helped drive down overall premium rates in this market significantly. That's excellent. In both the individual and small-group markets, the Department of Financial Services cut by more than half the average proposed premium rate, increased the health insurance requested for 2015. This actual saved policyholders and estimated one billion dollars next year. And depending on

income, some people may be eligible for financial assistance in the form of federal tax credits, as well. Rates for individuals will continue to be more than 50 percent lower than before we established the exchange, even for adjusting for inflation or federal financial assistance that's available to many consumers purchasing the insurance. We'll have more details about the offerings this coming month, as well. And the next enrollment period for individuals and families begins in November, November 15, 2014, and the coverage will start January 1, 2015. The enrollment in Medicaid Child Health Plus is open all year. Small businesses with fewer than 50 employees can enroll any time during the year, as well. Regarding the revamped health profiles. The Department recently launched a new version of its New York State Health Profiles, which you can get at our website, profiles.health.ny.gov. These profiles are part of a consumer-oriented portal that offers access to health care information in four areas—in the areas of hospitals, nursing homes, home health agencies, and hospice programs. And, obviously, physicians. They are among the most visited areas of the Department's public website and users can view details about the quality of care, inspections at health care facilities, and compare them to the national statewide averages, and I think this is a transparency which is very helpful for all those who live in the State of New York. The information empowers

consumers and helps them make decisions about their health care and that is critical to all that we want to do in the Department. The initial launch includes the fully redesigned hospital profile, enabling consumers to search for hospitals and clinics by county, by region, service designation (for example, trauma, perinatal care, stroke centers, and much more). And we'll be updating other sections in the near future, as well. On the issue of DSRIP, which is sort of the umbrella of many things that we deal with these days, we're continuing to implement the DSRIP in this year, essentially year zero. DOH is working with the emerging PPSs throughout New York and on Monday the draft DSRIP project plan application was released. The Department is soliciting public comment for the next 30 days, so we look forward to hearing what others have to say. And the applications will be due December 16th. Additional guidance documents and webinars will be released over the next several weeks. Jason has been working feverishly on this and his whole team. A wealth of information is available. The materials that I mentioned are available at health.ny.gov/DSRIP and you can get an incredible amount of information available there and answers pretty much every question that one could think up. Signing up for the list serve will allow interested parties to stay up to date on all the new developments that we have. The instructions for the DSRIP, information is available on the website, and anything

else, as I mentioned, is also available on the website, as well. The Health Innovation Challenge. Finally we will be announcing the winners of our Health Innovation Challenge in a couple of weeks. The Innovation Challenge builds on Governor Cuomo's Open Government Initiatives and provides a way for smart innovators to put the Department's extensive amounts of health data to good use—and we do have a lot of data, as you know. Coders and developers have created technological solutions that will make health data accessible and useful to consumers. These tools will enable consumers to assess and compare the quality, the cost, and the efficiency of health care services in our state. And this bodes well for the future of health for New York and we are pleased that we are moving forward in this area. I hope that I have covered most of the big topics that have happened since the last meeting. I know the Department, I can tell you the Department is doing a lot of work in a lot of different areas and I know that there will be questions that are brought up and I am always available to answer them and I thank you for the opportunity to speak with you today. Thank you.

JEFF KRAUT: Thank you, Commissioner. And before I open it up for questions, you heard in the accreditation, Drs. Boufford and Dr. Streck kind of spearheaded our participation and Dr. Streck, this was kind of his last official act as Chair

and he just wanted me to relay to the Commissioner and to all the staff that he just feels an enormous sense of pride to have participated because, you know, this is the kind of acknowledgement and recognition of the commitment, the compassion, the competency, and the quality of the health professionals who staff the Department of Health and who are entrusted with both protecting and advancing the health of New Yorkers and we should take great pride in their achievement and he just wanted me to relay that and thank you for his last act to be participating in such an important recognition for the Department. So, with that, I'd like to open it up for questions for the Commissioner from the staff. Dr. Martin. Council members. Sorry.

GLENN MARTIN: Firstly, congratulations on the accreditation and the other honors. It's good to have a nice, to be on a good roll. I just want to ask a little about the Ebola situation, only as I understand the facts, which you know, whatever the, you know, the press tells me, is that the hospital down there asked the appropriate questions, but then proceeded, for some reason, not necessarily to communicate it properly or react properly, diagnosed him with something, gave him an antibiotic—which strikes me as kind of bizarre anyway—and sent him home. What, I guess, why won't that happen in New York City

or New York State? I mean, I know, I mean, look, I have been inundated with my own hospital, I feel like I am now a psychiatrist with expertise in diagnosing Ebola and the like.

JEFF KRAUT: That's why it won't happen.

HOWARD ZUCKER: Right. It's likely it's not going to happen in my ER.

GLENN MARTIN: We are also doing, in addition to drills and education and the like, are we doing spot checks? Are we doing things like that? What are we going to do to make sure to minimize the risk?

HOWARD ZUCKER: Great question, and it's in my folder here and it's a note, right here, it says to give the both HANYS and Greater New York a phone call with some of these questions and it's actually one of the things, and I was looking at the time to be sure, around 11 o'clock, also to speak with the City Health Commissioner which is at 11 o'clock today, as well, about some of these issues. We, I think when there's increased amount of vigilance and things are in the news will heighten people's ability to ask the questions that need to be asked. And we, I know we had a meeting the other day, our INSTANT management team to address this from the Department, so let me look at this from

two sides, one is from the Department and then from the hospitals. So, from the Department side, we have looked at all the different things we need to do to be prepared. What about masks, what supplies do we have? What do we have and how would we respond? So we will continue to do that and we started that way back, but the other day we had a significant meeting within the Department to address that. And we've gone through these exercises before; we have gone through them in real life before, as well. So that's from the Department side. From the hospital side, we have reached out to the hospitals and addressed, asked them to go through their preparedness plans, as well. We've asked them to look at what possible gaps there are in the system there. We provided them with all the information and we've also addressed this with primary care providers. And also, one of the other issues which we wanted to also tackle is the issue of those who transport patients, because as the patient we mentioned, the first time he came in, he walked in; the second time, an ambulance brought him in, so there is that component, as well. I am also going to ask the hospital associations to see whether, about the issue of spot checks. And we were talking about this the other day—is there a way to tackle this? Is there a way to sort of test the system to see if there are problems in there, so that is one of the phone calls that I am going to bring up today. Just to see how we make sure that we don't have

someone who comes through and information isn't provided. And as we were talking about the other day, it really is sometimes you have to ask the question; someone may not volunteer the information, and so if you don't ask, then you may not find out that they are AROUND. But I think that because people are more vigilant about this. And hopefully if someone comes through with Ebola, we will quickly, and I am confident we will quickly identify them and catch them in time.

JEFF KRAUT: Any other questions? Yes. Doctor.

JOHN PALMER: Dr. Zucker, I am glad you are so confident. The projections are a million infections in Africa by January. New York City is a hub of travel, not only from around the world, but from Africa. We have residents who come back and forth from Africa. In Harlem, there are a number of residents who come back and forth from Senegal. So, the idea that it may happen—to me, it's more of a certainty. It will happen if things continue at this level. So, while there are measures being taken—you mentioned drills, was that one of the things you mentioned?

HOWARD ZUCKER: Right.

JOHN PALMER: OK. And case studies on errors and mistakes are available, I guess. Is there any communication directly from the people who provide care at the hospitals with folks who have been in the situation to see what they can learn from there?

HOWARD ZUCKER: Let me see if I have this correct. From the hospital, the physicians and health nurses, the others who are providing care.

JOHN PALMER: For instance, in-physicians who are actually providing care, coming back and forth, are they coming into our settings and saying, "Look, this is what you guys need to be aware of"? These are the issues. These may be the errors that happen. People who have actually had the experience, but there are enough of them now who have had the experience. They would seem to be a good source of information.

HOWARD ZUCKER: Right. We can get the feedback from them and find out what they are doing, as well. You are talking about from other parts of the state, as well. So the CDC did provide some of this information to all the departments in the webinars and in the past and we all should be able to contact them directly, as well. And that was part of what I was saying in some of these drills to have some of the people who are doing

some of these drills talk to those who have been exposed to the patients. But there are also those individuals who are working with patients overseas and that is something which we can also get some information on. I personally have called, because I used to wear a hat at the World Health Organization, so I called my colleagues over there to find out some of information about what is happening and what they have seen, but we can get that information, as well. Yes, did you want to add something?

[UNIDENTIFIED]: Well, there now is a cadre of clinicians in the US who are caring for the current set of patients and CDC has a regular call of those, a daily call, in fact, of those clinicians, and I think if we had a case here, where whatever facility it was in would be looped in to the clinical support that growing team (unfortunately) of clinicians that has to offer.

JEFF KRAUT: OK, Dr. Palmer. Dr. Strange, and then Dr. Baht.

DR. STRANGE: Yeah, hi. Good morning. I agree with, you know, with the vigilance needs to be carried out here, but let me just bring it to another arena and something that we can do on a day-to-day basis, and that's to, again, talk about the

opportunity, the great opportunity, to do the things for preventable things that sometimes can maybe mask this whole thing, like influenza, for example, and the importance of taking immunizations. We still have 50,000 a year or so die of influenza complications. We still have resistance to taking the immunization, and not only amongst the population, but even amongst our own peer group, and maybe this is an opportunity where we can speak to the Ebola virus as being a very difficult and challenging diagnostic disease to diagnose, but we should not at all have influenza complicate or, you know, be a something that we can treat and we can take care of and I think this may be an opportunity to get out to the public, here's the reason why we should be immunizing and doing the things necessary.

HOWARD ZUCKER: I think that's absolutely, we should couple the information we have from one particular infectious disease to another. In fact, prior to the case of Ebola in the United States, given the enterovirus, we had reached out to the hospitals and I had spoken at the HANYS board meeting a couple weeks ago on a Friday and asked the hospitals to use the enterovirus situation as a...

JEFF KRAUT: Teachable moment.

HOWARD ZUCKER: teachable moment, on that, because we already have something out there. Can we learn from that so that if something else—and this is before the Ebola case in Texas—so the same, and the same thing with flu. And I think what's happening is the public is, you know, more aware of these issues and I think it's helpful for us to deal with prevention that can occur. And I think it's to the advantage of all of us.

JEFF KRAUT: Dr. Baht.

DR. BHAT: Thank you. I think this is coming in as a triple whammy at this time. If the flu is around, the E68 is already here. And then you are going to have—all that you need is one Ebola patient in New York City. The symptoms, the initial symptoms are more or less the same. I think in a situation like that, what I am probably saying, one of these days we are going to have an Ebola patient. The chaos that is going to cause in a flu season, and patients ending up in an emergency room—are we prepared for that kind of a disaster?

HOWARD ZUCKER: So that's where we have spoken to the hospitals and also there have been discussions of where some of the patients would go and we're still in discussion about that.

Obviously, we have phenomenal medical centers in the state and have dealt with issues of infection control and patients that need to be isolated, but we are working on that, as well. And I recognize, the Ebola, as you have probably read, is harder to catch, right? And it's not a respiratory illness, so that's, in some ways, helpful and I think much of our concern is it's morbidity and mortality is so great in comparison to some of the other infectious diseases that we worry about. So I think that we are tackling this and I think we just need to continue to push forward on all this and that's why a lot of these exercises and a lot of these efforts of the hospitals and not just the hospitals, the primary care physicians, because it is very likely that someone's first visit is going to be to their doctor or to an ambulatory care, or a...

JEFF KRAUT: Urgent care.

HOWARD ZUCKER: Urgent care center. And so we, everyone has to be aware of this and be vigilant and sort of think, ask themselves that question. I think that the one thing I want to be sure [of] is that don't have people not sort of not seek medical care, and this is something which I was talking to some of my colleagues in Geneva, they were saying that one of the cases happened is that there are patients who have malaria and

they don't show up because of the concerns. So I want to be sure that—not that I am saying about malaria—but I am just saying I don't want other illnesses, people to not seek out care because of a worry. So, I think a lot of this is education and communication and that's what part, the Department is very committed to doing, but it is also very important for health professionals to provide education, as well.

JEFF KRAUT: Dr. Boufford, then Dr. Brown.

JO BOUFFORD: I don't want to change the topic, so if anybody wants to finish on this before.

JEFF KRAUT: Any... Does anybody else...

JO BOUFFORD: I was not pursuing the Ebola line, so before I change the subject.

JEFF KRAUT: So, Dr. Brown, do you have an Ebola question?

LAWRENCE BROWN: I have something related to infections.

JEFF KRAUT: Why don't you bring that aboard?

Thematically, we like to group the conversation.

LAWRENCE BROWN: This is Lawrence Brown, councilmember.

I follow the instructions of my chair.

JEFF KRAUT: Thank you. You are the only one who had so far. But that's OK. No, actually I call your name, that's why.

LAWRENCE BROWN: OK. Commissioner, again, I want to also offer my congratulations to the Department for the accreditation and the superb work that has happened with respect to influenza last year. So I have two questions, somewhat related to that. The first has to do with what are the, given the success last year with influenza, what is the target, the objective, or the Department, to leverage that success to get to even higher levels, given the fact that we talked about the concern, particularly about health care workers being so vaccinated. And the second question is, one that I am still not sure that I entirely understand, and that is with respect to our adolescents, some of whom are in detention centers, and how we have the connection between the Department of Health and criminal justice, to make sure that those adolescents and others in criminal justice system, who, at some point, come out of those systems, and have their care sometimes interrupted, or not

continuity in terms of the care. So how does the Department, particularly with respect to influenza and other infections, coming out of a setting that is at high risk for transmission, now coming into greater society without sufficient—no foundations for reducing their acquiring the infections within those systems, and not to mention when they leave them.

HOWARD ZUCKER: Great question. On the first part, my goal is 100 percent I'd like to get everyone should be vaccinated. Everyone who needs to be vaccinated should get vaccinated, so that's our goal. We'll keep pushing as far as we can.

[unidentified]: Do you have gold stars for those sites to give them?

HOWARD ZUCKER: I have gold stars still sitting at home. I'll bring them in. Absolutely. The, in regards to the detention centers that is a great point. We need to collaborate more with the Department of Justice on these issues and I think if that's where people can fall through the cracks on this. So, again this would come back to both, not only the education of the public, but the education of those who are not just health providers, but those who are involved in Justice Department. And I think that I am going to put a note down on my notes and make sure

that we tackle that, because that is, you know—any time there's a crack, the potential for it to end up being one patient becomes a next case or some of the others, so I like that idea.

JEFF KRAUT: OK. Dr. Brown, Mr. Robinson, and I, we just, when you made a statement, we just pulled out our ID badges to show that, you know, in both of our facilities, everyone who gets a flu vaccine has to identify that they have gotten it and then make it aware and I know we're not atypical, I think at this juncture, but the point about the correctional facilities, there's, you know, there's a real disconnect, you know, our mental health facilitate and then there as well. Dr. Boufford. Topic change?

JO BOUFFORD: Yeah, I just wanted to add my voice of congratulations and into further connotation and I think people don't appreciate how incredibly complex this process is in a large state and it's not by accident we're the first one, but it's cool to be the first one. I just wanted to make two points in addition to, again, praising Dr. Birkhead, and especially having to mention Sylvia Pirani and the terrific team that work there throughout the Department on the public health side, but two things I think deserve note by this Council. One was that there was, I think, a lot of courage and openness in the process

by the Department of Health. There was, there were over 300 people involved in working groups that really developed the goals and metrics and interventions over a couple-year period and that, you know, people, it was a new way of doing business. It was very important, I think, for the uptake at the local level, and so I give them a lot of credit for that. And then the other thing that's really important is that the mental health and substance abuse goal would not have been there had it not been for the Department's willingness to reach out to fellow commissioners in Mental Health and Substance Abuse and ask them to participate in this process, because the Health Department has no control over mental health and substance abuse, you know, services, and so that's another example of intersectional collaboration, across-agency collaboration that I think people should be aware of and just personally I'd like to thank the Ad Hoc Leadership Group, who were about 25-30 leaders of state-based, state-level organizations, including HANYS, Greater New York, New York City Health Department, Perinatal Network, many professional associations, New York Business Group on Health and others that put a lot of time in to sort of steer people, they provided the public advisory role to the accreditation process in addition to this Council. So these kind of process elements I think are great precedents going forward and something that we should, as a group, be quite proud of.

JEFF KRAUT: Thank you. I wasn't aware of the interrelating.

GUS BIRKHEAD: If I could comment.

JEFF KRAUT: Dr. Birkhead.

GUS BIRKHEAD: Mr. Kraut. I think the role of the Council was really instrumental in getting accreditation. I don't think we would have done it without the Council's input into the Prevention Agenda and the ad hoc committee going forward. We, as in many accreditation processes, we had a site visit of peer from peer states, including the Commissioner of Health from the State of California, which, yeah, we beat California! But I think the site visitors were very impressed, particularly with the session where Dr. Boufford and Dr. Streck came, actually, in person and spoke with them for an hour about the role of the Council. The Council actually has some governance role over the Health Department in the terms that the accreditors [sic] look at, so that was important, but I think the whole role of the Council in developing and continuing the Prevention Agenda was really instrumental. I don't think we would have succeeded

without demonstrating that we had that level of input that Dr. Boufford mentioned. So thank you.

JEFF KRAUT: Thank you for sharing that with us. Are there any other questions for the Commissioner? OK, then thank you, Commissioner. I appreciate it and I know you have—OK. OK. I am going to now turn it over to Albany where Mr. Shepard is going to give us an update on the Office of Primary Care and Health Systems Management activities.

DAN SHEPARD: OK. Thank you. Am I speaking loud enough?

JEFF KRAUT: I believe you are.

DAN SHEPARD: OK. Great. So first my apologies for not being with you there. Some urgent matters came up yesterday that required me to stay back here at the ranch, so you'll probably see me next time in person. So first on my report, I just want to do a staff acknowledgement. I want to acknowledge Jim Clancy, who's sitting there at the table with you, as well as Charlie Abel. As some of you may have heard, somewhat less formally, Jim is now the Director of the Center for Health Care Financing, Planning, and Licensure, and as you know, an essential part of the Department that interacts with PHHPC. Charlie Abel, who has

served—I'll avoid the pun—so well for so many years, as Deputy Director, is being appointed Deputy Director. He has been Acting Director for several years and will be Deputy Director. Charlie and Jim are going to make a great team, as we accelerate into what's going to be a very exciting time with DSRIP implementation, the broader challenges and opportunities presented by a health care system that you all know is increasingly being defined by outpatient, need-based care, and of course, the regulatory reform and streamlining initiatives that we'll be pursuing over the next months and years. So, again, I just wanted to just open my report by acknowledging both Jim and Charlie's appointments. So thank you. On to the other matters. On September 17th, Lisa Ullman and I presented the Department's initial guidance on the implementation of the regulatory flexibility authority granted for DSRIP related projects. I, Dr. Rugge, I defer to you provide any additional information on this when you give your report, so I won't give details, but both the presentation that Lisa and I gave, as well as the detailed guidance document, is posted on the DSRIP website, should you care to look at it. Also, being posted on the DSRIP website today will be an initial overview of the \$1.2-billion health care facility restructuring program that is state funds being rolled out in support of the federally funded core DSRIP program. The RFA for the, the FACILITY restructuring

program will be out in November, concurrent with the official—
the release of the final application for DSRIP. Also, on another
topic, on October 26th, Dr. Zucker, Sue Kelley, myself, and other
key Department staff attended the Resilient Coastline Health
Facility Evacuation, or HEC, exercise for 2014. As many of you,
not all of you may already know, the HEC is responsible for
ensuring that the safe shelter in place, transfer, and
repatriation of hospital patients and residents in long-term
care facilities in the event of a coastal storm, hurricane, or
other major event that requires the mass relocation of
vulnerable persons. This was a two-part tabletop exercise that
brought together officials from the State Department of Health,
the New York City Department of Health and Mental Hygiene, the
New York City Office of Emergency Management, and emergency
officials from Westchester, Suffolk, and Nassau Counties. The
first part of the exercise was an executive decision-making
tabletop exercise that Dr. Zucker and the Commissioner of, the
New York City Commissioners of Health and Emergency Management
participated in and the executive decision tabletop was
essentially determining the information needed during the early
phases of a hurricane, developing a list of facilities approved
to be considered for sheltering in place, and making the
decisions necessary to mobilize the HEC. The imaginary threat
that we were working with was Hurricane Maleficent, which was a

category two, was a category two hurricane that was off the coast of North Carolina and moving north. The second part of the exercise was the activation of the HEC itself. And imagine the room where you are right now with about 75 to 100 people all clustered around tables, each with a laptop all networked together and an accelerated time frame, basically covering three days over a three-hour period. The HEC staff tracked the progress of facility evacuations and solved problems that were injected into the exercise by facilitators. The overall exercise was a success, I think, on two fronts. One is just the opportunity for staff at executive and other levels, multiple state, city, and county agencies to get to know each other and their roles in the context of a tabletop exercise. And the second, of course, is it tested the process, protocols, and the computer systems themselves that we would use a real HEC activation and, I mean, there were strengths and areas of improvement that were identified and will be, and certainly will be acted on and so that when in the hopefully distant and unlikely event that HEC is activated, everything will run smoothly. And just an acknowledgement for this HEC exercise, the New York State Department of Health Office of Health Emergency Preparedness coordinated it ably, both a lot of work in advance and a lot hand holding during the session. That was under the leadership of Mike Primo and Nikhil Natarajan, as well as Deb

Sottolano, who works here at OPCHSM. So, that concludes my report and thank you very much.

JEFF KRAUT: Thanks, Shepard, and congratulations Jim and Charlie, and we look forward to continuing to work with you as we have for the last 20 years. Any questions for Mr. Shepherd? About his report? OK. OK, thank you. And then, as you heard before, Mr. Helgeson had sent his regrets, but he'll join us, I suspect, at the next meeting when DSRIP should be at full throttle with the application process. Now I'll turn it over to Dr. Birkhead, who will give a report on the activities of the Office of Public Health.

GUS BIRKHEAD: Thanks, Mr. Chairman. You may recall at the last meeting that you asked us about the coming centennial of the Wadsworth Center Laboratory, and so that's going to be a content of the remarks today. Just, and I am going to turn it over to Dr. Jill Taylor, the Director of the Wadsworth Lab in a moment to run through a presentation with you. I just wanted to comment, in Dr. Zucker's remarks he indicated that the Wadsworth Lab at the State Health Department is the only lab in New York performing Enterovirus D68 testing; it's actually lab in the Northeastern United States that's performing that testing, and we had been doing it before, so it's not something that we just

started to do. This is an example, I think, of the excellence that we have in the Wadsworth Lab, that when a new disease crisis comes along, be it SARS or small pox, we actually have experts in many of these area who are already doing the testing and at the cutting edge of the science in any of these emerging diseases. So, it's with pleasure, I think, that we do a brief presentation to the Council today about the Wadsworth Lab. It's, this is it's 100th anniversary this year and I believe you all have received invitations to come to an event in a couple of weeks in Albany commemorating and celebrating the centennial. So with that I'll turn it over to Dr. Jill Taylor, who is the director of the lab.

Are we going to use the screen?

Yes.

Yeah, so we're gonna...

JILL TAYLOR: Thank you very much for the invitation to come and talk today. Thank you, Gus, for your kind words. As Gus said, this is the 100th anniversary of the founding of the Division of Laboratories and Research. I am going to give you a very high-level overview of who we are and what we do. Clearly,

you've got a very busy schedule today, so I am not going to go into a great deal of detail, but if you are in Albany and would like to learn more about us and our programs, we'd love to host you for a tour. Wadsworth is New York's public health lab. I am going to give you a little bit of history first, because it's really quite interesting. How do we? That's the... advance isn't working there. There we go. So the lab actually began in 1901 and it was called the Antitoxin Lab and this was at the beginning of last century where we had no antibiotics and one of the only treatments for infectious diseases was actually antitoxins, or anti-sera as we also called them, and the Department set up the antitoxin lab specifically for diphtheria, and the source of the serum was horses, cause clearly you can get a lot of serum. I really like this picture. Look at the pretty wallpaper in the background. Clearly the horses were very nicely treated. This was a very small lab, I think about six people on Yates Street in Albany and even from the beginning the neighbors complained about the horses and the fact that we had horses living in a community. Then, in 1906—you are going to have to do this, sorry. Thank you. The lab expanded its capabilities a little bit and became the State Hygienic Laboratory, started making antitoxin for tetanus, also started doing some outbreak investigations, some water testing, and when you read the records, apparently they also did a very extensive,

in-depth examination of all the beer produced in New York State. And I don't think we'd be allowed to do that these days. So then in 1914, the then-Commissioner of Health, Dr. Herman Biggs, established the Division of Laboratories and Research, and the first director was Dr. Augustus Wadsworth. He was a young microbiologist, well trained. Did a lot of his training in Europe, and he came on as director and he stayed as director for 30 years and his vision of a public health focused on standardization, education, and investigation, and as I'll tell you what we do now, you'll see that those themes continue. Thank you. So, when Dr. Wadsworth took over as director, there was one site; now we have four sites in the Capital District. Dr. Wadsworth had 45 employees and now we're a little over 700 employees and our capacity and capability is very broad. Apart from CDC, we're actually the largest public health, state public health lab in the nation. Thank you. One of our biggest programs, our HIGH THREE program is newborn screening and in New York State, newborn screening is mandated. It began 50 years ago last year and the first test that we did was fetal ketonuria, so obviously something that can be corrected by putting the baby on the correct diet. We now screen for 47 conditions; the last one we added was adrenoleukodystrophy, which was added in January of this year. It's a very big program; it's the third biggest in

the country. About 250,000 babies born every year in New York State, so that's 1,000 babies a day.

One thing that we're doing in newborn screening now is looking at the impact of next generation sequencing. Clearly in some years, in a few years' time, I'm not sure what few is yet, we will be doing home genome sequencing of every baby, but clearly we're not there yet. But we are able to use next generation sequencing to improve our program and we're using it as a confirmatory test in cases where we know the gene coding for a particular congenital defect. We're actually looking at sequencing that gene which will allow us to cut down the number of babies that we actually screen as positive but who ultimately who don't have the disease. And so we're actively looking. Our first target is cystic fibrosis and I suspect that we will be bringing in a next gen screening confirmatory test for cystic fibrosis next year which could reduce our number of screened positive babies from anywhere in 800, 900 range down to less than 100 which clearly is something that would be wonderful for our parents. Next slide please.

We're a reference lab, which means that we're in many ways a lab of last resort. We don't do things that commercial and clinical labs do. We do what they don't want to do because the diseases are rare, they're too complex, there's not a market for them, so Dr. Zucker and Gus mentioned the EVD-68, that's a real

PCR and sequencing assay for typing assay and that's just not something that many clinical labs can do. We have the capability to test for SARS and MURS. We do influenza surveillance and drug resistance testing, and we're a regional center for drug resisting testing funded by the CDC. Flu season actually has started. We've had some H3 variancy already. So let's hope that H3 doesn't take off too quickly, at least until Enterovirus goes down.

So this is where a reference lab in the infectious disease area as well as in environmental areas looking for environmental toxins, radiation spills, chemical spills. So this is our day to day public health work.

We're also a biodefense laboratory. We had started looking at biodefense agents in the late 90s and so when the Anthrax attacks occurred in 2001 we were ready and we were actually a backup lab for the CDC. We do a panel of potential bioterror agents as well as chemical threat analysis and radiation analysis in our BSL3 laboratories, and we're frequently getting white powder incidents that we have to evaluate.

We also conduct research, and this follows on from Dr. Wadsworth's understanding that it was very important that we do research to really keep our public health testing at it's best. So we developed diagnostic assays, we have over 200-300 assays in the infectious disease area that we have developed and

validated in house, and this means that we're ready for what hits us next. We do basic and applied researching, looking for cures for disease, and our research program also supports our regulatory program. I want to go back to the very first slide I showed you where we were bleeding horses for diphtheria toxin. One of our researches, Dr. Nick (Mantis) actually looks for, is working on therapeutics for ricin toxin and while he's not developing the antitoxin in horses, he's actually developing humanized monoclonals. It's a very nice link to the past, and he's just received a \$7.6 million grant from the federal government to continue this work. He's actually working with the company that developed the Z-map cocktail of antibodies for Ebola. Our research funding at the moment brings in about \$26 million a year in funding, mostly from the federal government, so clearly there's an economic incentive for doing this work as well.

About a year or so ago we sat down with all our scientists and the department and looked at the research that we were doing and how to make sure that it was related to the mission of the Department, and these are the areas of focus that we're moving forward on in the future. Clearly genomics is going to have a huge impact on all our testing, not only in newborn screening but in infectious diseases. We have a very active program virus research in ecology, West Nile Virus because, hit New York

State in '99 and is now endemic across the country. We have small outbreaks of triple E. Every year clearly we have the virus in mosquitos every year. This year we've had two human cases but no deaths, which is great. We had the first case of Dengue in Suffolk County last year not associated with travel. That's worrying. Chikungunya we've had many, many imports from tourists to mostly the Dominican Republic. But clearly, especially with climate change and global warming, born diseases are very important.

Tuberculosis, nationally the numbers are going down, but with New York being a port of entry clearly we have many importations and the real problem in tuberculosis is the fact that many, many cases are resistant to one or more drugs, and that drug resistance is going up, and there are very limited therapies. And so this is an area focus for us.

The exposum is a term that's used by the CDC as a way of looking at a person's total body burden of exposures over their whole life. And rather than testing for exposures now in water or soil or air, the current technology allows us to actually test people, blood, urine, other body fluids for exposure to environmental toxins, and we have a very active biomonitoring program. We also have a very strong group that's very well-funded by the federal government in looking at brain computer interface for methods of communication for patients who are

locked in after a stroke or ALS, and also for brain mapping technologies to guide surgeons when they're doing sensitivity of brain surgery. And we have a very strong group in structural biology using high electron microscopy to look at basic cell division events for how they, at cell division can ultimately lead to cancer. So these are the focus for our research programs at the moment. Clearly they will evolve over time as other public health threats emerge. Can I have the next slide please?

But it's not only what we do that matters, it's how we do it. And so Dr. Wadsworth knew right from the beginning that standardization and monitoring how things are done in the laboratory is very important. So we have a regulation program which not only looks at our clinical labs, bloodbanks, and tissue banks, environmental labs, physician office labs, medical waste programs, and clearly medical waste is very much in the news at the moment with the of Ebola. It's a very comprehensive program not only inspections of labs, validations of methods, qualifications of directors and proficiency testing, and this is a program that clearly is evolving over time, but it's very important that we do this and the signs that we do at Wadsworth and our subject matter experts are very involved in these programs. So it's definitely just not an office-based program.

And the last program that I'm very, very proud of is that education program. We have a strong relationship with the State University at Albany for graduate, doctoral and master's degrees in environmental sciences and biomedical sciences, but we also have our own master's in laboratory science at Wadsworth which was started in 2011 - no I'm sorry, 2012, and this is our first graduating class, and so we're very, very proud of them. It's a very much hands-on lab based program and this is our future.

And just one other thing we do is extramural funding. We administer funding for the Department in the _____ program; spinal core injury and breast cancer, and this is clearly important for our academic medical centers for continuing to support work in these areas.

And my last slide is just this ven diagram. The reason that Wadsworth is so good to me is that we all wear multiple hats, and our scientists teach, our scientists are involved in regulation, our scientists are involved in testing. And so it's really systems approach to a public health lab. It makes us unique, but I think it really makes us strong and something we're very proud of. As Gus mentioned, we have a centennial celebration on October 17th in Albany. Dr. Harold Varmus who is the director of the National Cancer Institute in Washington will be our guest speaker, and we'd love you to come and join us for the celebration and if there's any area that you'd like more,

clearly I've gone very high level very quickly, so if there's any other information I can give you I'd be delighted to answer your questions.

JEFF KRAUT: Thank you so much, Dr. Taylor. Are there any questions? I just - you're going to make a statement because I'll make one too. Go ahead.

HOWARD ZUCKER: I just wanted to say that I am so proud of the lab, I really am. I've taken four or five tours of the lab and been down there multiple times and just thank Jill Taylor for your leadership on this. This is - you don't realize how phenomenal Wadsworth Lab is until you're down there, but also just - until you need it, that's right. And it really is one of the jewels in our crown in the Department of Health, so I thank you.

JEFF KRAUT: Thanks. One of the reasons we wanted to take some of our precious time here to do this is I doubt the public at all knows this and I would dare guess within the healthcare industry very few people appreciate this, and the role in protecting the health of the public, if you think of the Wadsworth - you know, they're the forward group. They're that tip of the spear that's probing the environment here, and this

is just an extraordinary resource. It's underappreciated, it's certainly undervalued, but its role can't be overstated. So I wanted to thank you and this, and in general laboratory science is kind of that hidden science. No patient really thinks about it. We don't necessarily think about when we get healthcare the role that all the people you don't see in pathology and laboratory science in testing, developing the assays, trying to determine differentially diagnosing, and all the data that comes from this, when we talk about big data, laboratory science is one of the bigger producers of that information that is gonna help us to do the predictive risk modeling and help doing - so I just wanted to take some of our time because again, you know, as I've learned the history and appreciated it, I can't say enough things, and I just hope, you know, we get newspaper reports about what happens in this place occasionally; I want them to report on Wadsworth and hopefully somebody will do a feature story as part of this to make the public more generally aware of it. Thank you and thank all of your staff for the work they do.

JILL TAYLOR: Thank you so much for your really kind comments. It's a place that we're really proud of, and please come visit.

JEFF KRAUT: You really should. It's on the - isn't it like the first floor of the plaza when you get in the building in the back?

JILL TAYLOR: That's one of four.

JEFF KRAUT: That's one of four labs. OK

[Applause]

JEFF KRAUT: Alright, alright! I've been told you haven't presented in front of the public health council in 100 years. So, we just wanted to correct that. OK. Thank you again. Thanks so much. Yes, Dr. Martin.

GLENN MARTIN: Do you have time for one question?

JEFF KRAUT: I've got time for - yeah, sure.

GLENN MARTIN: One - and - one of the functions as I understand it you have is to basically approve new laboratory tests and methodologies. And right now, as you know, certainly in genomics there are a bunch of labs churning things out and one of the reasons, I actually work at Mt. Sinai and that's one

of the things we do a lot of, and one of the issues - I don't know if it's an issue, I guess, are you able to keep up with your current staffing and funding and everything else with the large number - this is one of those questions that you either appreciate or don't. I'll let you answer it as diplomatically as I know you can, but is this just to keep up with that I imagine is a huge amount of work since people are churning our new genes and new tests on literally a daily basis or faster. So, are you able to keep up or is this something that is a real challenge that we're facing?

JILL TAYLOR: It's a challenge for two reasons; the huge number of tests that are coming out, but also it's a very new technology and so we need to be very careful to, while we want the good but to do no harm. So, and it's very interesting that the FDA at the moment as you know, has come out with that they're going to regulate lab developed tests and so they're clearly aware of those issues as well.

One of the values we have as, at Wadsworth is it's scientists who are reviewing these tests, and so I think that's a huge value that we bring to New York, but yes, it's a challenge. I think it's OK that I say that.

JEFF KRAUT: Yes, Dr. Kalkut.

DR. KALKUT: I just want to congratulate you. It's an incredible lab, and as a grateful user of the lab in infectious disease position, I know about it and how well it works. I also had a question about the extended spectrum genetic testing and how else you're anticipating using it. Some relates to Dr. Martin's question because these tests are proliferating and used widely in cancer screening without clear indications except for a few. How else could you see, besides the newborn screening program you would use it

JILL TAYLOR: Oh, at Wadsworth? We will use it in infectious disease testing, so at the moment, diagnostic. Tuberculosis is a beautiful example. At the moment there's a real time PCR for tuberculosis with a limited drug resistance panel, and then to define a typical analysis it takes weeks to months because it's a very slow growing organism. We're actually working on an assay at the moment where we should be able to do sequencing directly on the sputum, which means we can say its tuberculosis. We can type it, we can tell the drugs resistance within probably a week to 10 days, which means the patient goes on the right drug straight away, which means we can help transmission which means we can save money for the healthcare industry. We're using NextGen sequencing in food

safety surveillance to link a food source to a human to limit the size of the outbreak. The FDA has what's called a gene untraker project where there's labs all over the country at the moment feeding in salmonella and listeria to selected state labs and nationally tracking those. You know, you could HIV whole genome sequencing at some point. I mean, it's so exciting and it's boundless.

JEFF KRAUT: Dr. Grant.

ELLEN GRANT: Thank you Dr. Taylor, and congratulations again on the success of the lab. Just wondering, I served on the DNA recombinant committee with NIH for a while. Just wondering; do you do any collaboration with them in terms of their, in the administrative vain?

JILL TAYLOR: I'm sorry. Ask me that question another way; I'm not sure I understand.

ELLEN GRANT: Well, you're doing DNA mapping and genome -

JILL TAYLOR: We are, indeed.

ELLEN GRANT: I'm just wondering if you're collaborating with NIH's DNA recombinant.

JILL TAYLOR: We have an in-house DNA recombinant committee every state that every lab that has, does recombinant work needs to do that.

ELLEN GRANT: Oh, great.

JILL TAYLOR: Yes, absolutely.

ELLEN GRANT: Thank you.

JEFF KRAUT: Thank you again, Dr. Taylor, and Dr. Birkhead is there anything else you want to add to your report? Thank you so much for taking the time and joining us today. We really do appreciate your work and congratulations and wish everybody happy birthday.

I'll now turn over to Dr. Boufford to give the report on the activities of the committee of public health.

JO BOUFFORD: Dr. Rugge is going to go first.

JEFF KRAUT: I am now going to ask Dr. Ruge to give the report on the activities of the committee on health planning.

JOHN RUGGE: As Dan mentioned, we had an all-day meeting which shrunk to three hours. If only more days could be like that, on September 17. It was a two-part meeting with the first devoted to an informational session and waiver authority and how it may be extended by DOH and the other agencies. This is also, as you'll see in preparatory for considerations that this Council may need to do as those waivers become more permanent over time. As we all know, DSRIP is in the works as is that \$1.2 billion capital restructuring program putting us all on hyperspeed, and in order to accommodate that speed, the legislature took the opportunity to allow some waiver authority among multiple agencies including DOH, OASAS, OMH, and OPWDD. With the further stipulation that patient safety must remain paramount and there must be evidence of protection of patient safety in the event of any given waiver.

There are some exceptions that are not subject to waivers. One being antitrust, but this is handled in two ways; one through the issuance of certificates of public advantage which will soon be finalized, to an extent state action at the federal level and integration with the work of the State Attorney General at the State level. And also certification as an ACO,

Accountable Care Organization, also will extend through clinical integration, further protections for collaborating entities.

Other limits as that of waiver authority does not extend to the corporate practice of medicine and does not extend to fraud and abuse statutes or of course to CMS rules. For all that, there is plenty of room for maneuver. They include single licensure by any single lead agency especially for integration of primary care, there's health department activities, supervised activities for behavioral health or substance abuse services. For shared space among two or more providers, for CON exemptions, for revisions to physical plant to expand services or bed capacity, waivers to also exempt on a provisional basis establish requirements for active parenthood among providers in the context of emerging PPS's - pretty soon they won't be emerging, they'll be real - in addition flexibility regarding construction standards, loosening of criteria regarding admission, discharge, and transfers of patients from one facility to another if those facilities are participating collaboratively in a PPS, loosening of credentialing requirements because credentialing can be shared among those organizations which are newly collaborating, the allowance of home health visits rather than restricting activities under article 28 to the actual physical facility. That's a long list. For all that there are some exemptions. For example, there can

be no regulatory relief for telemedicine because it turns out there's no regulation for telemedicine. We have our limits, even in New York. In addition, with regard to information share, there can be no exemption from HIPPA requirements because this is federal statute over the state is working, the Department is working on a standard, simplified, model consent reform to be used across the state, and then perhaps not least is that there is very little that can be done through waiver regulations to assist in what we're all talking about as having everyone work at the top of their license. So with respect to home care orders by mid-level practitioners, by way of having nurse-driven protocols, advanced home health aids, expanded roles for EMTs - this is outside the existing jurisdiction of enacted legislation. There's more to be done and we anticipate the Governor will indeed be looking for regulatory flexibility in those areas as well.

For all this there's one other major limitation and that is all these waivers are only for the life of the project. Only for the five years of DSRIP implying that we certainly are not going to be able to reverse everything in the works if indeed DSRIP proves to be successful in leveraging the changes we want. That is transforming the delivery system to improve the safety net, to have more robust primary care as a foundation and to

leverage managed care payments to take us away from the balkanization of healthcare through fee-for-service modalities.

With that in mind, I think it is understood that some of the Department and at their behest the Planning Committee and the Full Council will be actively engaged during these coming five years in reviewing and monitoring the waivers as they're extended, evaluating the effectiveness and the implications of those waivers and making recommendations back to the Department and to the Governor and to the Legislature for permanent institution of those varied changes.

JEFF KRAUT: Are there any questions for Dr. Ruggie.

JOHN RUGGE: There is one more item.

JEFF KRAUT: Oh, I'm sorry.

JOHN RUGGE: This is a two-part presentation Mr. Kraut. The other being, this will be a little shorter. This regards developing criteria for the establishment of off-campus emergency departments where none currently now exist. Keeping in mind in the State of Texas, actually in the City of Houston there are - count them - 42 freestanding emergency departments, and given the limits of our imagination, the Committee failed to

identify criteria that would qualify an institution to place an emergency department where one now does not exist. It was suggested that we revert to the Potter-Stewart rule and if the Department could give us a model case, perhaps we would recognize such a thing if we could see it. And so, if indeed on a blinded basis, we're not looking at specific facilities, the names of a given institution, if we could be presented with the situation in which we are missing, our community is missing emergency level services that do not now exist, we'll be certainly willing to consider that on a planning basis for presentation to the Committee - to the Council. Thank you.

JEFF KRAUT: Are there questions of Dr. Ruggie? And you know, what you're essentially hearing is as we transform the healthcare delivery system, we're potentially on a temporary basis, but ultimately on a permanent basis be able to possibly transform the regulatory framework to recognize the new realities of delivering healthcare, and I think that's a journey we'll all be participating in over the years as we serve on the Council. Mr. Robinson.

PETER ROBINSON: Well, just a question. The Committee and I believe the Council actually moved some recommendations forward on some of these very topics including freestanding

emergency departments, not necessarily de novo but urgent care centers, retail clinics, and the like, and just wondering what the process is going forward and whether there's a likelihood that those would actually move into the realm of regulation.

JOHN RUGGE: As I understand it, the Commissioner currently has authority for approving off-campus, not freestanding, off-campus EDs. Individual circumstances especially where one hospital may be closing and a recognition that acute care footprint is indeed shrinking. There is also authority for the Commissioner to convert from full time to part time status and indeed that has been done with the understanding that it's hard to imagine such circumstance being compelling in an urban community, but in rural communities where utilization is small to non-existent during the late night hours, the only way for the institution to remain viable is to limit services.

PETER ROBINSON: Thank you for an answer. And I didn't ask the question correctly. I was actually looking for the rest of the continuum and where those things are, in particular the urgent care centers and retail clinics, and I fully agree that that authority sits with the commissioner now for the EDs.

HOWARD ZUCKER: I was going to say, we're going to take a look at this from last year, the Committee's report, and try and figure out where we're going to move forward on some of these issues, particularly as you've heard with the DSRIP plan to push more patients out -

JEFF KRAUT: Some of this is not in regulation. Some of this is legislative solution.

JOHN RUGGE: Yes, absolutely. And this-

JEFF KRAUT: Some of it but not all of it is.

JOHN RUGGE: It would seem with the unfortunate passing of a certain celebrity that I think there's been renewed attention to quality of care and just the transparency of events in ambulatory settings generally. This did not happen to be a non-licensed urgent care center or an office-based surgical center, but it would seem this would be another opportunity for us to relook in legislature to reconsider recommendations the Department has already made at the behest of the Council.

HOWARD ZUCKER: And I have had several meetings on this issue internally about looking at that and how do we address

some of the challenges with more ambulatory care, both from what your committee had looked at regarding urgent care, but also a little bit more comprehensive than that.

JEFF KRAUT: I also think this may be a good point in the conversation. You mentioned OBS - office-based surgery that as a follow up to the presentation that we received on the data, the follow-up activity was to reconstitute the office-based surgery workgroup. I think it's going to be chaired by Dr. Rossoff who originally chaired and promulgated the regulations to now take a look at the information and the data and to revisit it in light of new information about what modifications, if any, need to be done with respect to that, so the follow up was that that committee is going to be meeting and I suspect we'll hear a report at a future point in time at the Council.

OK. Any other questions? Comments? OK. I'd like now to return back the mic to Dr. Boufford for the Committee on Public Health.

JO BOUFFORD: OK. Thank you. I wanted to report activities since the last Council meeting. We're sort of carrying - this is part of the public health committee, one of the goals we had had aside from the accreditation and the prevention agenda sort of oversight steering was to try to move

the needle on maternal mortality in the State of New York, and we've had several meetings on this. The most recently we have had two what you call invited panels. One was in March, we brought in a group of primary care physicians to sort of advise us on how best to tackle—we had sort of three goals that the Committee agreed with the staff were priorities given our review of the literature and our understanding of what the Department is already doing. One was to try to integrate preconception, interconception care into as a core function of all of public health and ambulatory care. Second was to really try to assess and address pregnancy planning, especially in women with chronic conditions and other complications and really promote avoidance of unintended pregnancies, and the third was to be sure that there are referral systems available for high risk women as soon as their identified in the primary care practice. So those are the three goals we're working with.

The first panel with primary care was really focusing on the integration into the core business of primary care and the referral mechanism and I think one of the things that we learned and some of them were advanced primary care setting which is really important is the notion that any time a woman or girl of reproductive age touches a healthcare system there ought to be a question asked, which was actually quite an elegant question which is, "are you intending to get pregnant in the next year?"

So, it doesn't require delving into anyone's sexual or reproductive patterns or anything. It's a very simple question that's kind of benign and doesn't require a lot of intensive training. And some of the primary care practices that presented really actually have real time opportunity to help follow up with the person on site, and so it's really quite well known that many women will not come in for post-partum care on schedule but they do bring their babies to well-baby visits. This begins to raise the question of interdisciplinary practices, community health centers, and hospital-based ambulatory care practices really looking at this integration in a more intentional way. So that's kind of our first take-away from that is it needs to get And then we have a number of issues that emerge in the primary care setting around financial incentives and people going off Medicaid and other things, which we are keeping in our, on our list of things to do.

So the most recent meeting we had on September 10 was with those individuals leading various aspects of the healthcare reform in New York State, and we had a, the goal here was to really look at how do you get assess, address pregnancy planning and effective use of contraception in these various healthcare reform efforts and sort of get it baked in, and so we were very happy to have - we had Foster Gesten from the Office of Quality

and Patient Safety and Hope Plavin from the Primary Care - talking about the SHIP, the Primary Care Innovation Plan and Alana Earl talking about the health home, because we thought each of them had potential for integrating this issue, and they were, was a really interesting discussion. Unfortunately they were all in Albany and we were here, but we could hear on the television and the phone a lot of good back and forth among them and getting ideas and being quite creative about this. So some of the points that were the highlights of the conversation from Foster Gesten's presentation was the issue of adding more explicitly the potential for assessment of future pregnancy plans, as I just mentioned, and pregnancy prevention in the quality improvement plan. It sort of skipped over to get to the more technical and tough issues, and so the thought was yes, it's part of a core package, but if it were kind of brought up as an explicit issue either in prompts on electronic health records and others rather than sort of being included in a bundle that it probably isn't getting the attention. It's too easy to it's not getting the attention that it probably should get in these protocols. The other is to make sure that family planning providers are key partners in quality improvement activities and I mentioned the electronic health record, and then there are a number of issues on long term contraception that he raised that we are also interested in.

Hope talked a bit about the pending State Innovation Model, the SHIP, SIM and SHIP and again, I think she mentioned that the integration of preconception, interconception care is mentioned in the application on advanced primary care as one of the criteria, and again, making sure that it's explicit and visible and might be to the degree that's in all three stages of primary care that it may, it ought to be pulled out perhaps and the metric looked at or scored as far as performance is concerned.

And the most interesting conversation was actually with Lana Earl - it wasn't the most interesting - a very interesting one because we really didn't know that much about it was the health home. And so she presented some really interesting data that about 10 percent of women enrolled in health homes over the last two years had a live birth during that period. So these are women who have chronic, multiple chronic conditions and/or mental health or substance abuse issues already and so we're gonna take a deeper dive into those patients and try to understand who they are and what was done as part of the protocol and reviewing them, because again, she agreed that this is such a fundamental thing it may not be getting the attention it could get within the health home and also it raised issues of being sure that OB-GYN services, family planning partners are part of the health home network and that the referral protocols

are active, and we did ask a question as to whether a woman who has a history of adverse pregnancy outcomes mean, in a sense chronic disease, precipitated by pregnancy would qualify for the health home. They said no. That wouldn't be the case. It really has to be the primary criteria. But it was an interesting, it was a good conversation, and we sort of agreed on three things going forward from that discussion. One is that we're gonna look at gaps in eligibility and enrollment in Medicaid because of churning for these particular women, once they give birth they sometimes fall off the roster and whatever. Second is to try to identify looking at the communities in the prevention agenda that picked this issue. The numbers are so small that most communities did not pick, in the women's and children's health didn't pick maternal mortality prevention as part of their goal, but looking at those that really looked at reducing unplanned pregnancy to have them - to look at what they did, pull their plans out, look at them more carefully to take, as I said, a deep dive into the current health home enrollees that became pregnant and gave birth during the year. And then the issue of training of health home care managers on this sort of issue of maternal health and family planning topics which is, we don't believe is necessarily part of the core curriculum at this point. So it was a very interesting conversation and we're continuing that discussion sort of using the platform of the

bully pulpit and we'll come back with some more of the ideas there, I think which will be useful.

The second activity was on the issue of health disparities. This has been something that those of us working on the prevention agenda and the ad-hoc leadership group have felt was a bit of an unfinished business, not that the intent wasn't there because the prevention agenda fundamentally ask all communities, hospitals, and health departments to address two of the goals or objectives in the prevention agenda and address a health disparity that they're gonna tackle and they all did that, but actually relatively few identified interventions in metrics and identified that as an area of technical assistance that they needed which we knew at the beginning but had not had the resources or the ability to kind of be responsive in that regard. And the second area was that many of the communities are identifying poverty, socio-economic status as a disparity, which of course it is, but not many are identifying racial and ethnic disparities. So, the question was sort of why that is and it may be that those communities actually don't have high percentages of minority individuals in them, but we had some opportunity to drill down on that a little bit. So we had decided to create, and this is out of the ad-hoc committee, a working group on health disparities and we had Greater New York, HANYS, Dr. Boutin-Foster, the Yvonne Graham from the Office of

Minority Health, Sheryl Hilton from NYU and Cheryl Hunter Grant from the perinatal network, Lourdes Rodrigues from New York State Health Foundation, Sylvia and her colleagues, some of my staff from NYAM, and we met at NYAM on the 23rd of September to really take a look at this. We had a really nice presentation on the sort of nature of the disparities in the five prevention agenda goals. And then we each kind of walked through what our respective organizations are doing to try to tackle the issue of health disparities and the activities are very rich, but I think we all agree that we probably needed to do more to raise the profile of the disparities issue in whatever we're doing. I think Lourdes for example, at New York State Health Foundation said of course we're attentive to it but we don't lead with it, and we're doing our RFAs, you know, in community-based health activities. So, that I think was an interesting discussion. The other thing that we were most interested in is that Yvonne Graham mentioned that the Office of Minority Health and Health Disparities I believe will be issuing a sort of statutorily required report on health equity, probably certainly after the first of the year or maybe under the deadline of the calendar year. That provides a good platform for sort of raising a set of action steps on this issue in regard to the prevention agenda. Other activities and what they are doing is looking at, have identified 44, what they call minor civil divisions within

New York State that, which are, the issue here a lot of the problem is data below the county level. You just lose it. And so these 44 minor civil divisions that is a mechanism they've identified, I can't explain it - it's smaller than a county, bigger than a breadbox, but smaller than a county—with greater than 40 percent total racial and ethnic minorities. So those communities will be identified and we can then cross walk them with the counties in the prevention agenda and really try to look at what the, what emerged from those communities as far as addressing disparities and see how we can sort of organize ourselves to intervene. They are mainly by identifying what kind of technical assistance communities need or right people at the table, really just a set of interesting issues. So I think we came away with that notion of the opportunity with that report going out as a way to sort of organizing and deadline principle for us to decide how we want to move that forward, that raising awareness about the reality of statewide disparities and sort of where they're located, especially in the racial and ethnic minority area which of course is supposed to now be a reportable criteria in ACA, now data systems are supposed to report race, ethnicity, gender, and other activities and the routine healthcare reporting is something that needs to happen. Getting this smaller area data to local area health departments, looking at the diversity of the workforce with deans and schools of

medicine, public health and nursing, and Sylvia and Yvonne Graham together health department and minority health group will be looking at these high disparities doing sort of a matrix to cross walk these high disparity communities with the activities of the departments and the hospitals and then we'll probably have another meeting hopefully before that report comes out and have some recommendations. So it's been a really interesting and rich area, and I think one that could benefit from small investment but we're gonna truck ahead.

And then the final thing I wanted to mention which was still maybe invite Carla if she wants to - Claudia if she wants to say something about that meeting she attended. We have an opportunity over the next few months to look at the first year of the prevention agenda activities, and obviously the prevention agenda activities as stated which include the hospital plans, the hospital community needs assessments and their service plans with the schedule H reporting to the commissioner which will begin for the year 2014. This is the IRS reporting of the sort of community benefit investments that hospitals make and there're two particular categories on schedule H; one is called community health improvement, and the other is called community health building, which really lend themselves to prevention agenda type activities in which many hospitals now have investments. And look crosswalk the

prevention agenda plans with the community benefit investments. And then when the DSRIP comes in which also requires provider systems to select, two of the prevention agenda objectives to mention in their DSRIP application, we would have three data sets to begin to try over time to align the activities of the hospitals with their local alliance, community alliances in support of the prevention agenda, as well as the local community needs which they may have identified. So it's something we have our eye on and we're hoping we have a proposal into Robert Wood Johnson working with the Health Department to look at the cross-walking with the prevention agenda and community benefit when the reporting begins, and the DSRIP then offers that opportunity as well. So it's not a tomorrow issue, but I think if we get it together we can really begin to help the provider systems see because what we're seeing, the other that's been very interesting in these conversations is that to some degree in the hospital industry there's a bit of a disconnect historically between the CEO suite and the people who do community relations and community engagement, and so some of those decisions and the investments are made based on those, on interactions with community relations people with their community activities but they may or may not be embedded in the executive decision making of every hospital. So it's been an interesting kind of conversation. I think they will become more embedded as the

attention to community benefit and DSRIP sort of raises it up to that level. But we're hoping overtime to - and the aggregate amount of money in those two categories I mentioned is about \$117 million a year in New York State. So it's an interesting opportunity over time. So, that's my report. I don't know -

JEFF KRAUT: That is a full agenda. I'm sorry, did somebody make a statement?

JO BOUFFORD: Carla Boutin-Foster was at the meeting -

CARLA BOUTIN-FOSTER: I think it was an excellent synopsis of the meeting, Jo, and I think one of the challenges for the hospitals when we look at race and ethnicities how many of them are collecting it systematically in a way that can be utilized to generate data about where the problems lie. So that's a challenge.

And then the other thing, I forgot that the Dean of the School of Public Health at NYU said what you wanted to do to sort of revitalize public health and NYU is really playing a leadership role and we spent a lot of time talking about workforce diversity and what does that mean for who's going to carry on some of the work that we're doing here, so I think those are the two issues that we're going to try to move ahead

with especially with the Council, but you did a great job, and it was a really, really informative meeting.

JEFF KRAUT: Just to that point, you know, historically in the hospital SPARCS database, the racial category has been the least stable data element. We don't have good data governance rules and it's administered in a very differential way. Now that's been improved over the years and the federal requirements will do it, but recognize if you really want to get the comprehensive view, if you look at all the Medicaid claims data that we have, the hospitals are only maybe four, five percent of the total number of claims. It's the ambulatory environment that we have to do this, and the training that needs to be done at the front end so it's consistent with the census definition so we can correlate it back to other community characteristics, and that's the challenge and you know, I know this has been - I think there's a heightened awareness in the industry because of, not only the requirements but because they know there's an issue, so hopefully we're all getting better at the quality of the data that we're collecting to be used in the analytic process. But it is a problem, because some people are - my own experience and the anecdotes I get, I'm not allowed to ask about race. Why are you asking about my race if I'm seeking healthcare? And it goes back to a valid concern historically

here. So I think we have to even overcome our registrar's reluctance to ask that and not just take a look at somebody and say, ok, you are - they check a box without asking. We have to get people to self-identify in the same way they do when they fill out census information. Just give it to them. Tell them to choose the box. But - OK. Thank you. That's a big report. Any questions for Dr. Boufford? Thank you Dr. Boufford. I'd now like to turn it over to Dr. Gutierrez to give the report on the Codes, Regulation and Legislation.

ANGLE GUTIERREZ: Good morning. Thank you Mr. Kraut. I'm Angel Gutierrez, I'm the chair of the Codes, Regulation, and Legislation Committee, and I am here to report on the proceedings of the September 18 Codes Committee Meeting. The Committee review for regulations. One for emergency adoption, two for adoption, and one for discussion. The one for emergency adoption is one that you are familiar with. First matter yet another proposal emergency amendment to subpart 7-2 of the State Sanitary Code regarding summer camps. These amendments are necessary to implement the law that established the New York State Justice Center for the Protection of People with Special Needs. At the committee meeting, Tim Shea from the Department of Health noted that there have been no changes to emergency amendments previously approved by the Council which have been in

effect since June 30, 2013. He indicated that the emergency amendments currently in effect will expire in mid-December so it is necessary to request approval for another emergency adoption so we may see it come back. Mr. Shea also addressed concerns that previously have been raised concerning the number of emergency regulations that have been issued. He reiterated the importance of making sure that the Departments permanent regulations are consistent with those to be promulgated by the Justice Center. However, Mr. Shea reported that he expected to see drafts of the Justice Center regulations in the very near future which will help the Department move forward with its permanent regulations. Mr. Shea also noted that previously questions have been raised as to whether the regulation should apply to all camps with children with developmental disabilities or just to those where at least 20 percent or more of campers are children with developmental disabilities as currently reflected in the emergency regulations. Mr. Shea noted that the Department's camp safety advisory council considered this in April and will continue discussing the issue at its next meeting on October 29, 2014. Mr. Shea is available from Albany to answer any questions from Council members. The Committee unanimously voted to recommend adoption to the Full Council, and I so move.

JEFF KRAUT: I have a motion. Do I have a second? Have a second, Mr. Fassler. Is there any discussion? Are there any comments from the Department? Questions.

LAWRENCE BROWN: This is Lawrence Brown, Council Member. I'm still somewhat concerned that I don't hear a resolution of the issue about the threshold for when camps must have these provisions in place. I still have real serious concerns about having a threshold. Are we not saying the to the camps that don't meet that threshold it's alright for them not to have these provisions in place, so when should something go south, something happen terribly with a child, why can't that camp provider say, hey, you know, I'm exempt from the New York State regulations because I have a fewer number of children who have this disability. It just seems to be so out of touch and we keep approving these emergency regulations to allow that to continue. So, please forgive me, Mr. Chair, I just -

JEFF KRAUT: No, I - it is a conversation that we have had repeatedly here and has been the point of frustration for anybody who has served in Dr. Gutierrez position. There was one regulation we did, I don't know, six years? Four years? So, I don't know how to respond. Maybe from the Department? Does anybody want to -

ANGEL GUTIERREZ: Mr. Shea maybe in Albany. He may address that perhaps.

TIM SHEA: Yeah, I'm here. This is something that we posed to our camp safety advisory council. They had a little, some concern with it that if we applied it universally to every camp that accepted even one child with a developmental disability, it could dissuade those camps from accepting those campers. There is some financial costs associated with the regulations. They wanted some more time. As I mentioned, we discussed this in April. They wanted more time to consider the issue before making a recommendation to the Department about how to proceed. It's on the agenda for our October 29 meeting. I'd also like to point out that these regulations also apply in other settings, specifically adult care facilities which all have a threshold before they're applicable. So it's not something that's unique to the camp

[no audio]

Are looking further with our advisory council.

JEFF KRAUT: Are we permitted to establish a deadline? I don't want to suggest it unless the Department says you can't do it. But would it be helpful if we say we are not - we are

going to vote on this at you know, one cycle, two cycle, whatever it - I don't want to be arbitrary and I don't, you know, but just to the point that you're making, we feel we've given enough time we want a response, we want to know, but then again, I don't know the nuances here. So I don't want to back you guys, but I would suggest by the next meeting, next cycle you come back and give us a signal of some sort. But that's all I would say. I don't think you have to respond. I just think it to the point that Dr. Brown made I - there's validity here, but I, again, we don't know the nuances of every conversation. We've not - we don't have public hearing on this so we don't know what the public - we might be very well persuaded by those concerns. So why don't you give it consideration. We'll come back at the next - Dr. Gutierrez, your next report and we'll follow up on Dr. Brown's concerns.

Hold on, I'm sorry. Oh, I'm sorry, Dr. Palmer.

JOHN PALMER: John Palmer, member of the Council. I just want to go back to Dr. Brown. The level of concern sounds like an objection of a two tier system that is being allow to continue, and I'm wondering if the Council can be even stronger in their request that this be addressed in a timely fashion and ask them or can we give them a time limit even though it may sound arbitrary to them, it won't - I'm not sure we're going to

get anywhere from this side unless we get into a little bit of a scuffle about how and when to address this.

JEFF KRAUT: So, they're meeting October 29 I think he said, and we're reconvening as a full council on December 4, and the committee day is the 13th, so I would suggest by that next, you know, six weeks given it'll be you know, six weeks after that group meets, so, that's why I'm hoping they come back and we have a definitive, you could take definitive action at that juncture then. You know, it's at that Council meeting we could seek to act or -

ANGEL GUTIERREZ: If I'm reading this right, they are not meeting until December. So it's not going to come back to us until January for action in March.

JEFF KRAUT: So, is that correct?

TIM SHEA: I believe so.

JEFF KRAUT: So, we can't accelerate that because you're not meeting until -

ANGEL GUTIERREZ: The best we can do is say that you hope that by spring they have made a decision.

JEFF KRAUT: Alright. So, Dr. Palmer, Dr. Brown, and you know, we are going to suggest that we go for adopt - we're scheduling this - we'd like this to see scheduled for adoption in the March meeting, instead of an emergency adoption and a continuing resolution. And I just, again, I just want to make the point, that's the preference of the Council. I'm cautioned to direct that because I don't know all the details, so I'm just expressing our desire to the Department and if there's mitigating circumstances we'd like that to be made clear to us. That's all. Is that fair?

LAWRENCE BROWN: Point of information; is there a camp between now and then? Or is it? Just want to be clear.

JEFF KRAUT: Well, camps are probably recruiting for end of June, July. It's an active period so they really have to know what the rules are because they're gearing up, I suspect in the spring and the winter. I just don't know. I honestly don't know. So, I'm just being cautious about saying something inadvertently that has unintended consequences. That's all.
Mr. Fassler.

MICHAEL FASSLER: On Dr. Brown's point, as a council, can we ask for public comment before we get this again? Next because we really haven't had, we haven't gone outreach asking for comments.

JEFF KRAUT: Well, OK. All you camps out there that are watching this, we have a meeting, we have a committee day for Codes, right, and if you would like to hear those concerns we will ask the Department of Health to contact those individuals to come out here publicly and air their concerns so the public can hear them, and that may in and of itself accelerate the process. So let us put that on as an agenda item so at least we're part of it. OK? Is that, I mean for the Department again, did I - you know, I just don't know. But I'm hoping that's an acceptable suggestion. Not tying your hands. Let's assume it is.

JUSTIN PFEIFFER: This is Justin Pfeiffer from the Counsel's office. I just want to add that one of the other factors here is that we're trying to implement regulations that are going to be consistent with the Justice Department's regulations and we don't have a whole lot of control over that agencies process in issuing their regulations. So what we'd

like to avoid is issuing regulations and then finding out at a later time that they're inconsistent with what the Justice Department desires. Now, we have received draft regulations after the Codes Committee meeting, so very, very recently we just received draft regulations from the Justice Center. We are going to review those with them, iron out any issues and hopefully we can, that will enable us to make some good progress towards issuing final regulations in the next PHHPC cycles.

JEFF KRAUT: Alright. I mean, that's exactly the type of unintended consequences I think if we were aware of we wouldn't - that's why I don't want to speak with clarity, because we certainly don't want to create a conflict that makes these unenforceable. So, we understand, I think you understand our intent. Let's proceed from there. OK. Is that OK, acceptable to everybody? OK. Excuse me? We have to vote on the emergency so we have a motion from Dr. Gutierrez you made the motion?

ANGEL GUTIERREZ: The committee unanimously voted to recommend adoption to the Full Council and I so move.

JEFF KRAUT: OK. We have Dr. Gutierrez, Mr. Fassler because - moved it, and I'll take a vote. All those in favor, aye?

[Aye]

Opposed? Abstentions, the motion - we have three abstentions. Was that recorded? The motion carries, correct? The motion carries. Dr. Gutierrez.

ANGEL GUTIERREZ: The next item for consideration today is the adoption of a set of proposed regulations that would amend section 600.3 and 710.5 regarding changes to certain certificate of need applications. Chris Delker from the Department advised the committee that under current regulations, changes to CON applications that have been approved by the Council or the Commissioner but have not yet proceeded to construction or full establishment are classified as amendments and must come back to the Council for full review. As recommended by the Council in 2012 report on CON reform, the proposed regulations would reclassify certain changes which currently constitute amendments and thus require full review so that they are instead considered to be modifications which are review only by the Commissioner. These changes are changes in the method or terms of financing for more than 10 percent of approved costs, an increase in the total cost of construction greater than \$6 million or 10 percent whichever is less, changes

in the terms of agreement for the land or building involved, or any reduction in the scope of the approved project accounting for more than 50 percent - 15 percent or more of project costs. Review by the Commissioner will still supply sufficient scrutiny but would avoid the applicants need to wait for the next council cycle. Full review would still be required for other changes such as changes in capacity, location, or applicant which would continue to be classified as amendments. The proposal was filed as a consensus regulation and the comment period ended in September 8. No comments were received. Chris Delker from the Department is available from Albany to answer any questions from Council members. The committee voted to recommend adoption to the Full Council with one vote and a position cast by Dr. Palmer. I hereby move for adoption by the Council.

JEFF KRAUT: I have a motion to adopt. Do I have a second? Mr. Fassler. Are there any discussions on this motion? OK. Yes, Dr. Strange.

DR. STRANGE: Just a question; this came up a year or so ago as a legislative process. They did not when they were changing the whole certificate of need structure at the State level, it had to go through again, vote at a legislative level. So what is our rights and what are our responsibilities that

deal with, and again, I didn't get all the details of this, but it just sounded to me that we were now changing or we were voting to change some of what was legislatively proposed at that time.

JEFF KRAUT: I don't think this was - I think these are - well, let me defer to the Department. Charlie.

CHARLIE ABEL: Sure. First of all, the legislative changes that were presented during last budget season, they were not approved. This is a change that is not statutory based. It's a regulatory change that we can make that will comply with the Council's recommendation for CON streamlining and we are supportive of that.

JEFF KRAUT: OK. Any other Questions? Hearing none, I'll call for a vote. All those in favor aye?

[Aye]

Opposed? One opposition. Abstention? The motion carries. Dr. Gutierrez.

ANGEL GUTIERREZ: Next, is the adoption of proposed regulations to amend section 2.59 of title 10 in the NYCRR to

require healthcare personnel who have not been vaccinated against influenza to wear a mask during the influenza season. Dr. Emily Lutterloh from the Department advised that these regulations were proposed in response to feedback received from facilities in section 2.59 first took effect. The changes are intended to clarify certain provisions of the existing regulations and make it less burdensome for the facilities particularly in regard to reporting. Dr. Lutterloh noted that during the public comment period, the Department received comments from homecare associations, a union, and a local health department associations. Overall the commenters supported the proposed amendments. While some additional amendments were suggested, the Department will not be asking - will not be making any modifications to the proposal at this time. Dr. Deborah Warner from the Department is available from Albany to answer any questions from Council members. The Committee unanimously voted to recommend adoption to the Full Council, and I so move.

JEFF KRAUT: I have a motion from Dr. Gutierrez. May I have a second? Second, Dr. Grant. Is there any discussion or questions? Dr. Bhat.

DR. BHAT: I have a point of clarification. The flu - is it during the flu season or only after the Commissioner determines there's a flu epidemic? Because we had a discussion day before yesterday, because I thought it was through the entire flu season, but as it is at the present time Commissioner has to declare there's an epidemic in New York State that only this regulation goes into effect.

ANGEL GUTIERREZ: Dr. Lutterloh maybe wants to address that.

JEFF KRAUT: I'm not quite hearing the question. Dr. Lutterloh could not be with us. I'm from the Counsel's office and we have from epidemiology office, but if you could repeat the question please.

ANGEL GUTIERREZ: The question has to do with whether the regulation applies while flu season has not been declared.

JEFF KRAUT: When the commissioner uses his power to declare a flu emergency.

ANGEL GUTIERREZ: Right.

[ALBANY:] The regulation on the books. It only has effect during the time when the Commissioner declares influenza to be prevalent in the State. There is no current declaration.

JEFF KRAUT: So, it's an assertive declaration that he makes that initiates the implementation of this regulation.

[ALBANY]: That is correct. Just the part about wearing masks is the part that becomes effective, the part the people are mostly focused on.

JEFF KRAUT: It's essentially supporting voluntary efforts.

JOHN RUGGE: Are there any new requirements regarding the nature of the mask?

JEFF KRAUT: So, Dr. Rugge is asking - yeah, you heard it.

[ALBANY]: There are no new requirements in that regard.

JEFF KRAUT: You mean, you're concerned about the type of respirator that's used? Whether it's a level whatever?

JOHN RUGGE: you say there are none?

JEFF KRAUT: There are none, he said. Any other questions? Hearing none, I'll call for a vote. All those in favor aye.

[Aye]

Opposed? Abstentions? The motion carries.

ANGEL GUTIERREZ: Last and only for discussion is a set of proposed regulations pertaining to the integration of primary care and behavioral healthcare outpatient services. Lisa Ullman from the Department advised the Committee that the Regulations have been jointly developed by the Department of Health, the Office of Mental Health, and the Office of Alcoholism and Substance Abuse Services. For the Department, this proposal will create a new part 404 of title 10 in the NYCRR. OMH and the Office of Alcoholism and Substance Abuse Services will each issue identical proposed regulations. The regulations will apply to providers that are licensed by more than one of the agencies and there are, number one, stand-alone article 28 diagnostic and treatment centers and extension clinics, 2) general hospital outpatient programs, 3) mental hygiene law

article 31 clinic treatment programs, and 4) mental hygiene law article 32 substance use disorder programs. The regulations will allow these outpatient providers who are already licensed by more than one agency at one of their sites to add services at one of their other sites through an expedited process. Without the regulation they would have to get licensed by the second agency in order to provide the additional services at the additional site. Ms. Ullman noted, for example, that if they are where an article 28 provider that is licensed by OMH, to provide mental health service at one of its sites, and wants to add mental health services at one of its other article 28 sites, it currently will have to obtain licensure by OMH for that additional site. Under the proposed regulations, the provider will be able to take advantage of an expedited approval process and would not have to obtain OMH licensure for the additional site. The regulations set forth a number of requirements pertaining to operating and physical plan standards for integrated services providers. For example, the regulation will require all integrated services providers who have policies, to have policies and procedures in place to address matters such as the criteria for admission, discharge, and transfer screening for services and handling emergencies. They also would have to implement quality assurance programs. Providers adding behavioral services will have to engage in appropriate treatment

planning and provide certain minimum services. Providers adding primary care services will have to meet hygiene and safety standards pertaining to things such as storage of supplies, the handling of soiled linens, space requirements for treatment rooms, and waiting areas, and the availability of hand washing stations. Finally providers will be subject to inspection only by one agency that originally licensed the site at issue. As Ms. Ullman noted, the agencies will consult with each other as they conduct such oversight. These proposal is entering now into the 45 day public comment period. Once finalize, the permanent version will be presented for adoption. Ms. Ullman from the Department is available from Albany to answer any questions from Council members. Because this was only informational for the Committee and for discussion there was no vote. So you can proceed now Mr. Chairman.

JEFF KRAUT: Yes, Dr. Martin.

GLENN MARTIN: So I was going to say that this came up at the Behavioral Services Advisory Council and Dr. Brown may remember in more detail than I do but there was a fair amount of discussion about what this would actually lead to in unintended consequences and the like. I think it's going to take a little bit more time for industry and others to flesh it out. So, I

mean, is treatment planning going to be imposed on people who don't have a clue what mental health treatment plans are and the onerous nature that some find in the or are going to situation where you want to integrate something into a mental health clinic but you're a few square foot short in your - is it going to increase the amount of - is it flexible enough to reflect the reality of what this may do? I have no comment on it. Just that I think that was sort of the tenor of the discussion that was there and I know there are a lot of people going to be looking at it, so there are going to be a fair amount of comments that go in.

Everyone's obviously very excited about the idea of just having one person go in and do it and is thrilled with the general aim. I think the details are going to be bandied about for a while.

JEFF KRAUT: There's a kind of a follow up to that, is those actions that stem out of the new part 404 do they have to go to both PHHPC and the Behavior Health Services, or will they now just go to one of whichever one is the controlling license? Because -

GLENN MARTIN: That's a good question. I don't have a clue. But also, behavioral services -- only advisory.

JEFF KRAUT: Right. I know it's advisory but it's - the whole point is to streamline the process and -

GLENN MARTIN: I don't think that was addressed.

JEFF KRAUT: Was that addressed up in Albany? Could you

-

ANGEL GUTIERREZ: Ms. Ullman, could you address that?

LISA ULLMAN: Yeah, I'm sorry, I didn't quite hear the question but it sounded like are the multiple bodies going to need to approve these separately promulgated so each agency is issuing its own set of regulations so this one process would only be put forth to the Council for adoption. Does that answer the question?

JEFF KRAUT: Well, beyond the - assuming the regulation is adopted, which, do providers still have - you're integrating the kind of the regulatory survey framework. Are you also integrating the regulatory approval framework, so there's not multiple appearances before behavioral and PHHPC to get approval if you apply under part 404. Before you become licensed.

LISA ULLMAN: Yeah, again, the idea was, you know, it is not a new license. The idea is that you are proceeding under your existing license but that you're able to expedite the approval for the second, provide the services at the second site, so I don't think we expect any duplication, in fact, the regulatory framework was structured to avoid that duplication. Nevertheless the agencies will stay in contact with each other to make sure certainly that the providers have the competency to provide us services at the respective sites and that they're following all of the requirements that are set up under the regulations, and that's also why the inspection process is going to be handled by one agency rather than the other.

JEFF KRAUT: That's great. Dr. Palmer.

JOHN PALMER: The next question I have and it doesn't related to anything that's been said so far but it's something that's run through my mind since I looked at the draft, and I've heard people talk about this integration is what are the models that people are going to be looking at? What are the recommendations that the PHHPC or the departments are going to have in terms of what models these services should be reconfigured to? Because that would seem to be in terms of

input from consumers and other people very important to talk about before we got into the finalization of these new regulations because adding a psychiatrist here or a primary care doctor there or even trying to create forms that appear to integrate services doesn't mean the deed has been done, and certainly a lot of bad things can happen if we're not looking - if models that are sophisticated enough and have been established and are working someplace in the world to add to our recommendations for this.

JEFF KRAUT: Yeah. Dr. Martin.

GLENN MARTIN: Actually I was going to say I brought up the very similar concern at behavioral health because I know that normally in the past when we've talked about integrated care it's like drop a shrink in the middle of a clinic and it's suddenly integrated, and there are a lot more sophisticated ways of doing that where in fact they use a population health model and you're the psychiatrist is almost treating the primary care people as residents; you're essentially supervising their caseload. If you see something that looks out of the ordinary you swoop down and might get involved or call them out for more attention the other way, so on autopilot your just going through them over breakfast and saying what a good job they're doing.

So we discussed it that this doesn't really address the issue that you raise, it's still going to be helpful one presumes in a certain sense, but no, I don't think it's as forward-looking as it probably needs to.

JEFF KRAUT: OK. Any other questions? OK. Dr. Gutierrez?

ANGEL GUTIERREZ: That concluded my report.

JEFF KRAUT: Thank you much. Thank you very much Dr. Gutierrez. I'd now like to turn to Mr. Robinson who's going to give his report on the ad-hoc committee on freestanding ambulatory surgery centers and charity care. This is the follow up to the issue when an applicant doesn't meet the charity care requirements as part of a limited life extension. What should we do?

PETER ROBINSON: I think we were looking at both charity care and we extended it to look at Medicaid access as well, if you recall. And I'll be brief because we just had our first meeting on September 18 during Committee day and we spent a lot of time just defining charity care and trying to look at from a regulatory standpoint, what that means, and it's clear that the regulations are not clear. So, that we will have to in this

process at least come up with some more specific recommendations.

So, one of the things that we did recognize was that a whole set of issues relating to how sliding scales are applied, right now sort of are missed in the characterization and classification of charity care and will be trying to see how those can be incorporated, as well as the whole issue of bad debt and whether or not we are managing that bad debt issued proactively so that we can actually categorize some of that as charity care as well.

We did look at SPARCS data and one of the things that came out of that which is kind of interesting is that self-pay became a category that was much, much more significant than charity care was and it's clear that self-pay is not as we would've traditionally defined it as people who pay cash and fully pay for services. Rather we think there's a lot of discounted care and potentially charity care in that grouping as well. So we were really struggling with actually not even having adequate information in terms of what the current level of activity is in order to come up with recommendations.

With regard to access, we, the Committee heard several comments from the public. One came from an endoscopy ambulatory surgery center that was looking at meeting it's charity care obligations by doing specific kinds of outreach regarding colon

cancer screening. Obviously for GI procedures. The other comments were actually called for some kind of mandatory contracting by freestanding ambulatory surgery centers with Medicaid managed care plans, so actually getting to the payer relationships as well as looking for provider referrals.

So a lot of good fodder for developing recommendations. We're not at that point yet. We will be actually looking at trying to understand how DSRIP is gonna actually fold into this including the broader new project 11 which is designed to address the needs of the indigent care population, so we're looking to understand that a little bit better. We are looking for information on the total contributions that ambulatory surgery centers currently make to the HICRA pools which in fact is another way of contributing to charity care. So that, the SPARCS data that I mentioned earlier, and we're also looking for some kind of model draft agreement which we may want to use in some standardized form to allow freestanding ambulatory surgery centers to have referral contracts with FQHCs. So a couple of strategies that we are looking at as part of recommendations. I want to thank Chris Delker and the staff for the work that they've done so far, and we're looking forward to bringing you another report at the next council meeting.

JEFF KRAUT: Any questions for Mr. Robinson? Thanks so much, and off to a good start. A lot of interesting ideas there.

Now I'm going to - we've gotten no comment from any member of the Council about the agenda as it's structured, so we're going to proceed as we've structured with the batching, I'm going to now turn it over to Mr. Robinson to give the report of the Establishment and Project Review Committee.

PETER ROBINSON: Well, thank you Mr. Kraut, and may I first recuse myself from the first batch turning over to you.

JEFF KRAUT: Wait a minute...I thought - oh that's right. You're recused. That's right. OK.

Of course you gave me the big batch. No, no, it's just the single project. OK. Sorry.

Ok, I'm going to call applications for construction of health care facilities which is listed as category one and category two. We have one application on here that's application 142005C, Strong Memorial Hospital, Genesee County. Ms. Hines is recused and Mr. Robinson is recused and has left the room. The Establishment and Project Review Committee has recommended contingent approval, and I so move.

[Second]

And an interest by Mr. Booth has been declared. So, DOH and both, approval is contingent. I so move. We have a second by Dr. Gutierrez. Is there any comment by the Department on this application?

CHARLIE ABEL: Only if there are questions.

JEFF KRAUT: Are there any questions from the Council members on this application? Hearing none I'll call for a vote. All those in favor, aye?

[Aye]

Opposed? Abstention? The motion carries.

Could we please ask - that's it. He comes back in. Let's ask him to go to work.

I relinquish the Chair back to you.

PETER ROBINSON: Thank you very much. I'm actually going to go through a lot of batching on these, and if members want to pull out any particular project for special discussion, we'll do that. So in applications for establishment this is without issues or recusals. And this is - gotta put my glasses on - 14106E, Phoenix House Foundation. Certify Phoenix House as

the new operator of the Phoenix House Foundation. Approval conditions and contingencies by DOH, and similar recommendations from the Committee.

141258E, Harlem East Life Plan in New York County which is the transfer of three percent membership interest, also recommended for approval by the Department with conditions and contingencies as well as the Committee.

141044E, Saratoga Center for Care, which is to establish Saratoga Center for Care as the new operator of Saratoga County Maplewood Manor Nursing Home, and decertify 20 RHCf beds. So bringing that from 277 to 257. Department recommendations with conditions and contingencies, and the committee as well recommends approval with conditions and contingencies.

141235E, Sapphire Rehabilitation of Northtown in Erie County to establish Sapphire Rehabilitation as the new operator of a nursing home at 2799 Sheridan Drive. Department recommends approval with conditions and contingencies as does the Committee.

141237E, Sapphire Rehabilitation of Southtown, also in Erie County. The Department recommends approval with conditions and contingencies as does the Committee.

And 142050E, BTRNC LLC, which is the Beechwood Center for Rehabilitation and Nursing and establishing BTRNC as the new

operator of the Beechwood Care Center. For the last three of these, Mr. Booth has declared an interest.

Application 141082E, The Eddy Visiting Nurse Association. This is the change in the controlling person because of the merger of Catholic East and Trinity into CHE-Trinity. Department recommends approval with conditions and contingencies as does the Committee.

We also have certificate of amendment of the certificate of incorporation for the Schulman and Schachne - apologize for the mispronunciation - Institute of Nursing and Rehabilitation which is a fund raising entity and the New York Foundling Hospital for Pediatrics Medical and Rehabilitation care which is a name change. Department recommends approval as does the Committee.

A certificate of merger for St. Joseph's Hospital foundation in Elmira and Arnett Ogden Medical Center Foundation into the Arnett Health Foundation. An interest declared by Mr. Booth with recommendations for approval by both the Department and the Committee.

A certificate of incorporation for the St. Joseph Hospital Foundation for Fund Raising. With a recommendation for approval by both the Department and the Committee. The latter two again with an interest declared by Mr. Booth.

The following home health agency licensures, I'll just delineate the numbers:

2148L, 2000L, 2147L, 2136L interest by Mr. Booth; 2134L, 2371L interest by Mr. Booth; 2123L, 1980L, 2038L, 2104L, 2066L, 1614L, 1787L interest by Mr. Booth; 223L, 2294L, 2267L, 2303A - 2303L, 2105L, 1935L, 2212L, 2496L, 2219L interest by Mr. Booth; 2231L, 2309L, 2423L, 2424L, again Department approval with a contingency is recommended and the Committee did the same. And so I so move that Mr. Chairman.

[Second]

JEFF KRAUT: Have a second by Dr. Gutierrez. Just for clarification, I think there was a transposition error on some of the things. There was 2371L was not mentioned. So just pipe that in the record.

PETER ROBINSON: Let me amend my motion to include that.

JEFF KRAUT: OK. Are there any discussion? Any questions on any one of these applications? Hearing none, all for vote, all those in favor, aye.

[Aye]

Opposed? Abstentions? The motion carries.

JO BOUFFORD: Jeff, I didn't want to do anything to mess up the vote. I think what would be really helpful - I thought I did. Probably pushed the wrong button. I imagine that I was speaking more about the Montefiore proposal with White Plains and noticing active parenthood of many other facilities which looks to me like beginning to pull these health systems together, the provider, the PPSs that it might be an interesting briefing for this council about what are the implications of this, if any, for governance structure and regulatory processes?

PETER ROBINSON: Right, you're talking about the items that are coming up?

JO BOUFFORD: Well, the ones that are here. The White Plains Hospital I think was just -

PETER ROBINSON: We didn't do that yet.

JO BOUFFORD: Oh, I'm sorry. I thought it was mentioned in the batch-

JEFF KRAUT: No, No. We just stopped, but-

JO BOUFFORD: OK. No problem. I just want to raise that issue.

JEFF KRAUT: We're going to take that one separately.

JO BOUFFORD: Ok, thank you. Sorry about that.

JEFF KRAUT: We the vote on that.

JO BOUFFORD: There were so many number - yeah, yeah.

JEFF KRAUT: you just voted on this.

JO BOUFFORD: Thank you.

JEFF KRAUT: It's not inappropriate to bring this up.
Call the application first.

PETER ROBINSON: Well, I actually needed to do something before I did that which is that at our committee meeting Ms. Hines, who is - I'm sorry. Did we vote? I don't think we voted yet.

JEFF KRAUT: All those in favor, aye.

[Aye.]

Opposed? Abstentions? Motion carries. Thank you.

Keep us honest.

PETER ROBINSON: At the committee meeting Ms. Hines noted the history of this significant number of licensed home care agency applications that we've been approving in vast quantities over the last several years, and wanted to get a sense of what is all this doing to the delivery system and do we have any sense of what we've done with all of these approvals and how that's affected the delivery of care in the communities where these have been established? So I think we agreed Mr. Abel, that we would ask the Department to provide first the Committee and then to the extent that it seemed warranted at the Full Council an overview of this, including the kinds of oversight that's taking place for these entities.

JEFF KRAUT: That was the question is, has the Department have the bandwidth to oversee and attest to the quality of the services that are being provided of which we're licensing?

CHARLIE ABEL: OK, that to me is a different question.

JEFF KRAUT: OK. Then answer his first.

CHARLIE ABEL: We intend to provide the Council with an update on all of the approvals for the CHHAs that have gone through the RFA process, because as you know, those approvals had expiration dates or deadlines for implementing those programs, and some facilities are - some agencies are lingering a bit. So we intend to give the Council an update, if not next cycle the cycle after that with respect to number of CHHAs in operation in all of the counties.

The next logical question I think was, Mr. Robinson brought up was well, what has this really done to the system? And I think it may be too early to tell that. You know, in terms of what you know, what is -- are people getting better services, more services, what's are competitor, new competitors coming in and forcing other folks out? There's a whole lot of dynamics there, and I think it's all going to get even more complicated as we go through a DSRIP environment.

PETER ROBINSON: I think that part of it makes sense, but just a point of clarification; we recognize that the CHHA approvals are still in the implementation phase. What actually Ms. Hines was raising and I was advancing on her behalf was the LHHCSA side of it, and we think that's kind of been going on for

actually a lot longer than the, this reopening of the freeze if you will on CHHAs that occurred.

CHARLIE ABEL: And I can tell you briefly in discussions with staff, I'm not sure if Linda Roush is in Albany, but the, in general with all the approvals with LHHCSAs, we have just as many LHHCSAs that wind up going inactive or out of business. So, all of these approvals aren't adding to the resource in terms of numbers of LHHCSAs. It's really just kind of maintaining -

PETER ROBINSON: Even that would be I think an interesting picture to see. If there's a trend of approvals and disappearance that the Department's aware of and we can even look at that statistically over time that would probably be informative I think.

CHARLIE ABEL: We'll see what we can do.

JEFF KRAUT: Yea, and so, another dimension of Vicki's issue, putting aside the bandwidth question I asked was we're always concerned about supply-generated utilization. You, we talk about that in the hospitals, if you build more we're just going to use more and the like. Is that an issue here? Because

we just have a sense, we approve 20, 30, 40, 50 at almost every council meeting that I can remember in history. At least 20. It was a curiosity for right now. I don't think we have with purpose, but we're just trying to understand and Dr. Boufford.

JO BOUFFORD: I think this could also be a bigger issues which means something we should take stock of. I know colleagues in the sort of institutional long term care business are just feeling the whole system is on the edge in relation to where money's shifting. I'm not saying it's appropriate or inappropriate, but it gets back to this issue of are there contingencies for facilities. It's the same in long term care as it is in acute care for facilities that are really necessary. Everybody cannot move out of an institutional base in terms of their long term care. So I think this issue of impact not only here but in the overall long term care system and the institutional facilities is something we ought to be looking at some point because there's a bit of an absence of intellectual property being invested in the larger picture.

JEFF KRAUT: Fair enough. OK. Any other questions? Do you want to just call the application?

PETER ROBINSON: Yes. So we're calling application 141248E, White Plains Hospital Center in Westchester County. An interest by Mr. Fassler. This is to establish the Montefiore Health System Inc., as the active parent and co-operator of White Plains Hospital Medical Center. The application is recommended by the Department for approval with a condition and contingencies. The committee too recommends approval with a condition and contingencies, and I so move.

JEFF KRAUT: May I have a second? I have a second Dr. Torrez. Dr. Boufford, now you just want to make the point that you just made?

JO BOUFFORD: There are a number of these I see coming up. It's not just this one, but I guess the question is if we're going to see more of them and it really is pulling these systems together, these PPSs in some instances together, probably that we should understand the implication - once this approval takes place, how does the CON or absence of CON process play out at these multiple facilities start moving things around, sort of closing things, opening things, that sort of stuff. That's just sort of how that stuff works. And are there any governance issues here. I mean this is very careful to say this is what

Montefiore will do. The same thing happens in Rochester, but you know, then what does that mean on a governance side?

JEFF KRAUT: A couple of years ago we had a conversation and there's merit because of the turnover we've had on the Council, and I know we had it at the SHRPC, I don't think I've ever been present - before the merger. The concept of active parent, passive parent, the different governance structures that systems currently operate under and the recognition that as the consolidation continues you know, within the industry, how does this interact with maybe PPS? Maybe a little too early because we don't know the PPS models because they're being developed, but certainly within the active and passive parent and control issues. That might be, that was more of a legal conversation as to the structures and what the implications are.

JO BOUFFORD: The other issue I think would be the link to things like the anti-trust waivers and that sort of stuff, would just be an interesting kind of more comprehensive conversation.

PETER ROBINSON: And I would agree. And I do think just from the standpoint of the technical side of CON even with an active parent, the individual entities under this structure retain their own article 28 designation and if there are things

like bed capacity changes and other kinds of things, those would still require certificate of need application.

JEFF KRAUT: There are exceptions, but in general I think you're correct and I would suggest with the antitrust, it's not coming into this room if it hasn't passed antitrust.

JO BOUFFORD: So it's being reviewed elsewhere.

JEFF KRAUT: It typically, because you have to Hart-Scott-Rodino filing.

JO BOUFFORD: Not the waiver, --

JEFF KRAUT: But there's no waiver. I mean -

JO BOUFFORD: Certificate of whatever it is they'll-

JEFF KRAUT: But that's a different issue now. Because we've never issued a certificate of public authority, correct? We've never issued it. So that's a new twist here, and that's for different types of relationships other than active and passive parent. So, there's a lot of dimensions - it's a good

discussion. There's a lot of dimensions to this and I don't, but this is like my life every day.

(Inaudible comment by Jo Boufford)

JEFF KRAUT: OK. I would suggest to the Department maybe, would you prefer, well, Dr. Boufford - you're not on establishment, so maybe we come at - we'll do it at Council? A generic conversation. OK. Do it at Council. Good.

Call the question. All those in favor aye?

[Aye]

Opposed? Abstentions? The motion carries.

PETER ROBINSON: I'm turning the Chair over to you Mr. Kraut.

JEFF KRAUT: I'm going to call applications 142009E. RU System, Ontario County, and application 142041E, RU System Genesee County where both Mr. Robinson and Ms. Hines have declared a conflict. Mr. Robinson has left the room. OHSM and the Department of Health and the Committee have reviewed this and both recommend contingent approval and I so move. May I have a second? Dr. Gutierrez? Are there any questions on this

application? Hearing non - sorry - and there's an interest declared by Mr. Booth on both these applications. Sorry Chris. Is there any questions? Hearing none, I'll call for a vote. All those in favor, aye.

[Aye]

Opposed? Abstentions? The motion carries. Please ask Mr. Robinson to return.

PETER ROBINSON: Thank you. I will call now application 142024E, Charles Evans Health Center in Nassau County. An interest declared by Mr. Kraut. To establish the Charles Evans Health Center Inc., as the new operator of the facility located at 857 South Oyster Bay Rd. in Bethpage. Currently operated by Adults and Children with Learning and Developmental Disabilities Inc. The Department recommends approval with conditions and contingencies as does the Committee, and I so move.

[Second]

JEFF KRAUT: I have a second, Dr. Gutierrez. Any discussion? Questions? Hearing none, I'll call for a vote. All those in favor, aye.

[Aye]

Opposed? Abstentions? The motion carries.

PETER ROBINSON: Application 142031B, Lish Inc., d/b/a Lish at Central Islip, Suffolk County. An interest declared by Mr. Kraut. To establish a diagnostic and treatment center to be located at 159 Carlton Avenue Central Islip, and six extension clinics to serve Nassau and Suffolk Counties. All sites are currently operated as article 28 facilities by four different operators. This application has met with the Department's approval with conditions and contingencies recommended, as does the Committee, and I so move.

[Second]

JEFF KRAUT: I have a second, Dr. Gutierrez. Any questions? Hearing none, I'll call for a vote. All those in favor, aye.

[Aye]

Opposed? Abstentions? The motion carries.

And I will recuse myself on the next one.

PETER ROBINSON: So I am calling application 141221E, True North DC LLC, d/b/a Port Washington Dialysis Center in Nassau County. A conflict and recusal has been declared by Mr. Kraut who has left the room, and an interest has been declared by Dr. Bhat. This application is for the acquisition of Port Washington Dialysis Center located at 50 Seaview Blvd., Port Washington, and certification and construction of a chronic renal dialysis extension clinic to provide chronic renal dialysis home training to be located at 1 Cisney Avenue in Floral Park. This application has met with the approval of the Department with conditions and contingencies recommended, and the committee has also done the same. May I have a motion?

[Second]

Motion Mr. Fassler, Second Dr. Gutierrez. Any discussion?
All in favor?

[Aye]

Opposed? Motion carries. Mr. Kraut can return.

Calling application 142015E, West Nassau Dialysis Center Inc., in Nassau County. A conflict and a recusal by Dr. Bhat who has left the room. PHHPC approval of, is required of five new shareholders for an existing end stage renal dialysis center. So this is not a new center. It's just the approval of new shareholders into the center. The Department has rendered

its approval with a condition and contingency recommended. The committee does likewise, and I so move.

JEFF KRAUT: I have a second by Dr. Gutierrez. There any questions. Yes, Dr. Palmer.

JOHN PALMER: When I'm looking at the right up here, I think you said interest and recusal?

PETER ROBINSON: I meant to say conflict if I didn't. It's a conflict and a recusal by Dr. Bhat.

JOHN PALMER: OK. So, all I see is the conflict. While I see interest, it said the word next to it is interest. I'm looking at the -

JEFF KRAUT: Oh, I think you're looking at the previous application? This is West Dialysis.

JOHN PALMER: I'm sorry. OK. So recusal is what it's saying here. That's it. OK.

JEFF KRAUT: Any other questions? All those in favor aye.

[Aye]

Opposed? Abstentions? The motion carries. Can you ask Dr. Bhat to return please?

PETER ROBINSON: These are two home health agency licensure applications. 2150L, Professional Assistance for Seniors, with an interest by Mr. Booth, Ms. Hines and Mr. Robinson, and 2220L Healthwood Assisted Living at Penfield. Also an interest by Mr. Booth, Ms. Hines, and Mr. Robinson. The Department recommends approval with a contingency as does the committee and I so move.

JEFF KRAUT: I have a second Dr. Gutierrez. And discussion? Hearing none, I'll call for a vote. All those in favor, aye.

[Aye]

Opposed? Abstentions? The motion carries.

PETER ROBINSON: Calling now application 141201E, New York Endoscopy Center in Westchester County. This is a request for a two-year extension to the operating certificate established under project number 082037. And I'm noting here for the record the contingent approval for a two-year extension

of the operating certificate from the date of the Public Health and Health Planning Council recommendation. The application has received conditional and contingent approval for a two-year extension of the operating certificate by the Department, as, and the Committee makes a similar recommendation, and I so move.

JEFF KRAUT: I have a second, Dr. Gutierrez, any discussion? All those in favor, aye.

[Aye]

Opposed? Abstentions? The motion carries.

So what we're going to do now is I'm going to turn over the chair to Mr. Robinson and Mr. Booth will provide the results of the special project review committee which he chaired this morning and I am going to leave because I am in conflict on the three applications.

PETER ROBINSON: May I call upon you Mr. Booth?

CHRIS BOOTH: You may. I covered for Mr. Robinson this morning who was tardy and we considered the following three applications. Application 141300B. Greenwich Village Ambulatory Surgery Center. Conflict declared by Mr. Kraut who's outside the room. Establish and construct a freestanding

ambulatory surgery center specializing in orthopedic surgery and pain management to be located at 200 West 13th Street, suite 400 New York. Both the Department and the Committee recommended conditional and contingent approval with a five year extension to be the operating certificate from the date of the Public Health and Health Planning Council recommendation letter approval, and I so move.

[Second]

PETER ROBINSON: I have a motion and a second by Dr. Gutierrez. Any discussion? Call the question, all in favor.

[Aye]

Opposed? Motion carries.

CHRIS BOOTH: Application 132356E, CPRH four operations. Conflict declared by Mr. Kraut who is still outside the room. Establish KPRH Four Operations as the new operator of Flushing Manor Care Center, an existing proprietary business corporation at 278 bed RHCF located at 139, 66th, 35th avenue in Flushing, and decertify 10 RHCF beds resulting in a total of 268. Both the

Department and the committee recommend approval with condition and contingencies, and I so move.

PETER ROBINSON: Second, Dr. Gutierrez. Questions? Call the question, all in favor?

[Aye]

Opposed? Carried. Mr. Kraut can return. And you can continue.

CHRIS BOOTH: Application 14121 - let me try that again - 141215E, Dunkirk Operating LLC, d/b/a Chautauqua Nursing and Rehabilitation Center. Interest declared by Mr. Booth and Mr. Holt. Establish Dunkirk Operating LLC, a recently formed New York for-profit entity as the new operator of Chautauqua County home, an existing 216 bed public RHCF located at 10836 Temple Rd. Both the Department and the Committee recommended approval with a condition and contingencies, and I so move.

JEFF KRAUT: We have a second, Dr. Gutierrez. Is there any questions? Hearing none, I'll call for a vote. All those in favor, aye.

[Aye]

Opposed? Abstentions? The motion carries.

PETER ROBINSON: That concludes the report of the Establishment and Project Review Committee.

JEF KRAUT: Thank you very much Mr. Robinson, thank you very much Mr. Booth. Now, this concludes the public session of the Public Health and Health Planning Council which I am adjourning. The next committee day is on November 13 and the Full Council will convene on December 4. Both meetings will be held in Albany. I'm now going to go into executive session to receive a report on the committee of health personnel and interprofessional relations. The - you keep - the cameras will be turned off and I'll ask all public attendees to please leave the room.

[ES]

12-03 - Section 710.1 of Title 10 NYCRR – Certificate of Need Requirements
*****TO BE DISTIBUTED UNDER SEPARATE COVER*****

14-16 - Part 404 of Title 10 NYCRR – Integrated Outpatient Services
*****TO BE DISTIBUTED UNDER SEPARATE COVER*****

Summary of Express Terms

The amendments to section 415.3 of Title 10 (Health) NYCRR are required to clarify the requirements for transfer and discharge of residents from nursing homes as mandated by federal law. The amendments more clearly define what constitutes a transfer or discharge, specify the elements that must be included in a notice of transfer or discharge to the resident and the deadlines for service of notice, and clarify the rights of a resident at a hearing should one be requested. These amendments do not change existing requirements; they simply ensure that the Department's regulations clearly reflect the existing federal requirements.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by sections 2801, 2801-a and 2803(2) of the Public Health Law, Section 415.3(h) of Part 415 of Subchapter A (Medical Facilities-Minimum Standards) of Chapter V, Title 10 (Health) of the Official Compilation of Codes, Rules, and Regulations of the State of New York are hereby amended to be effective upon publication of a Notice of Adoption in the State Register, to read as follows:

(h) *Transfer and discharge rights.* Transfer and discharge shall include movement of a resident to a bed outside of the certified facility whether that bed is in the same physical plant or not. Transfer and discharge shall not refer to movement of a resident to a bed within the same certified facility, and does not include transfer or discharge made in compliance with a request by the resident, the resident's legal representative or health care agent, as evidenced by a signed and dated written statement, or those that occur due to incarceration of the resident.

(1) With regard to the transfer or discharge of residents, the facility shall:

i) permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless such transfer or discharge is made in recognition of the resident's rights to receive considerate and respectful care, to receive necessary care and services, and to participate in the development of the comprehensive care plan and in recognition of the rights of other residents in the facility:

a) The resident may be transferred only when the interdisciplinary care team, in consultation with the resident or the resident's designated representative, determines that:

1) the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met after reasonable attempts at accommodation in the facility;

2) the transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

3) the [health or] safety of individuals in the facility [would otherwise be] is endangered[, the risk to others is more than theoretical and all reasonable alternatives to transfer or discharge have been explored and have failed to safely address the problem];
or

4) The health of individuals in the facility is endangered;

b) transfer and discharge shall also be permissible when the resident has failed, after reasonable and appropriate notice, to pay for (or have paid under Medicare, Medicaid or third-party insurance) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid. Such transfer or discharge shall be permissible only if a charge is not in dispute, no appeal of a denial of benefits is pending, or funds for payment are actually available and the resident refuses to cooperate with the facility in obtaining the

funds;

c) transfer or discharge shall also be permissible when the facility discontinues operation and has received approval of its plan of closure in accordance with subdivision (i) of section 401.3 of this Title;

ii) ensure complete documentation in the resident's clinical record when the facility transfers or discharges a resident under any of the circumstances specified in subparagraph (i) of this paragraph. The documentation shall be made by:

a) the resident's physician and, as appropriate, interdisciplinary care team[, as appropriate], when discharge or transfer is necessary under subclause (1) or (2) of clause (a) of subparagraph (i) of this paragraph; and

b) a physician when transfer or discharge is necessary due to the endangerment of the health of other individuals in the facility under subclause (3) of clause (a) of subparagraph (i) of this paragraph;

iii) before it transfers or discharges a resident:

a) Notify the resident, designated representative, if any, and, if known, family member of the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner the[y] resident and/or family member understand;

- b) record the reasons in the resident's clinical record; and

- c) include in the notice the items described in paragraph (v) of this paragraph;

- iv) provide the notice of transfer or discharge required under subparagraph (iii) of this paragraph at least 30 days before the resident is transferred or discharged, except that notice shall be given as soon as practicable before transfer or discharge, but no later than the date on which a determination was made to transfer or discharge the resident, under the following circumstances:
 - (a) the safety of individuals in the facility would be endangered;

 - (b) the health of individuals in the facility would be endangered;

 - (c) the resident's health improves sufficiently to allow a more immediate transfer or discharge;

 - (d) an immediate transfer or discharge is required by the resident's urgent medical needs;
[or]

 - (e) [the transfer or discharge is being made in compliance with a request by the resident;]
the transfer or discharge is the result of a change in the level of medical care prescribed

by the resident's physician; or

(f) the resident has not resided in facility for 30 days.

v) include in the written notice specified in subparagraph (iii) of this paragraph the following:

(a) The reason for transfer or discharge;

(b) The specific regulations that support, or the change in Federal or State law that requires, the action;

(c) The effective date of transfer or discharge;

(d) The location to which the resident will be transferred or discharged;

([a]e) [for transfers or discharges] a statement that the resident has the right to appeal the action to the State Department of Health, which includes: [in accordance with paragraphs (2) and (3) of this subdivision. The statement shall include a current phone number for the department which can be used to initiate an appeal];

(1) an explanation of the individual's right to request an evidentiary hearing appealing the decision;

(2) the method by which an appeal may be obtained;

(3) in cases of an action based on a change in law, an explanation of the circumstances under which an appeal will be granted;

(4) an explanation that the resident may remain in the facility (except in cases of imminent danger) pending the appeal decision if the request for an appeal is made within 15 days of the date the resident received the notice of transfer/discharge;

(5) in cases of residents discharged/transferred due to imminent danger, a statement that the resident may return to the first available bed if he or she prevails at the hearing on appeal; and

(6) a statement that the resident may represent him or herself or use legal counsel, a relative, a friend, or other spokesman;

(b)f) the name, address and telephone number of the State long term care ombudsman;

(c)g) for nursing facility residents [who are mentally ill or who have] with developmental disabilities, the mailing address and telephone number of the [Commission on Quality of Care for the Mentally Disabled which is responsible for the

protection and advocacy of such individuals] agency responsible for the protection and advocacy of developmentally disabled individuals established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act; [and]

(h) for nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act;

[(d) a statement that, if the resident appeals the transfer or discharge to the Department of Health within 15 days of being notified of such transfer or discharge, the resident may remain in the facility pending an appeal determination. This clause shall not apply to transfers or discharges based on clauses (iv) (a), (b), (d), or (e) of this paragraph; and]

(vi) provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility [including an opportunity to participate in deciding where to go], in the form of a discharge plan which addresses the medical needs of the resident and how these will be met after discharge, and provide a discharge summary pursuant to section 415.11, subdivision (d) of this Title; and

(vii) permit the resident, their legal representative or health care agent the opportunity to participate in deciding where the resident will reside after discharge from the facility.

(2) The department shall grant an opportunity for a hearing to any resident who requests it because he or she believes the facility has erroneously determined that he or she must be transferred or discharged [Appeals of transfer and discharge decisions to the Department of Health as permitted by clause (a) of subparagraph (v) of paragraph (1) of this subdivision shall be] in accordance with the following:

(i) The resident has the right to:

(a) [a pre-transfer on-site appeal determination under the auspices of the Department of Health, provided that the resident has appealed the transfer or discharge within 15 days of the notice, except in cases involving imminent danger to others in the facility; and] request a hearing to appeal the transfer or discharge notice at any time within 60 days from the date the notice of transfer or discharge is received by the resident;

(b) remain in the facility pending an appeal determination if the appeal request is made within 15 days of the date of receipt of the transfer or discharge notice; [or]

(c) a post-transfer/discharge appeal determination [within 30 days of transfer] if the resident did not request an appeal determination [prior to transfer] within 15 days of the date of receipt of the transfer or discharge notice;

(d) return to the facility to the first available semi-private bed if the resident wins the appeal, prior to admitting any other person to the facility; and

(e) represent him or herself, or use legal counsel, a relative, a friend or other spokesman.

[examine his/her medical records.]

(ii) [The presiding officer shall have the power to obtain medical and psychosocial consultations.]The resident or the resident's representative as described in (2)(i)(e) of this paragraph must be given the opportunity to:

(a) examine at a reasonable time before the date of the hearing, at the facility, and during the hearing, at the place of the hearing:

1) the contents of the resident's file including his/her medical records; and

2) all documents and records to be used by the facility at the hearing on appeal;

(b) bring witnesses;

(c) establish all pertinent facts and circumstances;

(d) present an argument without undue interference; and

(e) question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.

(iii) [The nursing home shall have the burden of proof that the transfer is/was necessary and the discharge plan appropriate.]All hearings must be conducted in accordance with Article 3 of the State Administrative Procedure Act, and in accordance with the following:

(a) the presiding officer shall have the power to obtain medical assessments and psychosocial consultations, and the authority to issue subpoenas;

(b) the nursing home shall have the burden of proof that the discharge or transfer is/was necessary and the discharge plan appropriate;

(c) an administrative hearing must be scheduled within 90 days from the date of the request for a hearing on appeal; and

(d) the parties must be notified in writing of the decision and provided information on the right to seek review of the decision, if review is available.

[(iv) in cases involving imminent danger to others in the facility, an involuntary transfer may be arranged before a hearing. However, the facility shall be required to hold the resident's bed until after the hearing decision. If the transfer is found to be appropriate, the facility may charge a private pay resident for the time the bed was held. If the transfer is found to be inappropriate, the facility shall readmit the resident to his or her bed on a

priority basis the first available bed,]

[(v) the department shall conduct a review and render a decision on the appeal as required in clause (a) of subparagraph (i) of this paragraph within 15 days of the request.]

[(3) If an appeal decision rendered after discharge finds the discharge or transfer to be inappropriate, the facility shall readmit the resident prior to admitting any other person.]

[(4)3] The facility shall establish and implement a bed-hold policy and a readmission policy that reflect at least the following:

(i) at the time of admission and again at the time of transfer for any reason, the facility shall verbally inform and provide written information to the resident and the designated representative that specifies:

(a) the duration of the bed-hold policy during which the resident is permitted to return and resume residence in the facility; and

(b) the facility's policies regarding bed-hold periods, which must be consistent with subparagraph (iii) of this paragraph, permitting a resident to return;

(ii) At the time of transfer of a resident for hospitalization or for therapeutic leave, a nursing home shall provide written notice to the resident and the designated

representative, which specifies the duration of the bed-hold policy described in subparagraph (i) of this paragraph.

(iii) a nursing home shall establish and follow a written policy under which a resident whose hospitalization or therapeutic leave exceeds the bed hold period is readmitted to the facility immediately upon the first availability of a bed in a semi-private room if the resident:

(a) requires the services provided by the facility; and

(b) is eligible for Medicaid nursing home services.

(iv) a nursing home shall establish and follow a written policy under which a resident who has resided in the nursing home for 30 days or more and who has been hospitalized or who has been transferred or discharged on therapeutic leave without being given a bed-hold is readmitted to the facility immediately upon the first availability of a bed in a semi-private room if the resident:

(a) requires the services provided by the facility; and

(b) is eligible for Medicaid nursing home services.

([5]4) With regard to the assurance of equal access to quality care, the facility shall

establish and maintain identical policies and practices regarding transfer, discharge and the provision of all required services for all individuals regardless of source of payment.

Regulatory Impact Statement

Statutory Authority:

The statutory authority for this rule is Public Health Law, Sections 2801, 2801-a and 2803(2), which require the Public Health and Health Planning Council to promulgate regulations, subject to the Commissioner's approval, governing the standards and procedures followed by nursing homes. Those standards and procedures must, at a minimum, meet federal standards.

Legislative Objectives:

To clarify, in accordance with a Stipulation of Settlement in *Gautam, et. al. v. Novello, et. al.*, SDNY 03 Civ. 2473(THK), the requirements that must be met by nursing homes in connection with the transfer or discharge of residents. The state's regulations governing transfer and discharge must meet, at a minimum, federal standards.

Needs and Benefits:

Since July 2005, transfer and discharge of nursing home residents has been in accordance with an interim policy that clarifies state requirements in a way that ensures compliance with federal requirements. Amending 10 NYCRR 415.3 in accordance with the interim policy will permanently clarify the requirements that must be met by nursing homes prior to transferring and discharging patients and will ensure that all required policies and procedures are clearly included in the Department's regulations.

Costs:

Costs to Regulated Parties for the Implementation of and Continuing Compliance with the Rule:

Nursing homes are already required to comply with federal regulations prior to transferring and discharging residents. These regulations do not expand upon already existing requirements.

Costs to the Agency, the State and Local Governments for the Implementation and Continuation of the Rule:

The amendments to 10 NYCRR 415.3 will not increase any costs currently borne by the Department or state and local governments. The amendments clarify existing requirements that all facilities are required to follow.

The information, including the source(s) of such information and the methodology upon which the cost analysis is based:

Cost analysis is based on the substance of the regulations and the interim policy clarifying those regulations. There has been no change in the requirements that must be met by all affected entities.

Local Government Mandates:

Local governments that operate nursing homes are already complying with the requirements clarified by these amendments.

Paperwork:

The paperwork required by these amendments has not changed.

Duplication:

These amendments do not duplicate existing regulations or requirements.

Alternatives:

None. The amendments simply clarify state requirements by ensuring the Department's regulations clearly incorporate existing federal mandates.

Federal Standards:

Federal requirements, upon which these amendments are based, are located at 42 CFR Parts 431 and 483. These amendments do not expand upon these requirements.

Compliance Schedule:

Affected entities are already required to comply with the proposed amendments.

Contact Person:

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

Regulatory Flexibility Analysis for Small Businesses and Local Governments

Effect of Rule:

Local governments will not be affected by this rule except to the extent that they operate a nursing home. There are 34 counties that operate nursing homes. The Department does not have information regarding the number of small business nursing homes in NYS readily available. As the amendments do not add to or change existing requirements, and are mandated by federal law, small businesses and local governments will not be affected.

Compliance Requirements:

There are no new reporting and record keeping requirements. The regulations simply clarify state requirements by ensuring the Department's regulations clearly incorporate existing federal mandates.

Professional Services:

No additional professional staff is expected to be needed as a result of the regulations.

Compliance Costs:

There are no new or additional costs associated with these proposed rules.

Economic and Technological Feasibility:

These regulations simply clarify existing requirements. They do not require any new technology and should not affect the routine cost of doing business.

Minimizing Adverse Impact:

The Department has no flexibility with respect to these regulations as all requirements are mandated by federal law. Nonetheless, the rule will have no adverse economic impact on small businesses or local governments since it simply clarifies state requirements by ensuring the Department's regulations clearly incorporate existing federal mandates.

Small Business and Local Government Participation:

The Department will meet the requirements of SAPA § 202-b(6) in part by publishing a notice of proposed rulemaking in the State Register with a comment period. Input was not requested with respect to these amendments since they reflect federal mandates. The proposed rules are not expected to have a deleterious effect on small businesses and local governments, since these requirements are already in effect. Accordingly, opposition is not expected.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

Rural areas are defined as counties with a population less than 200,000 and, for counties with a population greater than 200,000, includes towns with population densities of 150 persons or less per square mile. The proposed amendment will apply statewide, including the 43 rural counties with less than 200,000 inhabitants, and the 10 urban counties with a population density of 150 per square mile or less.

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

There are no new or additional requirements as a result of this rule. The regulations simply clarify state requirements by ensuring the Department's regulations clearly incorporate existing federal mandates.

Costs:

There are no capital costs associated with these rules. There are no additional operational costs as providers are currently required to have policies and procedures in place to implement existing transfer and discharge requirements. Any administrative costs associated with transfer or discharge are mandated by federal law.

Minimizing Adverse Impact:

The Department has no flexibility with respect to these regulations as all requirements are mandated by federal law. Nonetheless, the rule will have no adverse economic impact on

rural area providers since it simply clarifies state requirements by ensuring the Department's regulations clearly incorporate existing federal mandates.

Rural Area Participation:

The Department will meet the requirements of SAPA Section 202-bb(7), in part, by publishing a notice of proposed rulemaking in the State Register with a comment period. The Department did not solicit input regarding these amendments since they reflect federal mandates. The proposed rules are not expected to have a deleterious effect on rural areas, since these requirements are already in effect. Accordingly, opposition is not expected.

Job Impact Statement

A Job Impact Statement is not required because it is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs and employment opportunities.



Public Health and Health Planning Council

Project # 142157-C
United Memorial Medical Center North Street Campus

Program: Hospital
Purpose: Construction

County: Genesee
Acknowledged: October 14, 2014

Executive Summary

Description

United Memorial Medical Center (UMMC), a 131-bed community hospital with its 111-bed main site located at 127 North Street, Batavia (Genesee County), New York 14020, proposes an expansion and service addition to improve the facility's cancer service program. The project consists of the purchase of a linear accelerator and the construction of a new 8,498 square foot cancer center building to be located on UMMC's main campus site. The new cancer center will house both Radiation (LINAC) and Medical Oncology services. Currently, no Radiation Oncology services are located in the main hospital building. The facility presently has a Medical Oncology suite (Infusion Services) located on the hospital's 2nd floor that will be relocated to the new ground level cancer center.

The proposed location for the new cancer center building is adjacent to the Imaging Department, which will allow the new Radiation Oncology service unit to use the Imaging Department's CT scanner and ultrasound rooms.

OPCHSM Recommendation
Contingent Approval

Need Summary

The proposed project will include the construction of an 8,498 sq. ft. cancer facility and the addition of one (1) linear accelerator unit to provide cancer treatment for people within the Western Region. The new program at UMMC also will have an affiliation with the Lipson Cancer Center at Rochester General Hospital.

Program Summary

A favorable recommendation can be made regarding the facility's current compliance pursuant to Section 2802-(3)(e) of the New York State Public Health Law.

Financial Summary

Project costs totaling \$6,494,004 will be met by \$650,004 in cash equity with the remaining \$5,844,000 financed through 2 separate loans from Tompkins Bank of Castile as follows:

- Construction loan for \$4,044,000 at 4.18% interest for 20 years, and
- Equipment loan for \$1,800,000 at 4.69% interest for 7 years.

Budget:	Revenues	\$6,452,115
	Expenses	<u>\$5,134,323</u>
	Net Income/(Loss)	\$1,317,792

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 Primary Care and 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, Albany, New York 12237. Once the check is mailed a copy of the transmittal letter should be uploaded into NYSECON as a response to this contingency. [PMU]
2. Submission of a commitment for a permanent mortgage, to be provided from a recognized lending institution at a rate of interest determined to be acceptable by the Department of Health. This is to be provided within 120 days of approval of state hospital code drawings and before the start of construction. Included with the submitted permanent mortgage commitment must be a sources and uses statement and a debt amortization schedule, for both new and refinanced debt. [BFA]
3. Submission of an executed equipment loan commitment acceptable to the Department of Health. [BFA]
4. Submission of an executed equipment purchase agreement 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]
2. The applicant is required to submit Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction for record purposes. [AES]
3. Per 710.9 the applicant shall notify the appropriate Regional Office at least two months in advance of the anticipated completion of construction date to schedule any required pre-opening survey. Failure to provide such notice may result in delays affecting both the pre-opening survey and authorization by the Department to commence occupancy and/or operations. [AES]
4. Compliance with all applicable sections of the NFPA 101 Life Safety Code (2000 Edition), and the State Hospital Code during the construction period is mandatory. This is to ensure that the health and safety of all building occupants are not compromised by the construction project. This may require the separation of residents, patients and other building occupants, essential resident/patient support services and the required means of egress from the actual construction site. The applicant shall develop an acceptable plan for maintaining the above objectives prior to the actual start of construction and maintain a copy of same on site for review by Department staff upon request. [AES]
5. The applicant must adhere to the Construction Start (08/01/2015) and Completion Dates (08/01/2016). The Department understands that unforeseen circumstances may delay the start and completion of the project. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AES]

Council Action Date

December 4, 2014

Need Analysis

Background

United Memorial -North Campus provides services to Genesee, Orleans, and Wyoming County. United Memorial -North Campus provided a total of 1,956 medical oncology treatments. Currently the facility does not provide therapeutic radiology.

Service	1 st Year	3 rd Year
Medical Oncology	3,912	4,057
Radiology Therapeutic	6,938	7,216
Total	10,850	11,273

The need methodology set forth in 10 NYCRR Section 709.16 calculates the need for therapeutic radiology devices (linacs) by health planning region.

The eight-county Western New York Region has a total of three facilities – two hospitals and one hospital extension clinic - providing linear accelerator services as follows:

Current Resources	# Facilities With Linac. Services			# Linac. Machines		
	Hospitals	Hospital Clinics	Total	Hospitals	Hospital Clinics	Total
Eight County Western NY Region						
Genesee	0	0	0	1	0	1
Orleans	0	0	0	0	0	0
Wyoming	0	0	0	0	0	0
Allegany	0	0	0	0	0	0
Cattaraugus	0	1	1	0	1	1
Chautauqua	1	0	1	1	0	1
Erie	1	0	1	4	0	4
Niagara	0	0	0	0	0	0
Total Western NY Region	2	1	3	5	1	6
Total Three County-Genesee, Orleans, Wyoming	0	0	0	1	0	1

The table below shows a need for 17 MEV devices (linear accelerators) in the eight-county Western New York HSA region:

Linac Need in Western NY	Total W. NY
# of Cancer Cases/Year	10,063
60% will be Candidates for Radiation Therapy	6,038
50% of (2) will be Curative Patients	3,019
50% of (2) will be Palliative Patients	3,019
Course of Treatment for Curative Patients is 35 Treatments	105,666
Course of Treatment for Palliative patients is 15 Treatments	45,285
The Total Number of Treatments [(5)+(6)]	150,951
Need for MEV Machines	
(Each MEV Machine has Capacity for 6,500 Treatments)	23.22
Existing/Approved Resources (Upon Approval of 142157)	8.00
Remaining Need for MEV Machines	15.22

Based on 709.16, there is a need for two linear accelerators in the three county area (Genesee, Orleans, and Wyoming) addressed by the applicant:

	Total for Three County Area (Genesee, Orleans, Wyoming)
# of Cancer Cases/Year	894
60% will be Candidates for Radiation Therapy	536
50% of (2) will be Curative Patients	268
50% of (2) will be Palliative Patients	268
Course of Treatment for Curative Patients is 35 Treatments	9,387
Course of Treatment for Palliative patients is 15 Treatments	4,023
The Total Number of Treatments [(5)+(6)]	13,410
Need for MEV Machines	
(Each MEV Machine has Capacity for 6,500 Treatments)	2.06
Existing/Approved Resources (Upon Approval of 142157)	2.00
Remaining Need for MEV Machines	0.06

Conclusion

The proposed project will improve access to therapeutic radiology for cancer patients in Genesee, Orleans, and Wyoming counties.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

United Memorial Medical Center (UMMC), an existing 131-bed community hospital that operates at two sites in Batavia, New York (Genesee County), seeks permission to construct a new 8,498-square foot addition at the hospital's main campus located at 127 North Street, Batavia. This new addition will house Radiation (LINAC) and Medical Oncology services. Currently, no Radiation Oncology services are located in the main hospital building. However, an existing Medical Oncology Suite (Infusion Services) exists on the Hospital's second floor and will be relocated to the new ground-level Cancer Center.

During a meeting of the Public Health and Health Planning Council on October 2, 2014, contingent approval was granted for UMMC to become a member of RU System d/b/a Rochester Regional Health System (RRHS) under the active parent governing model (CON 142041). During that same meeting, contingent approval was also granted to RRHS to become the active parent and co-operator of Clifton Springs Hospital and Clinic (CON 142009). RRHS has been in discussions with a private radiation oncology practice in Clifton Springs dating back to October of 2012 regarding acquisition and redistribution of two (2) private practice linear accelerators which will ultimately become Article 28 certified. One (1) linear accelerator will operate at UMMC and one (1) will operate in Clifton Springs to better serve the current and proposed RRHS acute care facilities in Genesee, Ontario and Wayne counties. Additionally with this application, UMMC seeks to add "Radiology – Therapeutic" to its complement of services.

Staffing is projected to increase by 9.75 FTEs the first year after completion and will remain at that level through the third year of operation.

Compliance with Applicable Codes, Rules and Regulations

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

Recommendation

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.

From a programmatic perspective, approval is recommended.

Financial Analysis

Purchase Agreement

The applicant has provided a draft purchase agreement for the Linear Accelerator Unit as shown below:

Seller: Varian Medical Systems
Purchaser: Rochester General Hospital
Equipment: Clinac IX package (LINAC unit)
Price: \$1,800,000

Total Project Cost and Financing

Total project cost for new construction and the purchase of fixed and movable equipment is estimated at \$6,494,004, broken down as follows:

New Construction	\$3,136,700
Design Contingency	\$313,670
Construction Contingency	\$156,835
Fixed Equipment	\$2,060,000
Architect/Engineering Fees	\$453,376
Movable Equipment	\$99,067
Telecommunications	\$25,000
Financing Costs	\$58,440
Interim Interest Expense	\$153,405
Application Fee	\$2,000
Additional Processing Fee	<u>\$35,511</u>
Total Project Cost	\$6,494,004

Project costs are based on a construction start date of August 1, 2015 and a 12 month construction period.

The applicant's financing plan is as follows:

Cash Equity	\$650,004
Construction loan – Tompkins Bank of Castile (20 Year term @ 4.18% interest)	\$4,044,000
Equipment loan – Tompkins Bank of Castile (7 Year term @ 4.69% interest)	<u>\$1,800,000</u>
Total	\$6,494,004

The applicant has provided a letter of interest from Tompkins Bank of Castile stating available financing at the stated terms above for the construction project and equipment purchase.

Operating Budget

The applicant has submitted operating budgets, in 2014 dollars, for the current year of operations and for subsequent years 1 and 3, as shown below:

	<u>Current Year</u>	<u>Year 1</u>	<u>Year 3</u>
Revenues:			
Operating	\$1,343,000.00	\$6,209,860.00	\$6,452,115.00
Total Revenues	\$1,343,000.00	\$6,209,860.00	\$6,452,115.00
Expenses:			
Operating	\$1,370,000.00	\$4,340,000.00	\$4,405,000.00
Capital	\$0.00	\$771,389.00	\$729,323.00
Total Expenses	\$1,370,000.00	\$5,111,389.00	\$5,134,323.00
Net Income/(Loss)	(\$27,000.00)	\$1,098,471.00	\$1,317,792.00
Utilization (visits)	1,956	10,850	11,273
Cost per visit	\$700.41	\$471.10	\$455.45

Utilization by payor source is as follows:

	<u>Current Year</u>		<u>Year 1</u>		<u>Year 3</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Commercial	626	32.0%	3,472	32.0%	3,607	32.0%
Medicare	822	42.0%	4,558	42.0%	4,736	42.0%
Medicaid	352	18.0%	1,937	17.8%	2,012	17.8%
Private Pay/Other	137	7.0%	760	7.0%	789	7.0%
Charity Care	19	1.0%	123	1.2%	129	1.2%
Total	1,956	100.0%	10,850	100.0%	11,273	100.0%

The expenses and utilization for this project are based upon:

- The historical experience of UMMC in providing Medical Oncology services;
- The experience of the private Radiation Oncology practice that will be brought on board at UMMC through this project; and
- The experience of Rochester General Hospital.

Capability and Feasibility

The total project cost of \$6,494,004 will be provided from the facility's existing cash equity in the amount of \$650,004, with the remainder of the project funding coming from 2 separate loans from Tompkins Bank of Castile. The construction loan is in the amount of \$4,044,000 and the equipment purchase loan is for \$1,800,000 at the above stated terms.

Working capital requirements are estimated at \$855,721 based on 2 months of year 3 expenses. The applicant will fund all of the working capital requirements through their existing cash equity. As shown on BFA Attachment A, the 2012 and 2013 certified financial statements for UMMC, the facility has enough available resources to cover both the equity and working capital requirements for this project.

The submitted budget indicates an excess of revenues over expenses of \$1,098,471 and \$1,317,792 in years 1 and 3, respectively. Revenues are based on current reimbursement methodologies for hospitals. The budget appears reasonable.

BFA Attachment A is the 2012 and 2013 certified financial summary for United Memorial Medical Center and Subsidiary, which shows average positive working capital and equity positions. The entity also has an average net income of \$2,792,682 for the period shown.

Subject to the noted contingencies, 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 2012-2013 Certified Financial Summary for United Memorial Medical Center and
Subsidiary



Public Health and Health Planning Council

Project # 142079-C
CareFirst / Southern Tier Hospice and Palliative Care / Southern Tier Hospice

Program: Hospice
Purpose: Construction

County: Steuben
Acknowledged: August 27, 2014

Executive Summary

Description

CareFirst/Southern Tier Hospice and Palliative Care/Southern Tier Hospice (CareFirst), a voluntary not-for-profit Article 40 Hospice located at 11751 East Corning Road, Corning, New York (Steuben County), requests approval to renovate a school building purchased in 2013 into their new main administrative office space location. The new site, previously known as the Franklin Pierce School, is located at 3805 Meads Creek Road, Painted Post, New York 14870 (Steuben County).

The school building site will be used as the hospice's main administrative office location upon completion of renovations, and the current administrative office site will be sold. Proceeds from the sale will be used toward the cost of renovations.

OPCHSM Recommendation Contingent Approval

Program Summary

CareFirst NY, Inc., d/b/a CareFirst / Southern Tier Hospice and Palliative Care / Southern Tier Hospice, a voluntary not-for-profit Article 40 hospice, proposes to renovate a previously purchased school building into

the hospice's new administrative main office practice location.

Financial Summary

Project costs of \$2,330,321 will be met as follows: \$830,321 in cash with the remaining \$1,500,000 coming from a 15 year mortgage with Corning Credit Union at 3.5% initial interest rate, with a possible revision every 5 years based on the Wall Street prime rate plus 0.25%. The interest rate will never be below 3.5%.

Budget:

Revenues	\$9,835,861
Expenses	<u>\$9,164,263</u>
Net Income/(Loss)	\$671,598

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 Primary Care and 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 4006.9 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of thirty hundredths of one percent of the total capital value of the project, exclusive of CON fees. A copy of the check needs to be uploaded into NYSE-CON [PMU]
2. Submission of an executed construction loan commitment acceptable to the Department of Health. [BFA]
3. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-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. The applicant shall complete construction by January 31, 2015 upon the filing of Final Construction Documents in accordance with 10 NYCRR section 710.7. It is the applicant's responsibility to request approval of revised construction dates if necessary. [AER]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's request for, and Department's granting approval for the start of construction. [AER]

Council Action Date

December 4, 2014

Program Analysis

Review Summary

CareFirst NY, Inc. d/b/a CareFirst / Southern Tier Hospice and Palliative Care / Southern Tier Hospice, a voluntary not-for-profit Article 40 hospice, proposes to renovate a previously purchased school building for use as the hospice's new administrative main office practice location.

The hospice is currently located at 11751 East Corning Road, Corning, New York 14830 (Steuben County). The hospice has no additional satellite office practice locations and does not operate any dedicated Article 40 hospice inpatient beds or hospice residence beds. When renovation is complete and the new building is ready for occupancy, the hospice plans to relocate its main office practice location and all corporate and administrative offices to the new building, which is located at 3805 Meads Creek Road, Painted Post, New York 14870 (Steuben County), at which time the former location will be sold. No dedicated Article 40 hospice inpatient beds or hospice residence beds will be operated at the new location.

CareFirst NY, Inc. d/b/a CareFirst / Southern Tier Hospice and Palliative Care / Southern Tier Hospice, will continue to serve Chemung, Schuyler, and Steuben Counties from the new practice location.

The Division of Home and Community Based Services reports that CareFirst NY, Inc. d/b/a CareFirst / Southern Tier Hospice and Palliative Care / Southern Tier Hospice is in current compliance with all applicable codes, rules, and regulations, and had no history of enforcement actions.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total project cost for the renovations is estimated at \$2,330,321 broken down as follows:

Land acquisition	\$100,000
Building acquisition	\$480,000
Renovation and Demolition	\$1,294,185
Temporary utilities	\$9,168
Asbestos abatement or removal	\$95,000
Design contingency	\$59,000
Construction contingency	\$123,900
Architect/Engineering fees	\$116,000
Telecommunications	\$8,000
Financing costs	\$10,000
Interim interest expense	\$26,104
CON application fees	\$2,000
Additional processing fees	\$6,964
Total project cost	\$2,330,321

The applicant's financing plan appears as follows:

Cash	\$830,321
Corning Credit Union mortgage for 15 years t 3.5% interest adjustable every 5 years (prime plus 0.25% (never below 3.5%))	<u>\$1,500,000</u>
Total	\$2,330,321

Operating Budget

The applicant has submitted the year 1 and year 3 operating budgets, in 2014 dollars, as summarized below:

	<u>Year 1</u>	<u>Year 3</u>
Total Revenues	\$7,902,493	\$9,835,861
Expenses:		
Operating	\$7,170,249	\$8,869,541
Capital	<u>\$256,172</u>	<u>\$294,723</u>
Total Expenses	\$7,426,421	\$9,164,264
Net Income/(Loss)	\$476,072	\$671,597
Utilization: (patient days)	45,625	54,750
Cost per patient day	\$162.77	\$167.38

Utilization by payor source for the current year and years 1 and 3 is as follows:

	<u>Current Year</u>	<u>Years 1 and 3</u>
Medicaid	5.03%	5.05%
Medicare	87.72%	87.70%
Private/Other	<u>7.25%</u>	<u>7.25%</u>
Total	100.00%	100.00%

Expenses and utilization are based upon CareFirst's historical operating experiences.

Capability and Feasibility

Total project cost of \$2,330,321 will be paid with \$830,321 in cash and the remaining \$1,500,000 financed through a 15 year mortgage from Corning Credit Union at 3.5% interest, subject to possible revision every 5 years based on Wall Street prime rate plus .25%. The interest rate will never be below 3.5%.

Working capital requirements are estimated at \$1,527,377 based on 2 months of the year 3 budgeted expenses. The working capital needs will be satisfied from existing facility cash and investment accounts. As shown on BFA Attachment A, the facility has sufficient funds to cover both the equity piece of the total project cost and the working capital requirement.

BFA Attachment A is the 2012 and 2013 certified financial statements of CareFirst which show that the facility had an average positive working capital position, an average positive net asset position and generated an average net income of \$779,876 for the period shown.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A 2012 and 2013 certified financial statements for CareFirst



Public Health and Health Planning Council

Project # 142140-E
NYP Community Programs, Inc.

Program: Hospital
Purpose: Establishment

County: Westchester
Acknowledged: October 6, 2014

Executive Summary

Description

NYP Community Programs, Inc. (NYP), an existing not-for-profit corporation, requests approval to become the active parent and co-operator of Hudson Valley Hospital Center (HVHC), which will conduct business as New York Presbyterian/Hudson Valley Hospital. HVHC is a 128-bed acute care hospital located at 1980 Crompond Road, Cortlandt Manor in Westchester County. The sole member of NYP is New York Presbyterian Hospital.

According to the applicant, the purpose of the transaction is to establish a more integrated system with the objectives of improving quality, increasing access, and lowering costs of health care in the communities served by HVHC. There will be no change in services or the number and type of beds as a result of approval of this project. Also, there are no projected changes in utilization, revenues, or expenses of HVHC as a direct result of this project. The hospital will remain a separate not-for-profit corporation.

As the active parent and co-operator, NYP will have the following rights, powers and authorities with respect to HVHC:

- Appointment of members of the Board of Trustees of HVHC;
- Appointment or dismissal of HVHC officers, managers, and medical staff;
- Approval of the operating and capital budgets and strategic and operating plans of HVHC;
- Adoption or approval of operating policies and procedures of HVHC;
- Approval of the certificate of need applications filed by or on behalf of HVHC;

- Approval of any indebtedness of HVHC;
- Approval of management or clinical services contracts by HVHC;
- Adoption or approval of any amendment, repeal, or other change to the organizational documents of HVHC; and
- Approval of settlements of administrative or other litigation or proceedings to which HVHC is a party.

OPCHSM Recommendation Contingent Approval

Need Summary

The project will allow NYP Community Program, Inc. to become the active parent/co-operator of Hudson Valley Hospital Center and to act within the powers that this arrangement grants.

There will be no change in beds, services or utilization through this project, but it is anticipated that patients will have better access to care in a more streamlined health care system.

Program Summary

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

Financial Summary

There are no project costs or budgets associated with this application. 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 Primary Care and Health Systems Management

Approval contingent upon:

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

December 4, 2014

Need Analysis

Project Description

NYP Community Program, Inc. is seeking approval to be established as the active parent and co-operator of the Hudson Valley Hospital Center which will operate as New York Presbyterian/Hudson Valley Center, a 128-bed Hospital located at 1980 Crompond Rd. Cortlandt Manor, NY 10567.

Background

Table 1 Hudson Valley Hospital Center

Bed Category	Certified Capacity
Intensive Care	10
Maternity	14
Medical/Surgical	90
Neonatal Intermediate Care	8
<u>Pediatric</u>	<u>6</u>
Total	128

Designations:

Level 2 Perinatal Center
Stroke Center

Conclusion

This project should allow Hudson Valley Hospital Center to operate in a more cost effective manner and to offer better access to care within a more streamlined patient health system.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

NYP Community Programs, Inc. (NYP), an existing not-for-profit corporation, seeks approval to become the active parent and co-operator of Hudson Valley Hospital Center (HVHC). Hudson Valley Hospital Center is an existing 128-bed acute care hospital located at 1980 Crompond Road in Cortlandt Manor (Westchester County). HVHC also operates five (5) extension clinics in Westchester County.

The sole member of NYP is The New York and Presbyterian Hospital, which serves in a passive parent capacity. Upon approval, NYP will have the ability, as sole corporate member of HVHC, to exercise Article 28 active powers and gain oversight with respect to day-to-day-operations over the following:

Hudson Valley Hospital Center (HVHC)

and

HVHC Extension Clinics

HVHC Croton Diagnostic & Rehabilitation
HVHC Croton Diagnostic & Rehabilitation
HVHC Croton Infusion Center
Medical Center at Cold Spring
Waterside Diagnostic Imaging

The applicant's objective is to establish a coordinated, integrated system that will improve quality, increase access and lower the costs of health care in the communities served by HVHC. There will be no reduction in authorized services or the number and/or type of beds is planned. Further, no costs are associated with this project and no staffing changes are anticipated.

Upon approval, HVHC will conduct business as New York Presbyterian/Hudson Valley Hospital Center.

Character and Competence
The proposed directors of NYP are:

<u>Name</u>	<u>Title</u>
John J. Mack	Trustee
Jeffrey W. Greenberg	Trustee
Arthur J. Hedge, Jr.	Trustee
Alfred F. Kelly, Jr.	Trustee
Ivan G. Seidenberg	Trustee
Seymour Sternberg	Trustee
Steven J. Corwin, MD	Trustee

The proposed directors of HVHC following the establishment of NYPCP as the Hospital's active parent are:

<i>Laura L. Forese, MD, MPH</i>	<i>Phyllis Lantos</i>
<i>Gary J. Zuar</i>	<i>Brian Regan</i>
<i>Mark E. Larmore</i>	<i>Kerry DeWitt</i>
<i>Wayne Osten</i>	<i>Kimlee Roldan-Sanchez</i>
<i>Richard Gemming</i>	<i>Edward B. MacDonald, Jr.</i>
<i>Michael Delfino</i>	<i>John Dare</i>

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 2/28/08, Hudson Valley Hospital Center was fined \$10,000 based on the investigation of a death from malignant hyperthermia following a rapid cycle detoxification (RCD) procedure. It was determined that the facility failed to monitor a patient under deep anesthesia, failed to train staff in RCD, failed to follow procedures to treat malignant hyperthermia and that the physician was not credentialed to perform an RCD.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Capability and Feasibility

There are no issues of capability or feasibility, since there are no project costs or budget associated with this application.

BFA Attachment A is the 2012 and 2013 certified financial statements of The New York Presbyterian Hospital. As show, the hospital had an average positive working capital position and an average positive net asset position from 2012 through 2013. Also, the hospital achieved an average operating income of \$197,785,500 from 2012 through 2013.

BFA Attachment C is the 2012 and 2013 certified financial statements of Hudson Valley Hospital Center. As show, the hospital had an average positive net asset position from 2012 through 2013. Also, the hospital incurred average operating losses of \$299,266 from 2012 through 2013. The hospital incurred a loss of \$3,619,341 in 2013. The applicant has indicated that the 2013 operating loss was primarily due to significant Medicare reductions that occurred in Sequestration. The hospital addressed these losses through expense reductions and improving efficiencies.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A: Organization Chart
BFA Attachment B: Financial Summary – New York Presbyterian Hospital
BFA Attachment C: Financial Summary – Hudson Valley Hospital Center

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 4th day of December, 2014, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish NYP Community Programs, Inc. as the active parent and co-operator of Hudson Valley Hospital Center, which will then do business as New York Presbyterian/Hudson Valley Hospital, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

142140 E

NYP Community Programs, Inc.

APPROVAL CONTINGENT UPON:

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

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

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



Public Health and Health Planning Council

Project # 132340-B
Richmond ASC, LLC d/b/a Richmond Pain Management

Program: Diagnostic and Treatment Center
Purpose: Establishment and Construction

County: Richmond
Acknowledged: December 20, 2013

Executive Summary

Description

The Richmond ASC, LLC d/b/a Richmond Pain Management ASC, a recently formed limited liability company, requests approval for the establishment and construction of a single-specialty freestanding ambulatory surgery center providing pain management services, to be located in leased space at 1360 Hylan Blvd., Staten Island, New York (Richmond County). The proposed ambulatory surgery center will have three operating rooms, three pre-op bays, seven post-op bays and three step-down recovery bays, as well as all of the required support spaces.

The proposed members of Richmond ASC, LLC are as follows:

Members

Kenneth Chapman, MD	80%
SIUH Ventures, LLC	20%

SIUH Ventures, LLC is solely owned by North Shore University Hospital. North Shore University is a member of the North Shore-Long Island Jewish Health System, Inc.

OPCHSM Recommendation

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

Need Summary

The number of projected procedures is 11,974 in year 1; the applicant does not anticipate migration of

procedures from area hospitals. Richmond ASC will provide two (2) percent charity care and five (5) percent Medicaid.

Program Summary

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

Financial Summary

Total project cost of \$2,800,749 will be met as follows: equity of \$700,000 from the proposed members' personal resources and from operations of North Shore-Long Island Jewish Health System, Inc., and a bank loan of \$2,100,749 at an interest rate of prime + 1% (approximately 4.25% as of 10/1/2014) for a seven year term.

Budget:

Revenues	\$4,942,087
Expenses	<u>3,043,764</u>
Net Income	\$1,898,323

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 Primary Care and Health Systems Management

Approval with an expiration of the operating certificate five (5) years from the date of its issuance, contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the DOH beginning in the second year of operation. Said reports should include:
 - Data showing actual utilization including procedures;
 - Data showing breakdown of visits by payor source;
 - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
 - Data showing number of emergency transfers to a hospital;
 - Data showing percentage of charity care provided, and
 - Number of nosocomial infections recorded during the year in question. [RNR]
3. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
4. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department with a local acute care hospital. [HSP]
6. Submission of an executed bank loan commitment, acceptable to the Department. [BFA]
7. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
8. Submission of an executed building lease, acceptable to the Department. [BFA]
9. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
10. Submission of a photocopy of an executed Restated Articles of Organization of Richmond ASC, LLC, acceptable to the Department. [CSL]
11. Submission of a photocopy of an executed amendment to the Amended Operating Agreement of Richmond ASC, LLC, acceptable to the Department. [CSL]
12. Submission of a photocopy of the executed lease agreement between the applicant and 1369 Hylan Boulevard, LLC, acceptable to the Department. [CSL]
13. Submission of a signed statement from the applicant, acceptable to the Department, that the proposed transaction has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate. [CSL]

14. Submission of a photocopy of an executed Certificate of Assumed Name of Richmond ASC, LLC, indicating its intent to do business as Richmond Pain Management, acceptable to the Department. [CSL]
15. Submission of a photocopy of an executed amendment to the Operating Agreement of SIUH Veatures, LLC acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The 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]
3. The applicant shall complete construction by April 1, 2016. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]
4. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
5. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
6. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
7. The clinical space must be used exclusively for the approved purpose. [HSP]

Council Action Date

December 4, 2014

Need Analysis

Background

The Richmond ASC, LLC d/b/a Richmond Pain Management ASC is seeking approval to establish and construct an Article 28 diagnostic and treatment center to provide single-specialty ambulatory surgery services specializing in pain management; it will be located at 1360 Hylan Blvd., Staten Island, 10305, in Richmond County.

Analysis

The primary service area of the proposed project is Richmond County, which includes the following zip codes: 10301-10310, 10312, and 10314.

The number of projected procedures is 11,974 in year 1 and 13,435 in year 3. These projections are based on the actual experience of the proposed surgeons who will be utilizing the proposed center.

Richmond County has no single specialty or multi-specialty freestanding ASCs. There are four hospitals in Richmond County that currently provide multi-specialty ambulatory surgical services.

The table below provides data on the number of total ambulatory patients cared for in Richmond County hospitals.

<u>Ambulatory Surgery Patients</u>	<u>Total Patients 2013</u>
Richmond University Medical Center	12,566
Staten Island Hospital-North	13,066
Staten Island Hospital-South	4,072

Source: SPARCS 2014

The proposed center will have a transfer and affiliation agreement with Staten Island University Hospital located 1.03 miles and 3 minutes away.

The applicant commits to serve all patients regardless of their ability to pay or the source of payment. The applicant will work in partnership with the Community Health Center of Richmond (CHCR) to provide charity care for those patients requiring ambulatory surgical services who are uninsured or underinsured.

Conclusion

Approval of the proposed ASC will bring into an Article 28 regulated setting a large number of ambulatory surgery procedures currently carried out in office-based environments.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Project Proposal

Richmond ASC, LLC is seeking approval to establish and construct an Article 28 single-specialty ambulatory surgery center.

Proposed Operator	Richmond ASC, LLC
Doing Business As	Richmond Pain Management
Site Address	1360 Hylan Blvd, Staten Island (Richmond County)
Surgical Specialties	Single Specialty: Pain Management
Operating Rooms	3 (2 Class B & 1 Class C)
Procedure Rooms	0
Hours of Operation	Monday and Thursday 9:00 am - 7:00 pm Tuesday, Wednesday & Friday 9:00 am - 5:00 pm Alternating Saturdays 10:00 am - 2:00 pm.
Staffing (1st Year / 3rd Year)	18.0 FTEs / 18.0 FTEs
Medical Director(s)	Kenneth Chapman, MD
Emergency, In-Patient and Backup Support Services Agreement and Distances	Expected to be provided by: Staten Island University Hospital 1.03 miles / 3 minutes
On-call service	The number for the surgeon's answering service or the on-call physician will be provided to the patient.

Character and Competence

The members of the LLC are:

<u>Name</u>	<u>Percentage</u>
Kenneth Chapman, MD	80%
SIUH Ventures, LLC	20%

Dr. Chapman is a board-certified anesthesiologist who has been in private practice for the last 8 years. SIUH Ventures, LLC is solely owned by North Shore University Hospital. North Shore University is a member of the North Shore-Long Island Jewish Health System, Inc.

A full Character and Competence Review was conducted on all voting members of the NSLIJ Board. Disclosures were made as part of project CON #141004 which was approved by PHHPC in June 2014.

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

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

Integration with Community Resources

The center will maintain a list of all primary care resources located in Staten Island and other NYC boroughs and it will make referrals according to patients' geographic preferences. The Center will serve all patients without regard to their ability to pay and has coordinated with a community non-profit agency to provide charity care to those who are uninsured or underinsured.

The center will be fully equipped with a state-of-the-art Electronic Medical Record (EMR) and it intends on being integrated into a Health Information Exchange (HIE). In addition, the Center recognizes the benefits of and plans on exploring the establishment of a working relationship with an Accountable Care Organization (ACO).

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Lease Rental Agreement

The applicant has submitted a draft lease rental agreement for the site, as summarized below:

Premises	6,932 square feet located at 1362 Hylan Boulevard, Staten Island, New York.
Lessor	Hylan Boulevard, LLC
Lessee	Richmond ASC, LLC
Term	10 years
Rental	\$291,144 annual (\$42.00 per sq.ft.) with a 3% increase each year thereafter.
Provisions	The lessee shall be responsible for insurance, utilities, and maintenance.

The applicant has indicated that there is a relationship between the lessor and the lessee. Kenneth Chapman owns the lessor entity. The applicant has submitted real estate letters attesting to the reasonableness of the per square foot rental.

Total Project Cost and Financing

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$2,800,749, further broken down as follows:

Renovation and Demolition	\$1,800,000
Asbestos Abatement or Removal	20,000
Design Contingency	180,200
Construction Contingency	180,200
Architect/Engineering Fees	218,040
Construction Manager Fees	50,000
Moveable Equipment	285,000
Telecommunications	50,000
CON Fee	2,000
Additional Processing Fee	15,309
Total Project Cost	\$2,800,749

Project costs are based on an August 1, 2015 construction start date and an eight month construction period.

The applicant's financing plan appears as follows:

Equity	\$700,000
Bank Loan (prime +1% approximately 4.25% as of 10/1/2014) for a seven year term	<u>2,100,749</u>
Total	\$2,800,749

Operating Budget

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

	<u>YEAR ONE</u>	<u>YEAR THREE</u>
Revenues:		
Medicaid Managed Care	\$227,834	\$255,629
Medicare Fee For Service	1,283,569	1,440,164
Commercial Fee For Service	1,538,420	1,726,107
Workers Compensation/ No Fault	<u>1,538,420</u>	<u>1,726,107</u>
Gross Revenues	\$4,588,243	\$5,148,007
Less:		
Charity Care	\$91,765	\$102,960
Bad Debt	<u>91,765</u>	<u>102,960</u>
Net Revenues	\$4,404,713	\$4,942,087
Expenses:		
Operating	\$2,307,691	\$2,411,324
Capital	<u>641,191</u>	<u>632,440</u>
Total Expenses	\$2,948,882	\$3,043,764
Net Income	\$1,455,831	\$1,898,323
Utilization: (Procedures)	11,974	13,435
Cost Per Procedure	\$246.27	\$226.55

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

	<u>YEAR ONE</u>	<u>YEAR THREE</u>
Medicaid Managed Care	5.00%	5.00%
Medicare Fee For Service	33.00%	33.00%
Commercial Fee For Service	30.00%	30.00%
Workers Compensation/ No Fault	30.00%	30.00%
Charity Care	2.00%	2.00%

Expenses and utilization assumptions are based on the historical experience of other single specialty ambulatory surgery centers providing pain management services in the New York downstate metropolitan area. The applicant has submitted physician referral letters in support of utilization projections.

Capability and Feasibility

Total project cost of \$2,800,749 will be met as follows: bank loan of \$2,100,749 at an interest rate of prime +1% (approximately 4.25% as of 10/1/2014) for a seven year term, and equity of \$700,000 to be provided from the proposed members' personal resources and from operations of North Shore-Long Island Jewish Health System.

Working capital requirements are estimated at \$507,294, which is equivalent to two months of third year expenses. Kenneth Chapman will provide a loan to Richmond ASC of \$235,647 at an interest rate of prime +1% (approximately 4.25% as of 10/1/2014) for a five year term. The remaining \$235,647 will be provided by the proposed members as cash equity. BFA Attachments A and B are the personal net worth statement of Kenneth Chapman and the 2012 and 2013 certified financial statements of North Shore-Long Island Jewish Health System, Inc., which indicates the availability of sufficient funds for the equity contributions. BFA Attachment C is the pro forma balance sheet of Richmond Pain Management ASC as of the first day of operation, which indicates a positive net asset position of \$953,647.

The submitted budget indicates a projected net income of \$1,455,831 and \$1,898,323 during the first and third years, respectively. Revenues reflect current reimbursement rates for ambulatory surgery services. The submitted budget appears reasonable.

As shown on Attachment B, North Shore-Long Island Jewish Health System, Inc. had an average positive working capital position and an average positive net asset position. Also, the entity achieved average operating revenues over operating expenses of \$90,912,000 from 2012 through 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- Proposed Member
BFA Attachment B	Financial Summary- North Shore- Long Island Jewish Health System
BFA Attachment C	Pro Forma Balance Sheet

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 4th day of December, 2014, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a new single specialty ambulatory surgery center providing pain management services, to be located at 1360 Hylan Boulevard, Staten Island, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

132340 B

FACILITY/APPLICANT:

Richmond ASC, LLC
d/b/a Richmond Pain Management

APPROVAL CONTINGENT UPON:

Approval with an expiration of the operating certificate five (5) years from the date of its issuance, contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the DOH beginning in the second year of operation. Said reports should include:
 - Data showing actual utilization including procedures;
 - Data showing breakdown of visits by payor source;
 - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
 - Data showing number of emergency transfers to a hospital;
 - Data showing percentage of charity care provided, and
 - Number of nosocomial infections recorded during the year in question. [RNR]
3. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
4. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department with a local acute care hospital. [HSP]
6. Submission of an executed bank loan commitment, acceptable to the Department. [BFA]
7. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
8. Submission of an executed building lease, acceptable to the Department. [BFA]
9. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
10. Submission of a photocopy of an executed Restated Articles of Organization of Richmond ASC, LLC, acceptable to the Department. [CSL]
11. Submission of a photocopy of an executed amendment to the Amended Operating Agreement of Richmond ASC, LLC, acceptable to the Department. [CSL]

12. Submission of a photocopy of the executed lease agreement between the applicant and 1369 Hylan Boulevard, LLC, acceptable to the Department. [CSL]
13. Submission of a signed statement from the applicant, acceptable to the Department, that the proposed transaction has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate. [CSL]
14. Submission of a photocopy of an executed Certificate of Assumed Name of Richmond ASC, LLC, indicating its intent to do business as Richmond Pain Management, acceptable to the Department. [CSL]
15. Submission of a photocopy of an executed amendment to the Operating Agreement of SIUH Ventures, LLC acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The 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]
3. The applicant shall complete construction by April 1, 2016. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]
4. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
5. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
6. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
7. The clinical space must be used exclusively for the approved purpose. [HSP]

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

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



Public Health and Health Planning Council

Project # 142077-E
Island Digestive Health Center

Program: Diagnostic and Treatment Center **County:** Suffolk
Purpose: Establishment **Acknowledged:** August 22, 2014

Executive Summary

Description

Island Digestive Health Center (IDHC), LLC, an existing, single-specialty, freestanding ambulatory surgery center specializing in the field of gastroenterology, requests approval to add Good Samaritan Hospital Medical Center as a 51% member of the Center. In addition, John Poisson, an existing Class B member of IDHC, will withdraw from the Center's membership. IDHC is located at 471 Montauk Highway, West Islip, New York (Suffolk Co.). On December 6, 2012, the applicant received contingent Public Health and Health Planning Council approval under CON #121393 for the establishment and construction of an ambulatory surgery center with a limited life of 5 years from the date of issuance of an operating certificate. Staff notes that the applicant received its operating certificate on May 22, 2014

The applicant has indicated that there will be three classes of members defined as follows:

- Class A Member – a Physician member class comprised of Advanced GI Endoscopy, LLC members,
- Class B Member – a Non-Physician member class held by persons who are not eligible physicians,
- Class C Member – an Institutional member class comprised of Good Samaritan Hospital Medical Center.

All members, regardless of class, will have the same economic and voting rights based on their percentage ownership interest.

The current and proposed members of Island Digestive Health Center, LLC are as follows:

CURRENT

<u>Member</u>	<u>Class</u>	<u>%</u>
Advanced GI Endoscopy, LLC	Class A	85.00%
Frank Principati	Class B	3.75%
Karen Sablyak	Class B	3.75%
Barry Tanner	Class B	3.75%
John Poisson	Class B	3.75%

PROPOSED

<u>Member</u>	<u>Class</u>	<u>%</u>
Advanced GI Endoscopy, LLC	Class A	39.000%
Frank Principati	Class B	3.333%
Karen Sablyak	Class B	3.333%
Barry Tanner	Class B	3.333%
Good Samaritan Hospital	Class C	51.000%

OPCHSM Recommendation
Contingent Approval

Need Summary

Island Digestive Health Center, LLC, an existing ambulatory surgery center specializing in gastroenterology ambulatory surgery services proposes the addition of Good Samaritan Hospital Medical Center as a 51 percent member and the withdrawal of an existing member. IDHC was approved under CON 121393 for a limited life of five (5) years (May 22, 2014 to May 21, 2019). There will not be any changes in services as a result of the proposed change in ownership.

Program Summary

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

Financial Summary

There are no project costs associated with this application. The purchase price for Good Samaritan

Hospital Medical Center to acquire the 51% membership interest in IDHC is \$452,880. The purchase price will be met as follows: Good Samaritan has made a \$200,000 loan to IDHC in the form of a Convertible Term Promissory Note that will convert to credit for payment when Good Samaritan acquires their ownership interests, and the remaining \$252,880 will be paid via equity from Good Samaritan Hospital Medical Center.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
2. Submission of an executed Medical Director Agreement, acceptable to the Department. [HSP]
3. Submission of an executed Outside Manager Agreement, acceptable to the Department. [HSP]
4. Submission of an executed Certificate of Amendment to the Certificate of Incorporation of Good Samaritan Hospital Medical Center, 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

December 4, 2014

Need Analysis

Project Description

Island Digestive Health Center, LLC, (IDHC), an existing ambulatory surgery center specializing in gastroenterology ambulatory surgery services, requests approval for the addition of Good Samaritan Hospital Medical Center as a 51 percent member and the withdrawal of an existing member. The facility is located at 471 Montauk Highway, West Islip, 11795, Suffolk County.

Background and Analysis

IDHC was approved under CON 121393 for a limited life of five (5) years (May 22, 2014 to May 21, 2019). IDHC projects a total of 6,914 procedures in year 1 with charity care at two (2) percent and Medicaid at seven (7) percent. In 2014, IDHC provided 2,035 procedures from May to September, according to the applicant. The applicant reports further that at this time, utilization data on charity care and Medicaid are not available. IDHC is working actively with the American Cancer Society and Federally Qualified Health Centers to create a formal charity care program that is expected to start on December 1, 2014. The applicant received its Provider Transaction Access Number in September 2014, which will enable them to apply for their Medicaid number.

There will be no changes in services as a result of the proposed change in ownership.

Conclusion

From a need perspective, approval is recommended with no change to the current expiration date of the operating certificate of May 21, 2019.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

Island Digestive Health Center, LLC (IDHC), an existing single-specialty ambulatory surgery center located at 471 Montauk Highway, West Islip (Suffolk County) requests approval to add Good Samaritan Hospital Medical Center (Good Samaritan) as a 51% member of the Center. Additionally, an existing Class B member of IDHC (Mr. Poisson) will withdraw from Center membership.

Island Digestive Health Center consists of three classes of membership: Class A - physician members of Advanced GI Endoscopy, LLC; Class B - non-physician members; and Class C - institutional member Good Samaritan Hospital Medical Center. All members have the same economic and voting rights based on percentage ownership interest.

Other than the proposed changes in membership (and membership percentages), there are no programmatic changes as a result of this request. The table below details the proposed change in ownership:

Member Name	Current Membership Interest	Proposed Membership Interest
<i>Class A Members</i>		
Advanced GI Endoscopy, LLC	85%	39%
Kourosh Adhami, MD	28.24%	28.24%
Babak Danesh, MD	5.88%	5.88%
James Kohlroser, MD	25.88%	25.88%
Neil Lobo, MD	28.24%	28.24%
Krishnaiyer Subramani, MD	11.76%	11.76%

Class B Members

Physicians Endoscopy, LLC

	15%	10%
John Poisson	3.75%	---
Frank Principati	3.75%	3.33%
W. Barry Tanner	3.75%	3.33%
Karen Sablyak	3.75%	3.33%

Class C Member

Good Samaritan Hospital Medical Center

---- **51%**

The proposed managers of IDHC have been identified as:

Krishnaiyer Subramani, MD

Kourosch Adhami, MD

Robert Estes

Stephen Trapani

Donald Teplitz, DO

The applicant has entered into an Administrative Services Agreement with Physicians Endoscopy, LLC, a national provider of administrative and consulting services to gastroenterology practices. Further, Drs. Adhami and Danesh, who are affiliated with the applicant and Island Digestive Disease Consultants, P.C., have entered into a Medical Director Agreement with the applicant.

Character and Competence

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

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

On June 6, 2005, the Department issued a Stipulation and Order and fined Good Samaritan Hospital \$18,000 based on an investigation of a complaint involving a small child who was admitted to the hospital for assessment of child abuse. The facility failed to do a complete physical and the child died the next day in the hospital of an undetected tear of the mesenteric artery.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Membership Purchase Agreement

The applicant has submitted an executed membership purchase agreement which is summarized below:

Date: July 21, 2014
 Sellers: John Poisson; Frank Principati; Karen Sablyak and Barry Tanner
 Purchaser: Good Samaritan Hospital Medical Center
 Purchase Price: \$452,880
 Payment of Purchase Price: \$200,000 loan to IDHC from Good Samaritan Hospital Medical Center
 \$252,880 due at Closing

The applicant has indicated that once Good Samaritan Hospital Medical Center acquires their ownership interests, the loan will be considered to be paid off.

Operating Budget

The applicant has submitted an operating budget, in 2014 dollars, during the first and third years after the change in membership interests summarized below:

	<u>YEAR ONE</u>	<u>YEAR THREE</u>
Revenues:		
Medicaid Managed Care	\$202,813	\$274,159
Medicaid Fee For Service	137,491	99,410
Medicare Fee For Service	534,952	489,511
Medicare Managed Care	209,866	302,607
Commercial Fee For Service	1,327,833	1,175,246
Commercial Managed Care	<u>2,160,383</u>	<u>2,523,205</u>
Total Revenues	\$4,573,338	\$4,864,138
Expenses:		
Operating	\$2,640,477	\$2,654,910
Capital	<u>1,261,239</u>	<u>1,270,854</u>
Total Expenses	\$3,901,716	\$3,925,764
Net Income	\$671,622	\$938,374
Utilization: (Procedures)	6,914	7,478
Cost Per Procedure	\$564.32	\$524.98

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

	<u>YEAR ONE</u>	<u>YEAR THREE</u>
Medicaid Managed Care	3.00%	2.00%
Medicaid Fee For Service	4.00%	5.00%
Medicare Fee For Service	13.00%	11.00%
Medicare Managed Care	6.00%	8.00%
Commercial Fee For Service	22.00%	18.00%
Commercial Managed Care	50.00%	54.00%
Charity Care	2.00%	2.00%

Expense and utilization assumptions are based on the applicant's personal experience of the participating physician, who are Board certified in gastroenterology.

Capability and Feasibility

The purchase price of Good Samaritan Hospital Medical Center to acquire the 51% membership interest is \$452,880. The purchase price will be met as follows: the \$200,000 loan made by Good Samaritan to IDHC will be deemed paid off when Good Samaritan Hospital Medical Center acquires their ownership interests, and the remaining \$252,880 will be via equity from Good Samaritan Hospital Medical Center.

Working capital requirements are estimated at \$654,294, which is equivalent to two months of third year expenses. The applicant has indicated that Good Samaritan Medical Center will provide equity to meet the working capital requirement. BFA Attachment A is the 2013 certified financial statements and the May 31, 2014 internal financial statements of Good Samaritan Hospital Medical Center, which indicates the availability of sufficient funds to meet the purchase price and the working capital requirements.

The submitted budget indicates a net income of \$671,622 and \$938,374 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for ambulatory surgery services.

As shown on BFA Attachment A, the applicant had an average positive working capital position and an average positive net asset position during the period 2013 through May 31, 2014. Also, the hospital incurred an operating loss of \$5,807,000 in 2013 and achieved an operating gain of \$8,765,000 through May 31, 2014. The applicant has indicated that the reason for the 2013 losses were the result of lower than expected volume for services. However, in 2014 the Medical Center experienced a significant turnaround in operations due to a growth in patient volumes and holding expenses to a modest growth.

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- Good Samaritan Hospital Medical Center

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 4th day of December, 2014, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Good Samaritan Hospital Medical Center as a 51% member of the Center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

142077 E

Island Digestive Health Center

APPROVAL CONTINGENT UPON:

1. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
2. Submission of an executed Medical Director Agreement, acceptable to the Department. [HSP]
3. Submission of an executed Outside Manager Agreement, acceptable to the Department. [HSP]
4. Submission of an executed Certificate of Amendment to the Certificate of Incorporation of Good Samaritan Hospital Medical Center, 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]

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

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



Public Health and Health Planning Council

Project # 142056-E
Hope Center Operations, LLC d/b/a Hope Center for HIV and Nursing Care

Program: Residential Health Care Facility **County:** Bronx
Purpose: Establishment **Acknowledged:** August 18, 2014

Executive Summary

Description

Hope Center Operations, LLC d/b/a Hope Center for HIV and Nursing Care, an existing New York limited liability company, requests approval to be established as the operator of HELP/PSI, a 66-bed AIDS specialty residential health care facility (RHCF) located at 1401 University Avenue, Bronx, New York. The current operator, HELP/PSI, Inc., provides services only to people with a diagnosis of AIDS, most of whom are Medicaid recipients. The RHCF services and programs currently provided to these AIDS patients will be maintained under the new operator.

Hope Center Operations, LLC entered into an Operational Transfer Agreement on October 21, 2014, for the sale and acquisition of the operating interests of HELP/PSI. The applicant will lease the premises from HELP/PSI, Inc.

The current operator and proposed operator are as follows:

<u>CURRENT</u>	
HELP/PSI, Inc. (NFP)	100%
<u>PROPOSED</u>	
Hope Center Operations, LLC	
Members:	
Kenneth Rozenberg	95%
Beth Rozenberg	5%

OPCHSMDOH Recommendation
Contingent Approval

Need Summary

Due to the designated AIDS beds that this facility has certified, Help/PSI is exempt from the nursing home methodology. However, since this is an RHCF, a review of utilization was completed. The annual occupancy averages for 2010 - 2012 were 98.9%, 97.24%, and 98.05%, respectively. In 2013, the occupancy dropped to 89.1% due to the facility's referral sources, which has since been corrected utilizing community outreach efforts and working with hospital discharge planners. In 2014, average occupancy has been 96.1%.

Program Summary

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

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

Financial Summary

There are no project cost associated with this application. The purchase price for the operating interest of HELP/PSI, Inc. is \$4,620,000. The purchase price will be met as follows: equity of \$1,501,500 from the proposed members' personal resources, and a bank loan of \$3,118,500 at 5% interest for a term of ten years with a payout period for the principal of twenty five years. The applicants have indicated that they will refinance the loan when the balloon payment becomes due. Kenneth Rozenberg has submitted an affidavit indicating that he will fund

the balloon payment from his personal resources if financing is not available when the loan becomes due.

Budget:

Revenues	\$9,693,409
Expenses	<u>\$7,421,377</u>
Net Income	<u>\$2,272,032</u>

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 Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed loan commitment for the operating portion, acceptable to the Department. [BFA]
2. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
3. Submission of an executed amendment to the lease agreement between HELP/PSI, Inc. and the applicant, acceptable to the Department. [CSL]
4. Submission of an executed certificate of amendment of the certificate of incorporation of HELP/PSI, 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

December 4, 2014

Need Analysis

Background

Hope Center Operations, LLC d/b/a Hope Center for HIV and Nursing Care seeks approval to become the established operator of Help/PSI, a 66-bed Article 28 residential health care facility (RHCF) located at 1401 University Avenue, Bronx, 10452, in Bronx County. This RHCF has 66 designated AIDS beds.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Help/PSI, Inc.	Hope Center for HIV and Nursing Care
Address	1401 University Avenue Bronx, New York 10452	Same
RHCF Capacity	66 RHCF AIDS	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Not-for-profit corporation	Limited Liability Company
Class of Operator	Voluntary	Proprietary
Operator	Help/PSI, Inc.	Hope Center Operations LLC d/b/a Hope Center for HIV and Nursing Care Members: Kenneth Rozenberg 95% Beth Rozenberg 5%

Character and Competence - Background

Facilities Reviewed:

Nursing Homes

Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bronx Center for Rehabilitation and Health Care	10/2004 to present
Brooklyn Center for Rehabilitation and Residential HC	03/2007 to present
Bushwick Center for Rehabilitation and Health Care (formerly Wartburg Lutheran Home for the Aging)	06/2008 to present
Chittenango Center for Rehabilitation and Health Care (formerly Stonehedge Health & Rehabilitation Center - Chittenango)	07/2008 to present
Corning Center for Rehabilitation	07/2013 to present
Daughters of Jacob Nursing Home Company Inc.	08/2013 to present
Delaware Nursing & Rehabilitation Center	06/2014 to present
Dutchess Center for Rehabilitation and Healthcare	08/2004 to present
Essex Center for Rehabilitation and Health Care	03/2014 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare	11/2010 to present
Queens Center for Rehabilitation and Residential Health Care	10/2004 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Rome Center for Rehabilitation and Health Care (formerly Stonehedge Health & Rehabilitation Center - Rome)	07/2008 to present
Steuben Center for Rehab	07/2014 to present

University Nursing Home	10/2004 to present
Washington Center for Rehabilitation and Health Care	02/2014 to present
Waterfront Center for Rehabilitation and Health Center	08/2011 to present
Williamsbridge Manor Nursing Home	10/2004 to present

Certified Home Health Agency

Alpine Home Health Care	07/2008 to present
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Licensed Home Care Services Agency

Amazing Home Care	05/2006 to present
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Ambulance Company

Senior Care Emergency Ambulance Services, Inc. (EMS)	06/2005 to present
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Managed Long Term Care Company

Center Plan for Health Living (MLTC)	01/2013 to present
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Individual Background Review:

Kenneth Rozenberg is a New York licensed nursing home administrator, in good standing, and licensed paramedic, in good standing. He has been employed as CEO of Bronx Center for Rehabilitation & Health Care since January 1998. Mr. Rozenberg discloses the following health facility interests:

Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bronx Center for Rehabilitation and Health Care	10/1997 to present
Brooklyn Center for Rehabilitation and Residential Health Care	03/2007 to present
Bushwick Center for Rehabilitation and Health Care	05/2011 to present
Chittenango Center for Rehabilitation and Health Care	05/2011 to present
Corning Center for Rehab	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare	08/2004 to present
Essex Center for Rehab	03/2014 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehab	04/2013 to present
Queens Center for Rehabilitation and Residential Health Care	06/2004 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Rome Center for Rehabilitation and Health Care	05/2011 to present
Steuben Center for Rehab	07/2014 to present
University Nursing Home	08/2001 to present
Waterfront Center for Rehabilitation	12/2012 to present
Washington Center for Rehab	02/2014 to present
Williamsbridge Manor Nursing Home	11/1996 to present
Holliswood Center for Rehabilitation (RECEivership)	11/2010 to 04/2013
Stonehedge Health & Rehabilitation Center – Rome (REC)	07/2008 to 04/2011
Stonehedge Health & Rehab Center – Chittenango (REC)	07/2008 to 04/2011
Wartburg Lutheran Home for the Aging (REC)	06/2008 to 05/2011
Waterfront Center for Rehabilitation (REC)	08/2011 to 12/2012
Delaware Nursing & Rehab Center (REC)	06/2014 to present
Daughters of Jacob Nursing Home Company Inc. (REC)	08/2013 to present
Center Plan for Health Living (MLTC)	01/2013 to present
Alpine Home Health Care (CHHA)	07/2008 to present
Amazing Home Care (LHCSA)	05/2006 to present
Senior Care Emergency Ambulance Services, Inc. (EMS)	06/2005 to present

Beth (Kosowsky) Rozenberg retired in 1995 as a teacher from Park East Day School in New York, NY. Ms. Rozenberg discloses the following health facility interests:

University Nursing Home	11/2002 to present
Williamsbridge Manor	12/2004 to present
Bronx Center for Rehab	09/2013 to present

Character and Competence - Analysis

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

A review of operations of Bronx Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-07-079 issued October 23, 2007 for surveillance findings on April 27, 2007. Deficiencies were found under 10 NYCRR 415.12 Quality of Care and 415.12(i)(1), Quality of Care: Nutrition.
- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-11-047 issued August 25, 2011 for surveillance findings on April 16, 2010. Deficiencies were found under 10 NYCRR 415.12 (h)(2) Quality of Care: Accidents and Supervision and 415.26 Administration.

A review of the operations of Chittenango Center for Rehabilitation and Health Care (formerly Stonehedge Health & Rehabilitation Center - Chittenango) for the period identified above reveals the following:

- The facility was fined \$20,000 pursuant to a Stipulation and Order NH-12-010 issued February 17, 2012 for surveillance findings on January 20, 2011. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores and NYCRR 415.12(d)(1) and Quality of Care: Catheters
- The facility was fined \$4,000 pursuant to a 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 the operations of Waterfront Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-13-014 issued April 24, 2013 for surveillance findings on September 27, 2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents and Supervision.

A review of Williamsbridge Manor Nursing Home for the period identified above reveals the following:

- The facility was fined \$1,000 pursuant to a Stipulation and Order NH-08- issued July 8, 2008 for surveillance findings of December 19, 2007. A deficiency was found under 10 NYCRR 415.12 Quality of Care.

The review of operations for Williamsbridge Manor Nursing Home, Bronx Center for Rehabilitation and Health Care, Chittenango Center for Rehabilitation and Health Care, and Waterfront Center for Rehabilitation and Healthcare for the time periods indicated above results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

The review of operations of Queens Center for Rehabilitation and Residential Health Care, Dutchess Center for Rehabilitation and Healthcare, Essex Center for Rehabilitation, Fulton Center for Rehabilitation and Health Care, Rome Center for Rehabilitation and Health Care, Corning Center for Rehabilitation, Washington Center for Rehabilitation, Brooklyn Center for Rehabilitation and Residential Health Care, Richmond Center for Rehabilitation and Specialty Health Care, Steuben Center for Rehabilitation, Suffolk Center for Rehabilitation, University Nursing Home, Daughters of Jacob Nursing Home, Holliswood Center for Rehabilitation and Health Care, and Delaware Nursing and Rehabilitation Center for the time periods indicated above reveals that a substantially consistent high level of care has been provided since there were no enforcements.

A review of Alpine Home Health Care, LLC and Amazing Home Care reveals that a substantially consistent high level of care has been provided since there were no enforcements.

The review of Senior Care Emergency Ambulance Services, Inc. reveals that a substantially consistent high level of care has been provided since there were no enforcements.

A review of operations for Center Plan for Health Living, for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement for the purchase of the operating interests; summarized below:

Date:	October 21, 2014
Seller:	HELP/PSI, Inc.
Buyer:	Hope Center, Operations, LLC
Asset Acquired:	All of Seller's right, title and Operational Interest in the Facility.
Excluded Assets:	All of Seller's rights, properties, assets and interests other than the Basic Assets, including, without limitation, the name "HELP/PSI" and all real property associated with the Facility.
Assumption of Liabilities:	Buyer shall not assume any obligations or liabilities of Seller with respect to the Basic Assets or the Facility of its operations arising at any time prior to the Closing Date.
Purchase Price:	\$4,620,000
Payment of Purchase Price:	\$462,000 paid by Seller prior to the execution of this agreement. \$4,158,000 shall be due and payable by Buyer to Seller at the Closing.

The applicant's financing plan appears as follows:

Equity	\$1,501,500
Bank Loan (5% interest for a ten year term with a twenty five year principal payout)	3,118,500

The applicant has indicated that they will refinance the loan when the balloon payment becomes due. Kenneth Rozenberg has submitted an affidavit indicating that he will fund the balloon payment from his personal resources if financing is not available when the loan becomes due.

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 the liability and responsibility. Currently, there are no outstanding audit liabilities or assessments.

Lease Rental Agreement

The applicant has submitted an executed lease rental agreement for the site that the nursing home will occupy, which is summarized below:

Date: July 8, 2014
Premises: Leasing of the premises located at 1401 University Avenue, Bronx, New York.
Landlord: HELP/PSI, Inc.
Tenant: Hope Center Operations, LLC
Term: Ten years
Rental: The annual base rent shall be \$288,000
Provisions: The lessee shall be responsible for maintenance, real estate taxes and utilities.

Operating Budget

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

Revenues:	
Medicaid Managed Care	\$9,693,409
Expenses:	
Operating	\$6,468,155
Capital	<u>953,222</u>
Total Expenses	\$7,421,377
Net Income	\$2,272,032
Utilization (patient days)	23,608
Occupancy	98.0%

Utilization will be 100% Medicaid Managed Care.

The applicant increased utilization from historical levels due to the high HIV/AIDS population in the facility's primary service area. Moreover, with the closure of Robert Mapplethorpe Residential Treatment Facility, which also serves AIDS patients, the need for nursing home placement for these residents is evident. The applicants have indicated that they are committed to actively conducting community outreach to hospitals and other area programs to maintain their occupancy levels.

The applicant projected the following expense reductions:

- Salary and Wages – The applicant will be reducing FTEs in the following areas: Management & Supervision (5.4 FTEs); Technician & Specialist (1.8 FTEs); Licensed Practical Nurses (1.1 FTEs); Social Workers and Psychologist (0.7 FTEs); Other Therapist and Assistants - Substance Abuse (8.4 FTEs); Infection Control, Environment and Food Service (12.2 FTEs); Clerical & Other Administrative (6.3 FTEs); and Other-Transportation (6.4 FTEs). The staff reductions will result in total salary and wage savings of \$2,155,284 compared to 2012 historical. The reductions are based on an analysis of the current operator's staffing schedule, as reported in the 2012 RHCF cost report, and the applicant's previous experience as a successful nursing home operator. To maintain needed RHCF services and programs, the applicant will be increasing FTEs in other areas as follows: Registered Nurses (2.4 FTEs); Aides, Orderlies & Attendants (2.4 FTEs) and Other-Activities Program (0.9 FTEs). As a result, the net reduction in staffing will be a total of 36.6 FTE's.
- Employee Health Benefits – Reduction of employee health benefits (\$581,469) due to reduction of FTE's.
- Professional Fees – reduced by \$234,233.
- Medical & Surgical Supplies – reduced by \$22,584.
- Non-medical, non- surgical supplies – reduced by \$138,708.
- Utilities – reduced by \$77,673.
- Purchased services – reduced by \$131,500.

Capability and Feasibility

The purchase price for the operating interests is \$4,620,000. The purchase price will be met as follows: equity of \$1,501,500 from the proposed members' personal resources, and a bank loan of \$3,118,500 at an interest rate of 5% for a term of ten years with a payout period of twenty-five years. The applicant has indicated that they will refinance the loan when the balloon payment becomes due. Kenneth Rozenberg has submitted an affidavit indicating that he will fund the balloon payment from his personal resources if financing is not available when the loan becomes due.

Working capital requirements are estimated at \$1,236,896, which is equivalent to two months of first year expenses. The applicant will finance \$618,448 at an interest rate of 5% for a term of five years. The remainder, \$618,448, will be provided as equity from the proposed members of Hope Center Operations, LLC. BFA Attachment A is the personal net worth statements of the proposed members of Hope Center Operations, LLC, which indicates the availability of sufficient funds for the equity contribution for the purchase price portion and for the working capital requirement portion. BFA Attachment C is the pro forma balance sheet as of the first day of operation, which indicates a positive net asset position of \$2,119,948. Assets includes \$4,620,000 in goodwill which is not a liquid resource nor is it recognized for Medicaid reimbursement. If goodwill is eliminated from the equation, the total net assets would become a negative \$2,500,052.

The submitted budget indicates a net income of \$2,272,032 during the first year subsequent to the change in operator. The submitted budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Effective June 1, 2014, eligible Medicaid beneficiaries in the following counties were required to join a managed care plan (phase 1, downstate): NYC, Nassau, Suffolk and Westchester. The rest of the State (phase 2, upstate) will transition beginning December 1, 2014. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with the NH providers. To mitigate untoward financial impact to NH providers during the transition to managed care, the 2014-15 Enacted State Budget amended Public Health Law adding §2808 2-c(e) to establish the NH Medicaid fee-for-service (FFS) rate as the benchmark rate (floor) for MCO payments to NH providers. Department Policy, noticed to Plans in March 2014, provided further guidance requiring MCOs to pay the benchmark FFS rate, or a negotiated rate acceptable to both plans and NHs, for 3 years after a county has been deemed mandatory (phased in) for NH population enrollment. As a result, the benchmark FFS rate remains a reliable basis for assessing NH Medicaid revenues through to May 31, 2017 (downstate), and November 30, 2017 (upstate), respectively.

BFA Attachment B is a financial summary of HELP/PSI for the period 2011 through 2013. As shown, the entity had an average positive working capital position and an average positive net asset position from 2011 through 2013. Also, the entity achieved an average excess of revenues over expenses of \$1,676,026 from 2011 through 2013.

BFA Attachment E is the March 31, 2014 internal financial statements of HELP/PSI. As shown, the entity had a positive working capital position and a positive net asset position through March 31, 2014. Also, the entity achieved an excess of revenues over expenses of \$82,754 through March 31, 2014.

BFA Attachment D is the financial summaries of the other RHCs in which Kenneth Rozenberg has ownership interests. The following is noted:

- Bronx Center for Rehab had an average negative working capital position and an average positive net asset position from 2010 through 2013. The applicant has indicated that the reason for the average negative working capital position is the result of an \$800,000 Medicare Part B receivable owed to the facility. Also, the facility achieved an average operating net income of \$905,495 from 2010 through 2013.
- Dutchess Center had an average negative working capital position and an average positive net asset position from 2010 through 2013. The applicant has indicated that the reason for the negative working capital position is the result of vacation and sick time accrual. Also, the entity achieved an average operating net income of \$684,086 from 2010 through 2013.

- Bushwick Center had an average negative working capital position and an average positive net asset position from 2012 through 2013. The applicant has indicated that the reason for the average negative working capital position is the result of pending CMI and capital reimbursement from the State, vacation and sick time accruals and pending HUD reimbursement. Also, the entity achieved an average operating net income of \$491,025 from 2012 through 2013.
- Rome Center had an average negative working capital position and an average positive net asset position from 2012 through 2013. The applicant has indicated that the reason for the average negative working capital position is the result of vacation and sick time accrual. Also, the entity achieved an average operating net income of \$701,374 from 2012 through 2013.
- Chittenango Center for Rehab had an average negative working capital position and an average positive net asset position from 2012 through 2013. The applicant has indicated that the reason for the average negative working capital position is the result of vacation and sick time accrual. Also, the entity achieved an average net income of \$383,205 from 2012 through 2013. The applicant has indicated that the reason for the 2012 losses were the result of a \$400,000 capital audit take back. The applicant further indicated that they implemented the following steps to improve operations: renegotiating vendor contracts, analyzing overtime utilization and making adjustments necessary to reduce the overtime expense, and enhanced efforts on collections on accounts receivable.
- Boro Park Center had an average negative working capital position and an average positive net asset position from 2012 through 2013. The applicant has indicated that the reason for the average negative working capital position is the result of vacation and sick time accrual. Also, the entity achieved an operating net income of \$3,725,321 from 2012 through 2013.
- Fulton Center had a negative working capital position and a positive net asset position in 2013. The applicant has indicated that the reason for the negative working capital position is the result of vacation and sick time accrual. Also, the entity achieved an operating net income of \$568,318 in 2013.
- Richmond Center had a negative working capital position and a positive net asset position in 2013. The applicant has indicated that the reason for the negative working capital position is the result of vacation and sick time accrual. Also, the entity achieved an operating net income of \$2,576,814 in 2013.
- Queens Center had an average negative working capital position and an average positive net asset position from 2010 through 2013. The applicant has indicated that the reason for the negative working capital position is the result of a third party payor liability, as well as vacation and sick time accrual. Also, the entity achieved an average operating net income of \$625,327 from 2010 through 2013.
- University Nursing Home had an average negative working capital position and an average positive net asset position from 2010 through 2013. The applicant has indicated that the reason for the average negative working capital position is the result of vacation and sick time accrual. Also, the applicant achieved an average operating net income of \$295,821 from 2010 through 2013.
- Williamsbridge Manor had an average positive working capital position and an average positive net asset position from 2010 through 2013. The applicant has indicated that the reason for the 2011 negative working capital position is the result of vacation and sick time accrual. Also, the entity achieved an operating net income of \$345,289 from 2010 through 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 Statements of Proposed Members
BFA Attachment B	Financial Summary- HELP/PSI
BFA Attachment C	Pro Forma Balance Sheet
BFA Attachment D	Financial Summaries of other owned facilities
BFA Attachment E	March 31, 2014 Internal Financial Statements of Help/PSI
BNHLC Attachment A	Quality Measures and Inspection Report

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 4th day of December, 2014, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Hope Center Operations, LLC as the new operator of other facility located at 1401 University Avenue, Bronx that is currently operated by Help/PSI, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

142056 E

FACILITY/APPLICANT:

Hope Center Operations, LLC
d/b/a Hope Center for HIV and Nursing Care

APPROVAL CONTINGENT UPON:

1. Submission of an executed loan commitment for the operating portion, acceptable to the Department. [BFA]
2. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
3. Submission of an executed amendment to the lease agreement between HELP/PSI, Inc. and the applicant, acceptable to the Department. [CSL]
4. Submission of an executed certificate of amendment of the certificate of incorporation of HELP/PSI, 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]

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

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



Public Health and Health Planning Council

Project # 142090-E
L&A Operations LLC d/b/a Adira at Riverside Rehabilitation and Nursing

Program: Residential Health Care Facility
Purpose: Establishment

County: Westchester
Acknowledged: September 2, 2014

Executive Summary

Description

L&A Operations, LLC d/b/a Adira at Riverside Rehabilitation and Nursing (L&A Operations), a Delaware limited liability company, is seeking approval to be established as the new operator of Michael N. Malotz Skilled Nursing Pavilion, an existing not-for-profit 120-bed residential health care facility (RHCF) located at 120 Odell Avenue, Yonkers, New York (Westchester County). The 120 certified beds consists of 112 geriatric beds and 8 ventilator dependent beds. Simultaneously, a separate realty entity, L&A RE Acquisitions, LLC, will acquire the facility's real property.

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.

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

<u>Current Operator</u>	<u>Ownership</u>
Riverside Health Care System, Inc.	100%

<u>Proposed Operator</u>	<u>Ownership</u>
L&A Operations, LLC d/b/a Adira at Riverside Rehabilitation and Healthcare	
Allen Stein	43.0%
Lazer Strulovitch	43.0%
Leopold Schwimmer	14.0%

Financial Summary

L&A Operations will acquire the RHCF operating assets for \$1,700,000 which will be funded as follows: \$340,000 from members' equity, and a 10-year term loan of \$1,360,000 with a 25-year amortization schedule at 5% interest rate. L&A RE Acquisitions, LLC, the applicant's landlord, is purchasing the real property for \$21,000,000 and its members will contribute \$4,200,000 in equity along with entering into a \$16,800,000 loan with 10-year terms amortized over 25 years at 5% interest rate. There are no project costs associated with this application.

OPCHSM Recommendation
Contingent Approval

Budget:	Revenues:	\$15,465,185
	Expenses:	\$12,940,541
	Gain:	\$2,524,644

Need Summary

Michael N. Malotz Skilled Nursing Pavilion's utilization was 95.7% in 2010, 97.6% in 2011, and 96.4% in 2012. Current utilization, as of October 8, 2014 is 92.9%.

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 Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed operations loan commitment, acceptable to the Department. [BFA]
2. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
3. Submission of an executed real property loan commitment, acceptable to the Department. [BFA]
4. Submission of an executed building lease, acceptable to the Department. [BFA]
5. Submission of authorization to operate in New York State acceptable to the Department. [BFA]
6. 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]
7. 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; and
 - 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. [RNR]
8. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
 - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
 - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - e. Other factors as determined by the applicant to be pertinent. [RNR]
9. Submission of a photocopy of the applicants finalized and executed Amended and Restated Certificate of Formation, acceptable to the Department. [CSL]
10. Submission of a photocopy of a finalized and executed amendment to the applicants Operating Agreement, which is acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicants finalized and executed Application for Authority, acceptable to the Department. [CSL]
12. Submission of a photocopy of the applicants finalized and executed Lease, acceptable to the Department. [CSL]

Council Action Date

December 4, 2014

Need Analysis

Project Description

L&A Operations LLC, d/b/a Adira at Riverside Rehabilitation and Nursing, seeks approval to become the established operator of Michael N. Malotz Skilled Nursing Pavilion, a 120-bed Article 28 residential health care facility, located at 120 Odell Avenue, Yonkers, 10701, in Westchester County.

Analysis

There is currently a need for 138 beds in Westchester County as indicated in Table 1 below. However, the overall occupancy for Westchester County is 92.6% for 2012 as indicated in Table 2.

Table 1: RHCF Need – Westchester County

2016 Projected Need	6,716
Current Beds	6,625
Beds Under Construction	-47
Total Resources	6,578
Unmet Need	138

Michael N. Malotz Skilled Nursing Pavilion's utilization was 95.7% in 2010, 97.6% in 2011, and 96.4% in 2012. Current utilization, as of October 8, 2014, is 92.9%. The facility is currently operated by Riverside Health Care System, Inc., which also operates St. John's Riverside Hospital, a 225-bed acute care facility and a 12-bed "hybrid" facility. From 2010-2013, the current operator relied almost exclusively upon discharges from the Riverside Health Care System facilities for its nursing home admissions, which resulted in a limited pool of potential residents and declining occupancy for the nursing home.

Table 2: Michael N. Malotz Skilled Nursing Pavilion/Westchester County

<u>Facility/County</u>	<u>% Occupancy 2010</u>	<u>% Occupancy 2011</u>	<u>% Occupancy 2012</u>
Michael N. Malotz SNP	95.7%	97.6%	96.4%
Westchester County	92.9%	92.4%	92.6%

According to the applicant, utilization will increase to the Department's optimum level of 97% as a result of the following plans:

- Collaboration with St. John's Riverside Hospital, which has very high acuity patients in need of RHCF services;
- Collaboration with local health care and social services providers, including other hospitals, ACFs, ALPs, senior citizen centers, religious organizations, community centers, and the Westchester County Department of Social Services, to lay out plans to operate a well-utilized RHCF in a friendly, home-like, and enjoyable environment for elderly residents; and
- Renovation of the facility (with the Department's approval) once becoming the established operator.

The applicant also noted that St. John's Riverside will be part of the Montefiore DSRIP initiative in the Hudson Valley. It will be important for the hospital to work closely with the RHCF to prevent readmissions, and the applicant will be a reliable resource for the hospital in this regard.

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.

Michael N. Malotz Skilled Nursing Pavilion's Medicaid admissions for 2011 and 2012 was 69.6% and 64.4%, respectively. This facility exceeded Westchester County 75% rates in 2011 and 2012 of 23.8% and 21.1%, respectively.

Conclusion

The applicant has proposed a reasonable plan to stem the facility's declining occupancy and restore it to more optimum levels. Approval of this application will help ensure the implementation of this plan and enable the facility to operate in a more efficient and robust manner.

Recommendation

From a need perspective, contingent approval is recommended.

<h2>Program Analysis</h2>

Facility Information

	<u>Existing</u>	<u>Proposed</u>
Facility Name	Michael Malotz Skilled Nursing Pavilion	Adira at Riverside Rehabilitation and Nursing
Address	120 Odell Ave, Yonkers, NY 10701	Same
RHCF Capacity	120	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	Voluntary	Proprietary
Class of Operator	Corporation	Limited Liability Company
Operator	Riverside Health Care System, Inc.	L&A Operations LLC
		Managing Member: Allen Stein 43.0% Members: Lazer Strulovich 43.0% Leopold Schwimmer 14.0%

Character and Competence - Background

Facilities Reviewed:

Nursing Home

Sprain Brook Manor Rehab 09/2012 to present

Adult Care Facility

Long Beach Assisted Living 04/2014 to present

Island Assisted Living 06/2004 to present

Individual Background Review:

Allen Stein has been employed as a manager at Sprain Brook Manor Rehab since 2008. Prior to his employment at the nursing home, Mr. Stein was the owner of the Kosher Food Depot located in Brooklyn, New York. Allen Stein discloses the following ownership interest:

Sprain Brook Manor Rehab 09/2012 to present

Lazer Strulovich is the owner of Park Avenue Door and Hardware Inc., a door and hardware distributor located in Brooklyn, New York. Mr. Strulovich is also the owner of Park Avenue Management of Berry LLC, a real estate management company. Lazer Strulovich discloses the following ownership interests in health facilities:

Nursing Home

Sprain Brook Manor Rehab 09/2012 to present

Adult Care Facility

Long Beach Assisted Living 04/2014 to present

Island Assisted Living 06/2004 to present

Leopold Schwimmer lists his employment as the President and owner of United Commercial Group, a real estate financing company located in Brooklyn, New York. Leopold Schwimmer discloses the following ownership interests:

Sprain Brook Manor Rehab 09/2012 to present

Character and Competence – Analysis

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

A review of operations for Sprain Brook Manor Rehab for the period identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of operations for Long Beach Assisted Living and Island Assisted Living for the period identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

Project Review

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The facility is in compliance with CMS 2013 sprinkler mandates.

Conclusion

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed purchase agreement to acquire the RHCF's operating interest. The terms are summarized below:

Date:	July 16, 2014
Seller:	Michael N. Malotz Skilled Nursing Pavilion
Purchaser:	L&A Operations, LLC d/b/a Adira at Riverside Rehabilitation and Nursing
Assets Transferred:	All rights, title and interest in the assets including: tangible assets used in the operations; applicable warranties, contracts and agreements; along with managed care and third party reimbursement contracts. Also included are: trade names and logos; books and records relating to business operations; assignable licenses and permits including Medicare and Medicaid provider numbers; resident trust funds; goodwill and going concern value.

Excluded Assets: Cash and cash equivalents, pre-closing accounts receivables; security deposits; refunds and settlements prior to closing, any websites and e-mail addresses; charitable gift, grant, bequest or legacy; and handbooks.

Assumed Liabilities: Those occurring after the Closing date.

Purchase Price: \$1,700,000

Payment: \$170,000 escrow deposit (paid at the time of signing)
\$1,530,000 due at closing.

The purchase price is proposed to be satisfied as follows:

Equity - L&A Operations, LLC Members	\$340,000
Loan -10 year terms, 25-year amortization, 5%	<u>\$1,360,000</u>
Total	\$1,700,000.00

The members' have provided affidavits to personally fund the balloon payment, should acceptable refinancing not be available.

BFA Attachment B is the proposed members' net worth summaries for both L&A Operations, LLC and L&A RE Acquisitions, LLC. Only one net worth schedule is being presented as the members and their membership interest are the same for both entities. A review of the net worth statement reveals sufficient resources to meet the equity requirements. It is noted that liquid resources may not be available in proportion to the proposed ownership interest. Lazer Strulovitch has provided an affidavit stating that he is willing to contribute resources disproportionate to his membership interest in the operating entity. A letter of interest has been provided by Greystone Funding Corporation.

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 is a one outstanding Medicaid liability (small amount) and no Assessment liability as of October 3, 2014.

Purchase and Sale Agreement for the Real Property

The applicant has submitted an executed agreement to purchase the RHCF's real property. The terms are summarized below:

Date: July 16, 2014

Seller Realty: Michael N. Malotz Skilled Nursing Pavilion

Purchaser Realty: L&A RE Acquisitions, LLC

Asset Transferred Realty: All rights, title and interest in the premises including: the land, buildings, structures and improvements, fixtures, easements and appurtenances known by the address 120 Odell Avenue, Yonkers, New York 10701 and designated on the tax map of Westchester County as Section 3, Block 3535, Lot 84.

Purchase Price: \$21,000,000

Payment of Purchase Price: \$2,100,000 escrow deposit (paid at the time of signing)
\$18,900,000 due at closing.

The purchase price is proposed to be satisfied as follows:

Equity - L&A RE Acquisitions, LLC Members	\$4,200,000
Loan -10 year terms, 25-year amortization, 5%	<u>\$16,800,000</u>
Total	\$21,000,000

The members' have provided affidavits to personally fund the balloon payment, should acceptable refinancing not be available.

A review of BFA Attachment B, the proposed L&A RE Acquisitions, LLC members' net worth summary, reveals sufficient resources to meet the equity requirements. It is noted that liquid resources may not be available in proportion to the proposed ownership interest. Leopold Schwimmer has provided an affidavit stating that he is willing to contribute resources disproportionate to his membership interest in the realty entity. A letter of interest has been provided by Greystone Funding Corporation.

Lease Agreement

A draft lease has been submitted to lease the real property. The terms are summarized below:

Premises: 120-bed RHCF located at 120 Odell Avenue, Yonkers, NY 10701
 Owner/Landlord: L&A RE Acquisitions, LLC
 Lessee: L&A Operations, LLC
 Term: Ten years with three 5-year renewal option
 Rent: \$1,200,000 per year (\$100,000 per month)
 Provisions: Triple Net

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

Medicaid capital reimbursement for the proposed applicant will change from the existing not-for-profit Article 28 methodology to the proprietary reimbursement methodology of return on/of equity.

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 (RHCF - 112 Beds):		
Medicaid	\$252.64	\$5,438,334
Medicare	537.20	5,556,276
Private Pay	434.50	1,542,483
Other	331.36	997,070
Assessment Revenue		268,136
Revenues (Ventilator - 8 Beds):		
Medicaid	\$463.32	\$996,132
Medicare	810.64	298,317
Private Pay	786.26	310,571
Assessment Revenue		57,866
Total Revenues:		<u>\$15,465,185</u>
Expenses:		
Operating		\$10,735,847
Capital		<u>2,204,694</u>
Total Expenses:		<u>\$12,940,541</u>
Net Income:		<u><u>\$2,524,644</u></u>
RHFC Utilization (patient days)		38,428
RHFC Occupancy		94.00%
Ventilator Utilization		2,913
Ventilator Occupancy		99.76%

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

- RHCF expenses include lease rental.
- RHCF Medicaid revenues are based on 2014 rates adjusted for proprietary capital.
- RHCF Medicare revenues were based on historical experience.
- RHCF private pay revenues are based historical experience;
- The applicant plans on increasing utilization through working very closely with local health care and social providers, including the nursing home's current sole member St. John's Riverside Hospital. The applicant believes that its relationship with St. John's Riverside Hospital and the Hospital's participation in Montefiore Hudson Valley DSRIP initiative will enable the facility to be well-utilized.
- Vent bed occupancy increase from 2012 to 2013 as the result of Medicaid rate increase that made it financially feasible to offer the service to more patients.
- Breakeven utilization is projected at 78.98%.
- RHCF utilization by payor source is anticipated as follows:

	<u>RHCF</u>	<u>Ventilator</u>
Medicaid	56.02%	73.81%
Medicare	26.92%	12.63%
Private and All Other	17.06%	13.56%

Capability and Feasibility

L&A Operations will acquire the RHCF operations for \$1,700,000 which will be funded with \$340,000 in members' equity plus a \$1,360,000 loan at the above stated terms. Concurrently, L&A RE Acquisitions, LLC will purchase the real property for \$21,000,000 which will be funded as follows: \$4,200,000 in members' equity along with a \$16,800,000 loan at the above stated terms. Greystone Funding Corporation has provided letters of interest for both the operation and the real property loans. Review of BFA Attachment B, members net worth summaries, shows there are sufficient assets to complete the transactions. It is noted that liquid resources may not be available in proportion to the proposed ownership interest; therefore, Lazer Strulovitch and Leopold Schwimmer have provided affidavits stating they are willing to contribute resources disproportionate to their membership interest. There are no project costs associated with this application.

The working capital requirement is estimated at \$2,156,757 based on two months of the first year expenses. Half or \$1,078,379 will be satisfied from the members' equity. The remaining \$1,078,378 will be satisfied through a five-year term loan at 5% interest rate. As stated above, there are sufficient resources to satisfy the projects' equity requirements.

The submitted budget indicates net income of \$2,524,644 would be generated in the first year after the change in ownership. Revenues are expected to decline by approximately \$965,326 primarily from a Medicaid rate reduction in both ventilator dependent and geriatric beds. Expenses are projected to decline by \$4,340,992, primarily from the following: \$2,348,067 decrease in fringe benefit cost, bringing the percentage from 44.8% to 22.6% of salary and wages; \$964,835 decrease in administrative fees, with the net balance coming primarily from a reduction of 26.96 FTE's as the result of outsourcing some services including: inhalation, physical and occupational therapies, dietary, and laundry and linen services. The budget was created taking into consideration the proposed new owners' experience in operating similar size facility. BFA Attachment C is L&A Operations, LLC's pro forma balance sheet, which shows the entity will start off with \$1,418,379 in equity. Equity includes \$1,700,000 in goodwill which is not a liquid resource nor is it recognized for Medicaid reimbursement. If goodwill was eliminated from the equation, then the total net assets would become a negative \$281,621. The budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Effective June 1, 2014, eligible Medicaid beneficiaries in the following counties were required to join a managed care plan (phase 1, downstate): NYC, Nassau, Suffolk and Westchester. The rest of the State (phase 2, upstate) will transition beginning December 1, 2014. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with the NH providers. To mitigate untoward financial impact to NH providers during the transition to managed care, the 2014-15 Enacted State Budget amended Public Health Law adding §2808 2-c(e) to establish the NH Medicaid fee-for-service (FFS) rate as the benchmark rate (floor) for MCO payments to NH providers. Department Policy, noticed to Plans in March 2014, provided further guidance requiring MCOs to pay the benchmark FFS rate, or a negotiated rate acceptable to both plans and NHs, for 3 years after a county has been deemed mandatory (phased in) for NH population enrollment. As a result, the benchmark FFS rate remains a reliable basis for assessing NH Medicaid revenues through to May 31, 2017 (downstate), and November 30, 2017 (upstate), respectively.

As shown on BFA Attachment D, Financial Summary of Michael N. Malotz Skilled Nursing Pavilion for the period 2011 through 2013, the RHCF had an average positive working capital position of \$290,398. For 2013 the facility generated an \$851,022 operating loss as the result of accruing a \$1,360,000 bad debt expense which was \$998,168 higher than the average bad debt expense in the prior two years of \$180,916. The proposed sale of the nursing home is expected to satisfy the liabilities with no impairment of the assets, thus curing the negative total net asset position. The average occupancy for geriatric and ventilator beds was 95.78% and 90.12%, respectively.

As shown on BFA Attachment E, Sprain Brook Manor Rehab, LLC for the period of 2013, the facility had a positive working capital position of \$1,916,407, positive net asset position of \$5,268,177, and generated an operating surplus of \$1,129,178. Occupancy was 86.89% for 2013, and 94.2% through June 2014.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Proposed Members of L&A RE Acquisitions, LLC
BFA Attachment B	Net Worth of Proposed Members, L&A Operations, LLC d/b/a Adira at Riverside Rehabilitation and Nursing and L&A RE Acquisitions, LLC
BFA Attachment C	Pro Forma Balance Sheet L&A Operations, LLC d/b/a Adira at Riverside Rehabilitation and Nursing
BFA Attachment D	Financial Summary, Michael N. Malotz Skilled Nursing Pavilion
BFA Attachment E	Financial Summary, Sprain Brook Manor Rehab, LLC
BNHLC Attachment A	Quality Measures and Inspection Report

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 4th day of December, 2014, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish L&A Operations LLC as the new operator of the facility located at 120 Odell Avenue, Yonkers, currently the Michael Malotz Skilled Nursing Pavilion, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

142090 E

FACILITY/APPLICANT:

L&A Operations LLC
d/b/a Adira at Riverside Rehabilitation

APPROVAL CONTINGENT UPON:

1. Submission of an executed operations loan commitment, acceptable to the Department.
[BFA]
2. Submission of an executed working capital loan commitment, acceptable to the Department.
[BFA]
3. Submission of an executed real property loan commitment, acceptable to the Department.
[BFA]
4. Submission of an executed building lease, acceptable to the Department. [BFA]
5. Submission of authorization to operate in New York State acceptable to the Department.
[BFA]
6. 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]
7. 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; and
 - 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. [RNR]
8. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
 - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
 - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - e. Other factors as determined by the applicant to be pertinent. [RNR]
9. Submission of a photocopy of the applicants finalized and executed Amended and Restated Certificate of Formation, acceptable to the Department. [CSL]
10. Submission of a photocopy of a finalized and executed amendment to the applicants Operating Agreement, which is acceptable to the Department. [CSL]

11. Submission of a photocopy of the applicants finalized and executed Application for Authority, acceptable to the Department. [CSL]
12. Submission of a photocopy of the applicants finalized and executed Lease, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

N/A

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

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



Public Health and Health Planning Council

Project # 142060-E
Dominican Sisters Family Health Service, Inc.

Program: Certified Home Health Agency
Purpose: Establishment

County: Nassau
Acknowledged: August 19, 2014

Executive Summary

Description

Dominican Sisters Family Health Service, Inc. (DSFHS), a New York not-for-profit corporation with its principal office located at 299 North Highland Avenue, Ossining, New York, is seeking approval to become the operator of Visiting Nurse Association of Long Island, Inc. (VNALI) through a merger. DSFHS operates a Certified Home Health Agency (CHHA), a Long Term Home Health Care Program (LTHHCP), a Licensed Home Care Services Agency (LHCSA), and an AIDS Home Care Program (AHCP). VNALI operates a CHHA, LTHHCP and Meals on Wheels program which will operate as a branch of DSFHS post-merger. DSFHS will be the surviving corporation after the merger is completed.

The roots of both organizations as providers of home health care services go back over 100 years. Currently, DSFHS is authorized to provide CHHA services in 11 counties and LTHHCP services in 6 counties as follows:

- CHHA Counties: Bronx, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk and Westchester.
- LTHHCP Counties: Bronx, Kings, New York, Queens, Suffolk and Westchester.

VNALI is authorized to provide CHHA services in 4 counties and LTHHCP services in 3 counties as follows:

- CHHA Counties: Kings, Nassau, Queens and Suffolk.
- LTHHCP Counties: Nassau, Queens, Suffolk.

There will be no change to the service area nor any programmatic changes as a result of this merger. The merger is expected to enhance organizational stability, strengthen vendor relationships to achieve greater operating efficiencies, and reduce costs through integration and centralization of administrative and information technology functions.

DSFHS is accredited by the Joint Commission on Accreditation of Health Care Organizations and VNALI is accredited by the Community Health Accreditation Program.

OPCHSM Recommendation
Contingent Approval.

Need Summary

There will be no change in service. There is no Need recommendation necessary for this review.

Program Summary

Dominican Sisters Family Health Service, Inc., a not-for-profit Article 36 certified home health agency (CHHA) and long term home health care program (LTHHCP), proposes to acquire and merge Visiting Nurse Association of Long Island, Inc. CHHA and LTHHCP into the existing Dominican Sisters Family Health Service, Inc. CHHA and LTHHCP.

Financial Summary

There are no project costs associated with this application.

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

Incremental Budget:	
Revenues	\$10,754,356
Expenses	<u>9,778,250</u>
Gain/(Loss)	\$ 976,106

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a copy of a dated and executed Certificate of Merger of the Visiting Nurse Association of Long Island, Inc. ("VNALI) into the Dominican Sisters Family Health Services, Inc. ("DSFHS") acceptable to the Department. [CSL]
2. Submission of a copy of an executed Agreement of Merger between VNALI and DSFHS acceptable to the Department. [CSL]
3. Submission of a copy of a dated and executed Plan of Merger of VNALI into DSFHS 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. Submission of an executed Vital Access Provider (VAP) award agreement documenting approval of the VAP funding for the merger of Visiting Nurse Association of Long Island, Inc. into Dominican Sisters Family Health Service, Inc., acceptable to the Department of Health. [BFA]

Council Action Date

December 4, 2014

Program Analysis

Review Summary

Dominican Sisters Family Health Service, Inc., a not-for-profit Article 36 certified home health agency (CHHA) and long term home health care program (LTHHCP), proposes to acquire and merge Visiting Nurse Association of Long Island, Inc., also a not-for-profit Article 36 CHHA and LTHHCP, into the existing Dominican Sisters Family Health Service, Inc. CHHA and LTHHCP. Dominican Sisters Family Health Service, Inc. CHHA is currently approved to serve Bronx, Kings, New York, Queens, Richmond, Nassau, Suffolk, Orange, Putnam, Rockland, and Westchester Counties, and its LTHHCP is currently approved to serve Bronx, Kings, New York, Queens, Suffolk, and Westchester Counties. Visiting Nurse Association of Long Island, Inc. CHHA is currently approved to serve Kings, Queens, Nassau, and Suffolk Counties, and its LTHHCP is currently approved to serve Queens, Nassau, and Suffolk Counties. As a result of the proposed acquisition and merger of the Visiting Nurse Association of Long Island, Inc. CHHA, the Dominican Sisters Family Health Service, Inc. CHHA will not be adding any additional county service areas to its approval. However, as a result of the proposed acquisition and merger of the Visiting Nurse Association of Long Island, Inc. LTHHCP, the Dominican Sisters Family Health Service, Inc. LTHHCP will be adding Nassau County as an additional county service area with its 150 patient capacity, and will be adding 25 additional patient capacity to each of its approvals for Queens and Suffolk Counties. Accordingly, upon acquisition and merger, Visiting Nurse Association of Long Island, Inc., CHHA and LTHHCP will officially close.

Dominican Sisters Family Health Service, Inc. CHHA and LTHHCP currently has its main parent office practice location in Ossining (Westchester County), and five (5) additional branch office practice locations in Bronx (Bronx County), Hampton Bays (Suffolk County), Medford (Suffolk County), Spring Valley (Rockland County), and Manhattan (New York County). Dominican Sisters Family Health Service, Inc. CHHA and LTHHCP plans to open a sixth additional branch office practice location in Garden City (Nassau County), by acquiring the current sole practice location of Visiting Nurse Association of Long Island, Inc. CHHA and LTHHCP in Garden City.

Dominican Sisters Family Health Service, Inc. CHHA plans to continue providing the following home health care services: home health aide; medical social services; medical supplies, equipment and appliances; nursing; nutritional; occupational therapy; physical therapy; and speech language pathology. Dominican Sisters Family Health Service, Inc. LTHHCP plans to continue providing the following home health care services: AIDS home care program; audiology; homemaker; housekeeper; home health aide; medical social services; medical supplies, equipment and appliances; nursing; nutritional; personal care; occupational therapy; physical therapy; respiratory therapy; and speech language pathology.

Dominican Sisters Family Health Service, Inc. is a not-for-profit corporation. According to the corporation's by-laws, the corporation's members (parents) are The Major Superiors, or their delegates, of the following religious institutes: Dominican Sisters of Blauvelt, Dominican Sisters of Hope, Dominican Sisters of Sparkill, and Franciscan Sisters of Allegany. Dominican Sisters Family Health Service, Inc. is in turn the member (parent) corporation of Family Home Health Care, Inc., a not-for-profit corporation which operates a Licensed Home Care Services Agency (LHCSA) in Tarrytown (Westchester County), serving Bronx, Westchester, Rockland, and Putnam Counties, and in Medford (Suffolk County), serving Queens, Nassau, and Suffolk Counties.

The members of the Board of Directors of Dominican Sisters Family Health Service, Inc., are as follows:

<p>William T. Smith, PhD, LNHA, LMSW, Chairperson President / CEO, Aging in America, Inc. (Aging Services Consulting) Affiliations: Morningside House Nursing Home Company, Inc. (RHCF and LTHHCP); Morningside at Home, Inc. (ALP and LHCSA)</p>	<p>Max Van Gilder, MD, Vice Chairperson Senior Partner, West Care Pediatrics (Physician Practice)</p>
<p>Mary Alice Higgins Donius, EdD, RN (NY and CT), Secretary Director, School of Nursing, Sacred Heart University (CT)</p>	<p>Michael Martinucci, CPA (NY and WI), Treasurer Manager, Healthcare Services Group, McGladrey, LLP (Assurance, Tax, and Consulting Services)</p>
<p>Mary J. Zagajeski, RN President / CEO, Dominican Sisters Family Health Service, Inc. (CHHA and LTHHCP) Affiliations: Dominican Sisters Family Health Service, Inc. (CHHA and LTHHCP); Family Home Health Care, Inc. (LHCSA)</p>	<p>Robert Slingsby, Esq. CEO, All Med of New York (Diagnostic & Treatment Center) Affiliations: All Med of New York (Diagnostic & Treatment Center)</p>
<p>Raymond Sacher Vice President / Relationship Manager, CMS Bank</p>	<p>Mary Eileen Randolph, RN Retired School Nurse Teacher</p>
<p>William Mooney, Jr. CEO, The Westchester County Association (Public Policy / Business Membership Organization)</p>	<p>Ronald Krawczyk Self-Employed Financial Consultant</p>
<p>Dorothea Ferguson-Bell VP Human Resource Development, Aging in America, Inc. / Morningside House Nursing Home Company, Inc. Affiliations: Morningside House Nursing Home Company, Inc. (RHCF and LTHHCP); Morningside at Home, Inc. (ALP and LHCSA)</p>	<p>James P. Drew Retired Debt Resolution Specialist, US Treasury Department, IRS Compliance Division</p>
<p>Joseph DeAngelis, Jr. Retired Portfolio Manager and Bond/Stock Trader, Inverness Counsel (Money Management)</p>	<p>Thomas Condron Managing Director / Investment Advisor / Broker, Benjamin F. Edwards and Company, Inc. (Investments, Wealth Management)</p>
<p>Thomas K. Bourke Financial Consultant / Broker, Morgan Stanley (Investments, Wealth Management)</p>	

The Major Superiors, or their delegates, of the Dominican Sisters of Blauvelt in Blauvelt, New York (Rockland County) are as follows:

<p>Sister Michaela Connolly VP for Administration and Pastoral Care Sisters of St. Dominic of Blauvelt</p>	<p>Sister Catherine A. Howard, PhD President Sisters of St. Dominic of Blauvelt</p>
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The Major Superior, or her delegate, of the Dominican Sisters of Hope in Ossining, New York (Westchester County) is as follows:

<p>Sister Lorelle E. Elcock, PhD President, Administration and Planning Dominican Sisters of Hope</p>	
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The Major Superiors, or their delegates, of the Dominican Sisters of Sparkill in Sparkill, New York (Rockland County) are as follows:

<p>Sister Irene J. Ellis Executive Leadership Team Leader of Dominican Convent Dominican Sisters of Sparkill</p>	<p>Sister Mary Murray President of Dominican Convent Dominican Sisters of Sparkill</p>
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The Major Superiors, or their delegates, of the Franciscan Sisters of Allegany in Allegany, New York (Cattaraugus County) are as follows:

<p>Sister Margaret Mary Kimmins Congregational Minister Franciscan Sisters of Allegany</p>	<p>Sister Margaret M. McManus Retired Franciscan Sisters of Allegany</p>
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In addition to Dominican Sisters Family Health Service, Inc. CHHA and LTHHCP, all individuals listed above would also be affiliated with Family Home Health Care, Inc., the LHCSA for which Dominican Sisters Family Health Service, Inc. is the member (parent) corporation, as explained above.

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 Teaching Certifications of the New York State Education Department, 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 NYSDOH Bureau of Professional Credentialing, the Security and Exchange Commission (SEC) Investment Advisors Directory, the Financial Industry Regulatory Authority (FINRA) Securities Broker Central Registration, the State of Connecticut Department of Public Health, and the Wisconsin Department of Safety and Professional Services, indicate no issues with the licensure of the health professionals and other licensed professionals associated with this application. In addition, the attorney has submitted a current Certificate of Good Standing.

A seven year review of the operations of the following agencies/facilities was performed as part of this review:

Dominican Sisters Family Health Service, Inc. (CHHA and LTHHCP)
Family Home Health Care, Inc. (LHCSA)
Morningside House Nursing Home Company, Inc. (RHCF and LTHHCP)
Morningside at Home, Inc. (ALP and LHCSA)
All Med of New York (Diagnostic & Treatment Center)

The Division of Hospitals and Diagnostic and Treatment Centers reviewed the compliance history of the affiliated diagnostic and treatment center for the time period 2007 through 2014. It has been determined that the affiliated diagnostic and treatment center has been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

The Division of Assisted Living reviewed the compliance history of the affiliated assisted living program for the time period 2007 through 2014. It has been determined that the affiliated assisted living program 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 affiliated residential health care facility for the time period 2007 through 2014.

An enforcement action was taken against Morningside House Nursing Home Company, Inc., in 2008 based on an August, 2007 survey citing violations in Quality of Care, Quality of Care: Accidents, and Quality of Care: Pressure Sores. This enforcement was resolved with a \$6000 civil penalty.

Another enforcement action was taken against Morningside House Nursing Home Company, Inc., in 2011 based on an October, 2009 survey citing violations in Quality of Care: Accidents and Supervision, Administration, and Emergencies: Staff Trained and Drilled. This enforcement was also resolved with a \$6000 civil penalty.

It has been determined that the residential health care facility have been in substantial compliance with all applicable codes, rules, and regulations.

The Division of Home and Community Based Services reviewed the compliance history of the affiliated certified home health agency, long term home health care programs, and licensed home care service agencies, for the time period 2007 to 2014. It has been determined that the certified home health agency, long term home health care programs, and licensed home care service agencies have exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations. The agencies have been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

A review of all personal qualifying information indicates there is nothing in the background of the board members of Dominican Sisters Family Health Service, Inc., or of the Major Superiors of Dominican Sisters of Blauvelt, Dominican Sisters of Hope, Dominican Sisters of Sparkill, and Franciscan Sisters of Allegany, to adversely affect their positions in their respective organizations. 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

Background

In October 2012, VNALI submitted a VAP application to the New York State Department of Health (DOH), in collaboration with Catholic Health Services of Long Island (CHSLI), requesting funding assistance for the merger of VNALI into CHSLI's healthcare system. In December 2013, VNALI was awarded a total of \$4,281,840 in VAP funding to transition into CHSLI, with funds to be disbursed over two years (\$3,204,920 in 2014 and \$1,076,920 in 2015). On August 13, 2014, New York State disbursed \$1,602,460 to VNALI, which represented 50% (the State's share) of the 2014 VAP award payment. Since VAP awards are Medicaid payments, they are subject to CMS approval for the federal match (50%). CMS approval of the State Plan Amendment (SPA) enabling this federal match is still pending.

Under CON 132236-E, VNALI and Nursing Sisters Home Care, Inc., d/b/a Catholic Home Care (CHC), submitted a request to bring VNALI within the governance of CHC, a member of CHSLI. CON 132236-E was contingently approved on April 10, 2014, by the Public Health and Health Planning Council, but on July 9, 2014, CHSLI notified the DOH that they would not be proceeding with the proposed VNALI affiliation and was withdrawing from the project submitted under CON 132236-E.

On July 17, 2014, representatives from both VNALI and DSFHS met with staff from the DOH Office of Health Insurance Programs (OHIP) to discuss the substitution of DSFHS in place of CHC. It is noted that there is a condition to this application for documentation of approval from the DOH OHIP verifying the substitution of DSFHS as it relates to VAP award funding.

The applicant states that the Chief Executive Officers of both VNALI and DSFHS have a current working relationship and both recognize the synergies and benefits that can be achieved through the proposed merger. The Board of Directors of VNALI and DSFHS have concluded that the merger will enhance the quality, efficiency and services available to their patient populations and the communities that they both serve.

BFA Attachments C and D are DSFHS's current and proposed organizational charts.

Operating Budget

The applicant has submitted first and third years incremental operating budgets, in 2014 dollars, as summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues		
Medicaid	\$2,453,970	\$2,800,364
Medicare	6,598,987	7,499,378
Commercial	303,353	451,846
All Other*	<u>1,078,778</u>	<u>2,768</u>
Total Revenues	\$10,435,088	\$10,754,356
Expenses		
Operating	\$9,637,793	\$9,055,345
Capital	<u>755,839</u>	<u>722,905</u>
Total Expenses	\$10,393,632	\$9,778,250
 Net Income or (Loss)	 <u>\$41,456</u>	 <u>\$976,106</u>
 Utilization (RN, Therapies, MSS visits)	 45,703	 47,943
Utilization (Home Health Aide hours)	35,890	35,890
Utilization (Home Health Aide visits)	8,340	8,340

* All Other for year one includes the total 2015 VAP award for \$1,076,920 (inclusive of federal share).

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

Medicaid Fee-For-Service	23%
Medicaid Managed Care	3%
Medicare Fee-For-Service	48%
Medicare Manage Care	5%
Commercial Fee-For-Service	6%
Commercial Manage Care	13%
Charity	2%

Charity care is expected to be 2%. The applicant's policy is to assess individual based on income, expenses and unusual care needs to determine eligibility for reduced fees and/or charity care. Their goal is to provide compassionate, comprehensive and family focused home care to persons in need, regardless of their ability to pay.

VNALI expects to significantly reduce its LTHHPC contract service expenses as the patients are enrolled into MLTCPs. In addition, during the first and third years the applicant anticipates elimination of \$580,000 and \$740,000 in salary and benefits, respectively, due to redundant positions between the merged organizations. As offset there will be added costs associated with providing services to the patients, such as nurses, specialists, and aids. Revenues are based on prevailing reimbursement methodologies while commercial payers are based on experience.

Capability and Feasibility

There are no project costs associated with this application. Feasibility rests upon the applicant receiving CMS approval for the VAP award along with the balance (federal match) of VAP funding.

BFA Attachment A is DSFHS's certified financial summary for 2012 and 2013 which shows negative net income of \$913,616 in 2012. However, in 2013 DSFHS generated positive net income of \$207,890 as total revenue increase by \$4,052,240 while expenses increased by \$2,930,734. The loss in 2012 was impacted by two one-time costs: \$300,000 in super storm Sandy costs and a 2% retroactive Medicaid rate adjustment. In late 2012 DSFHS management developed a strategic plan to increase referrals which included: development of a new care management team to partner with the new managed care long-term insurers, hiring business development staff, and adding additional community liaison staff. As a result of implementing this strategic plan, referrals to the provider increased by 21%, which allowed for an overall 18% increase in admissions and accounted for the overall revenue increase between 2012 and 2013.

During the period 2012-2013, DSFHS had a negative working capital position and ended with a positive net asset position of \$1,929,642. DSFHS has put in place the following to address its negative working capital position:

- Developing a strategic plan focusing on agency growth including developing hospital partnerships via the use of documented readmissions metrics on shared patients.
- Expansion of the Center for Medicare and Innovation grant in Suffolk County.
- Expansion into new communities resulting in incremental revenues to related costs.
- Increased reimbursement through renegotiation of managed long term care rates.
- Improved cash management based on historical trends, and
- Establishing vendor payment plans that efficiently manage cash flow and decrease accounts payable.

BFA Attachment B is VNALI's certified financial summary for 2012 and 2013 which shows negative net income of \$1,090,486 in 2012 and positive net income of \$1,798,123 in 2013. According to VNALI, \$3,204,920 of the VAP awarded was recorded on the 2013 balance sheet under the line item (Contracts and Grants Receivable). As an offset, VNALI recognized \$1,999,027 of revenue from this award as a result of costs incurred prior to December 31, 2013. The remaining balance of \$1,205,893 was recorded as a current liability under the line item (Deferred Revenue). For the period 2012-2013 VNALI had a negative working capital position and ended with a positive net asset position of \$119,820. As noted above, on August 13, 2014, New York State issued a \$1,602,460 VAP payment to VNALI.

VNALI projects that the first and third years after the merger will show a surplus of \$41,456 and \$976,106, respectively. BFA Attachment E is the consolidated pro forma balance sheet which shows operations will start off with \$1,323,694 in positive equity. The budget appears to be reasonable.

VNALI stated that their legal counsel discussed the merger and potential alternatives to the merger, including closure, with the Board of Directors. The Board of Directors concluded that it was in the best interest of all parties (including the company, the patients, and the served communities) to merge with DSFHS and continue its corporation mission in the most effective and economic manner.

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, Dominican Sisters Family Health Service, Inc.
BFA Attachment B	Financial Summary for 2012 and 2013, Visiting Nurse Association of Long Island, Inc.
BFA Attachment C	Current Organizational Chart for Dominican Sisters Family Health Service, Inc.
BFA Attachment D	Proposed Organizational Chart for Dominican Sisters Family Health Service, Inc.
BFA Attachment E	Pro Forma Balance Sheet.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 4th day of December, 2014, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to establish Dominican Sisters Family Health Services, Inc. as the new operator of an existing certified home health agency and long term home health care program, through a merger with Visiting Nurse Association of Long Island, Inc. , and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER

APPLICANT/FACILITY

142060 E

Dominican Sisters Family Health
Services, Inc.

APPROVAL CONTINGENT UPON:

1. Submission of a copy of a dated and executed Certificate of Merger of the Visiting Nurse Association of Long Island, Inc. (“VNALI) into the Dominican Sisters Family Health Services, Inc. (“DSFHS”) acceptable to the Department. [CSL]
2. Submission of a copy of an executed Agreement of Merger between VNALI and DSFHS acceptable to the Department. [CSL]
3. Submission of a copy of a dated and executed Plan of Merger of VNALI into DSFHS acceptable to the Department. [CSL]

APPROVAL CONDITIONED 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 an executed Vital Access Provider (VAP) award agreement documenting approval of the VAP funding for the merger of Visiting Nurse Association of Long Island, Inc. into Dominican Sisters Family Health Service, Inc., acceptable to the Department of Health. [BFA]

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

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



Public Health and Health Planning Council

Project # 142068-E
Royal Care Certified Home Health Care, LLC

Program: Certified Home Health Agency
Purpose: Establishment

County: Queens
Acknowledged: August 20, 2014

Executive Summary

Description

Royal Care Certified Home Health Care, LLC, an existing limited liability company, requests approval to become the operator of the Certified Home Health Agency (CHHA) currently operated by Franklin Medical Center. The CHHA is licensed to operate in Queens and Nassau counties, and the proposed new operator will maintain and continue all currently certified services. The applicant will lease space located at 146-14 35th Ave, Flushing, New York (Queens County). There are no construction or equipment costs associated with the project.

The current and proposed operator of the CHHA is as follows:

<u>CURRENT</u>	<u>PROPOSED</u>
Franklin Medical Center (Not-for-profit)	Royal Care Certified Home Health Care, LLC.
	<u>Members:</u>
	Chaim Klein 60%
	Faye Klein 30%
	Bernath Yankel 10%

Royal Care, Inc. is a licensed home care services agency primarily serving Queens, Brooklyn, the Bronx and Manhattan as well as Nassau and Richmond Counties. The applicant and Royal Care, Inc, have a common ownership interest in that Faye Klein is in the ownership of both entities.

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no Need recommendation for this project.

Program Summary

Royal Care Certified Home Health Care, LLC, a proprietary LLC, proposes to purchase and become the new owner / operator of the Certified Home Health Agency (CHHA) currently owned and operated by Franklin Hospital Medical Center, an Article 28 hospital and member of the North Shore / Long Island Jewish family of health care providers.

Financial Summary

There are no project costs associated with this application.

The purchase price for the operation is \$1,000,000. The proposed members have already paid \$500,000 in escrow and the remaining \$500,000 will be provided as equity derived from the financial statements of Royal Care, Inc.

Budget:

Revenues	\$11,514,608
Expenses	<u>11,445,209</u>
Net Income	\$ 69,399

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 Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed building lease, acceptable to the Department. [BFA]
2. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
3. Submission of a photocopy of an executed amendment to the applicants Articles of Organization, acceptable to the Department. [CSL]
4. Submission of a photocopy of an executed amendment to the applicants 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

December 4, 2014

Program Analysis

Review Summary

Royal Care Certified Home Health Care, LLC, a proprietary LLC, proposes to purchase and become the new owner / operator of the Certified Home Health Agency (CHHA) currently owned and operated by Franklin Hospital Medical Center, an Article 28 hospital and member of the North Shore-Long Island Jewish family of health care providers. The Franklin Hospital Medical Center CHHA is currently approved to serve Queens and Nassau Counties, and its practice location is currently located in Nassau County. Royal Care Certified Home Health Care, LLC, will continue to be approved to serve Queens and Nassau County. However, its sole CHHA practice location will be in Queens County at 146-14 35th Avenue Flushing, New York 11354, whereas the LLC's corporate office will be in Kings County at 6323 14th Avenue, Brooklyn, New York 11219.

Royal Care Certified Home Health Care, LLC, plans to have its CHHA provide the following home health care services: audiology; home health aide; homemaker; housekeeper; medical social services; medical supplies, equipment and appliances; nursing; nutritional; personal care; occupational therapy; physical therapy; respiratory therapy; and speech language pathology.

Royal Care Certified Home Health Care, LLC, has no parent, sibling, or child entities or organizations in its corporate structure. As disclosed below, the 30% member of Royal Care Certified Home Health Care, LLC, is also the sole 100% stockholder of The Royal Care, Inc., a Licensed Home Care Services Agency (LHCSA) that is also located at 6323 14th Avenue, Brooklyn, New York 11219 (the address of the corporate offices of Royal Care Certified Home Health Care, LLC). However, The Royal Care, Inc. LHCSA is not a member of the corporate structure of Royal Care Certified Home Health Care, LLC, nor is Royal Care Certified Home Health Care, LLC, a member of the corporate structure of The Royal Care, Inc. LHCSA. Other than sharing one common stockholder / LLC member (Faye Klein), the two legal entities have no corporate relationship.

The members and managers of Royal Care Certified Home Health Care, LLC, and the percentage of LLC membership / ownership for each, are as follows:

<p>Chaim (Josh) Klein, EMT, Manager 60% LLC Membership / Ownership</p> <p>Chief Executive Officer, Royal Care Certified Home Health Care, LLC Chief Executive Officer, The Royal Care, Inc. (LHCSA)</p> <p>Affiliations: Better Care Home Health Services, LLC, d/b/a Aspire Home Health Care, South Plainfield, New Jersey (Health Care Service Firm)</p>	<p>Yankel (Jack) Bernath, Manager 10% LLC Membership / Ownership</p> <p>Chief Operating Officer, Royal Care Certified Home Health Care, LLC Chief Operating Officer, The Royal Care, Inc. (LHCSA)</p> <p>Affiliations: Better Care Home Health Services, LLC, d/b/a Aspire Home Health Care, South Plainfield, New Jersey (Health Care Service Firm)</p>
<p>Faye Klein 30% LLC Membership / Ownership</p> <p>President, The Royal Care, Inc. (LHCSA)</p> <p>Affiliations: The Royal Care, Inc. (LHCSA) – 100% sole stockholder</p>	

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. In addition, the NYSDOH Bureau of Emergency Medical Services indicates no issues with the EMT licensure of Chaim (Josh) Klein.

Better Care Home Health Services, LLC d/b/a Aspire Home Health Care, in South Plainfield, New Jersey, which is affiliated with two of the LLC members listed above, is licensed by the New Jersey Department of Law and Public Safety, Office of the Attorney General, Division of Consumer Affairs. A copy of their license issued by New Jersey Office of the Attorney General, Division of Consumer Affairs, indicates they are licensed as a Health Care Service Firm with an expiration date of June 30, 2015. According to the license search on the above state agency's website, Better Care Home Health Services, LLC d/b/a Aspire Home Health Care, is a Nursing and Home Health Aide Employer whose license was issued April 22, 2014, and whose record of disciplinary action indicates No Board Action Taken.

The Division of Home and Community Based Services reviewed the compliance history of The Royal Care, Inc., the licensed home care services agency affiliated with one of the LLC members listed above, for the time period 2007 to 2014. It has been determined that the licensed home care services agency has exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations. The 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 LLC members and managers of Royal Care Certified Home Health Care, LLC to adversely affect their positions with the organization. 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 Franklin Medical Center CHHA, which is summarized below:

Date	August 15, 2014
Seller	Franklin Hospital
Purchaser	Royal Care Certified Home Health Care, LLC.
Assets Acquired	Purchaser will acquire the Seller's existing Medicare and Medicaid provider number and elected provider agreements.
Assumed Liabilities	The purchaser will not assume any liabilities of the Seller.
Purchase Price	\$1,000,000
Payment of Purchase Price	\$500,000 provided in escrow and the remaining \$500,000 provided at closing.

The \$500,000 owed will be provided as equity derived from the financial statements of Royal Care, Inc.

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 will occupy two adjacent sites (units) located within the same building. The applicant has submitted draft lease agreements with Chaim Shea, LLC, as lessor of one of the units, and Chatham Real Estate, Inc., as lessor of the second unit, summarized as follows:

Premises:	1,500 square feet of a medical office in a condominium building located on the ground floor designated as MD-2 in the building known as 146-14 35 th Ave, Flushing, New York.
Lessor:	Chaim Shea, LLC
Lessee:	Royal Care Certified Home Health Care, LLC
Term:	Five years
Rental:	Annual rental of \$37,200 (\$24.80 per sq.ft.)
Provisions:	The lessee shall be responsible for maintenance.

The applicant has indicated that this lease arrangement will be a non-arms length lease arrangement.

Premises:	1,500 square feet of a medical office in a condominium building located on the ground floor designated as MD-1 plus three parking spaces in the basement building known as 146-14 35 th Avenue, Flushing, New York
Lessor:	Chatham Real Estate, Inc.
Lessee:	Royal Care Certified Home Health Care, LLC
Term:	Five years
Rental:	Annual rental of \$37,200 (\$24.80 per sq.ft.)
Provisions:	The lessee shall be responsible for maintenance.

The applicant has indicated that this lease arrangement will be an arms-length lease arrangement. The applicant has submitted two real estate letters attesting to the reasonableness of the per square foot rental.

Operating Budget

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

Revenues:	
Medicaid Managed Care	\$8,216,636
Medicare Managed Care	561,290
Medicare Fee For Service	2,697,862
Private Pay	<u>38,820</u>
Total Revenues	\$11,514,608
Expenses:	
Operating	\$11,324,469
Capital	<u>120,740</u>
Total Expenses	\$11,445,209
Net Income	\$69,399
Utilization:	
Visits	25,066
Hours	400,317

Utilization broken down by payor source during the first year is as follows:

Medicaid Managed Care	89.33%
Medicare Fee For Service	6.07%
Medicare Managed Care	2.02%
Private Pay	.08%
Charity Care	2.50%

Expense and utilization assumptions are based on the normal experience of Certified Home Health Care Agencies. Revenues are reflective of the current payment rates including the Medicaid Episodic Payment System.

Capability and Feasibility

The purchase price for the operations is \$1,000,000. The proposed members have already paid \$500,000 in escrow and the remaining \$500,000 will be provided as equity derived from the financial statements of Royal Care, Inc.

Working capital requirements are estimated at \$1,907,534, which is equivalent to two months of first year expenses. The applicant will finance \$900,000 with a 5 year term loan at an interest rate of 1 month LIBOR + 3.8% (approximately 3.95% as of 9/29/2014). The remainder, \$1,007,534, will be provided as equity to be derived from the proposed members' personal resources and from the operations of Royal Care, Inc. BFA Attachment A and BFA Attachment B are the personal net worth statements and the June 30, 2014, internal financial statements of The Royal Care, Inc., which indicates the availability of sufficient funds to meet the purchase price and the working capital equity requirements. As mentioned in a previous section, there is common ownership between the applicant and Royal Care, Inc in that Faye Klein has ownership interest in both facilities. BFA Attachment D is the pro forma balance sheet of Royal Care Certified Home Health Care, LLC, which indicates a positive members' equity position of \$2,007,534.

The submitted budget indicates a net income of \$69,399 during the first year after the change in operator. Revenues are based on current CHHA payment rates, including Medicaid Episodic Payment System.

As shown on Attachment B, the entity had a positive working capital position and a positive stockholders equity position through June 30, 2014. Also, the entity achieved a net income of \$851,281 through June 30, 2014.

BFA Attachment C is the 2013 certified financial statements of The Royal Care, Inc. As shown, the entity had a positive working capital position and a positive stockholders equity position in 2013. Also, the entity achieved a net income of \$1,166,838 in 2013.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statement
BFA Attachment B	Financial Summary- June 30, 2014 internal financial statements of The Royal Care, Inc.
BFA Attachment C	Financial Summary- 2013 certified financial statements of The Royal Care, Inc.
BFA Attachment D	Pro Forma Balance Sheet

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 4th day of December, 2014, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to establish Royal Care Certified Home Health Care, LLC as the new operator of Franklin Medical Center's Home Health Agency located at 444 Merrick Road, Lynbrook, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER

APPLICANT/FACILITY

142068 E

Royal Care Certified Home Health
Care, LLC

APPROVAL CONTINGENT UPON:

1. Submission of an executed building lease, acceptable to the Department. [BFA]
2. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
3. Submission of a photocopy of an executed amendment to the applicants Articles of Organization, acceptable to the Department. [CSL]
4. Submission of a photocopy of an executed amendment to the applicants Operating Agreement, acceptable to the Department. [CSL]

APPROVAL CONDITIONED 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]

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

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



Public Health and Health Planning Council

Project # 142100-E
A & T Certified Home Care, LLC

Program: Certified Home Health Agency
Purpose: Establishment

County: Rockland
Acknowledged: September 17, 2014

Executive Summary

Description

A & T Certified Home Care, LLC, an existing limited liability company, requests approval for a 100% change in membership of the certified home health agency (CHHA). This application is required as a result of the passing of Toni Babington, the sole member of A & T Certified Home Care, LLC. The CHHA is licensed to operate in Rockland County and will maintain and continue all currently certified services. The applicant currently leases space at 339 N. Main Street, Unit 9, New City, New York, and will continue to lease the space going forward. There will be no change in the day to day operation of the CHHA as a result of the membership change.

The current and proposed ownership of A & T Certified Home Care is as follows:

<u>Current</u>	<u>Proposed</u>
Toni Babington 100%	Marital Trust of Toni Babington 100%

The trustees of the Marital Trust of Toni Babington are Margaret Onody and Lowell Babington, the daughter and husband respectively of the current member.

OPCHSM Recommendation
Contingent Approval

Need Summary

The Bureau of Public Need Review has no recommendation regarding this proposal.

Program Summary

This proposal seeks approval of the change of membership interest of A & T Certified Home Care, LLC. In accordance with the Last Will and Testament of Toni Babington, A & T Certified Home Care, LLC submitted an application to change the membership interest of A & T Certified Home Care, LLC to the Marital Trust of Toni Babington. The new proposed member will maintain and continue all currently certified services. The CHHA will continue to operate out of 337 North Main Street, New City, in Rockland County.

Financial Summary

There is no purchase price for the change in membership interest.

Budget:		
	Revenues	\$1,000,000
	Expenses	<u>\$956,000</u>
	Net Income	\$44,000

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 Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a photocopy of the applicants executed Operating Agreement, and any amendments thereto, acceptable to the Department. [CSL]
2. Submission of a photocopy of an executed transfer agreement for the membership interest being transferred and any additional transfer documents, which are acceptable to the Department. [CSL]
3. Submission of a photocopy of the applicants executed Articles of Organization, 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

December 4, 2014

Program Analysis

Review Summary

This proposal seeks approval of the change of membership of A & T Certified Home Care, LLC. In accordance with the Last Will and Testament of Toni Babington, A & T Certified Home Care, LLC submitted an application to change the member of A & T Certified Home Care, LLC to the Marital Trust of Toni Babington.

The applicant submitted an identical change in membership of the Licensed Home Care Services Agency operated by A&T Healthcare, LLC which was contingently approved at the October 2, 2014 Public Health and Health Planning Council meeting.

The applicant proposes to continue to serve the residents of Rockland County from an office located at 337 North Main Street, New City, New York 10956.

The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Medical Supplies, Equipment and Appliances
Occupational Therapy	Physical Therapy	Speech Language Pathology
Medical Social Services		

The Board of Directors of A & T Certified Home Care, LLC comprises the following individuals:

Margaret A. Onody – President	Tom T. Babington – Vice President
Vice President, A & T Healthcare, LLC	VP Sales and Marketing, A & T Healthcare, LLC
Vice President, A & T Healthcare of N.J., Inc.	VP Sales and Marketing, A & T Healthcare of N.J., Inc.
Vice President, A & T Certified Home Care, LLC	VP Sales and Marketing, A & T Certified Home Care, LLC

Carol E. Ianiro – Secretary
Vice President of Scheduling, A & T Healthcare, LLC
Vice President of Scheduling, A & T Healthcare of N.J., Inc.
Vice President of Scheduling, A & T Certified Home Care, LLC

The Trustees of The Marital Trust of Toni Babington are following individuals:

Margaret A. Onody - Trustee (Previously Disclosed)	Lowell T. Babington – Trustee 401K Coordinator, A & T Healthcare, LLC
---	--

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A seven year review was conducted for the following healthcare facilities:

- A & T Healthcare, LLC
- A & T Healthcare of N.J., Inc.
- A & T Certified Home Care, LLC

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 State of New Jersey has indicated that the A & T Healthcare of N. J., Inc. is up-to-date with their registration, they have had no complaints against this agency and that no enforcement actions have been taken against this agency.

A review of all personal qualifying information indicates there is nothing in the background of the proposed members and managers to adversely affect their positions in the organization. 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

Last Will and Testament

The applicant has submitted an executed Last Will and Testament which is summarized below:

Assignor:	Lowell Babington, Executor of the Estate of Toni Babington
Assignee:	Marital Trust of Toni Babington
Purpose:	The transfer of 100% membership interest in A&T Certified Home Care, LLC
Purchase Price:	\$0

The applicant has submitted an affidavit, which is acceptable to the Assignee, 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 Seller 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 Assignor of its liability and responsibility. Currently, the facility has no outstanding audit liabilities and assessments.

Operating Budget

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

	<u>Year One</u>
Revenues:	
Medicaid	\$200,000
Medicare	700,000
Third Party	<u>100,000</u>
Total Revenues	\$1,000,000
Expenses:	
Operating	\$845,300
Capital	<u>110,700</u>
Total Expenses	\$956,000
Net Income	<u>\$44,000</u>
Utilization:	
Visits	5,134
Hours	1,194

Expense and utilization assumptions are based on the historical experience of the CHHA. Revenues are reflective of the current payment rates, including Medicaid reimbursement per the Medicaid Episodic Payment System.

Utilization, broken down by payor source, during the first year after the change in operator is summarized below:

Medicaid	3.60%
Medicare	80.90%
Private Pay	13.50%
Charity Care	2.00%

Capability and Feasibility

There is no purchase price for the change in membership interest.

Working capital requirements are estimated at \$159,333, based on two months of first year expenses, and will be satisfied from the entity's existing cash and receivables, and additional Trustees' equity. Net cash and receivables (minus accounts payable) were \$123,350 at December 31, 2013, resulting in a need for additional equity of \$35,983. The Trustees have submitted an affidavit indicating that the Trust has sufficient funds to cover the \$35,983 additional working capital needs.

The submitted budget indicates a net income of \$44,000 during the first year after the change in operator. Revenues are based on current payment rates, including Medicaid Episodic Payment System rates of payment.

BFA Attachment A is the 2012 and 2013 internal financial statements of A&T Certified Home Care, LLC. The applicant has indicated that there are no certified financial statements for this CHHA; however, the applicant's accountant has attested to the reasonableness of the internal financial statements and provided a letter stating that the internal financial statements are accurate. As shown, the entity had an average positive working capital position and an average positive net asset position. Also, the entity achieved an average net income of \$12,434 from 2012 through 2013.

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 - Internal Financial Statements of A&T Certified Home Care, LLC.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 4th day of December, 2014, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application for a 100% change in membership of A&T Certified Home Care, LLC to Marital Trust of Toni Babington, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER

APPLICANT/FACILITY

142100 E

A&T Certified Home Care, LLC

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the applicants executed Operating Agreement, and any amendments thereto, acceptable to the Department. [CSL]
2. Submission of a photocopy of an executed transfer agreement for the membership interest being transferred and any additional transfer documents, which are acceptable to the Department. [CSL]
3. Submission of a photocopy of the applicants executed Articles of Organization, acceptable to the Department. [CSL]

APPROVAL CONDITIONED 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]

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

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



STATE OF NEW YORK - DEPARTMENT OF HEALTH

M E M O R A N D U M

TO: Public Health and Health Planning Council
FROM: James E. Dering, General Counsel *JED*
DATE: October 9, 2014
SUBJECT: Proposed Name Change of Fletcher Allen Partners, Inc.

Fletcher Allen Partners, Inc. ("FAP") requests Public Health and Health Planning Council approval to change its name as stated on its Application for Authority, in accordance with Not-for-Profit Law § 804 and 10 NYCRR 600.1. The new name would be "The University of Vermont Health Network, Inc."

Attached are copies of the proposed Certificate of Amendment to FAP's Application for Authority, a letter from FAP's attorney explaining the need for the proposed name change, a copy of FAP's current Application for Authority, the Certificate of Amendment to FAP's Vermont Article of Incorporation, and a letter from the University of Vermont acknowledging permission to use the proposed name.

The Certificate of Amendment is in legally acceptable form.

Attachments

**CERTIFICATE OF AMENDMENT
OF THE
APPLICATION FOR AUTHORITY
OF
FLETCHER ALLEN PARTNERS, INC.**

(Under Section 1309 of the Not-for-Profit Corporation Law of the State of New York)

The undersigned hereby certifies on behalf of Fletcher Allen Partners, Inc., a Vermont not-for-profit corporation (the "Company"), that:

FIRST: The name of the Company as it appears on the index of names in the department of state is Fletcher Allen Partners, Inc.

SECOND: The jurisdiction of incorporation of the Company is the State of Vermont.

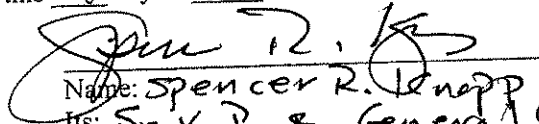
THIRD: The date on which the Company's application for authority to do business in this state was filed with the Department of State is May 28, 2013.

FOURTH: The application for authority is amended to change the name of the Company as it appears on the index of names in the department of state. The change of the Company's name has been effected under the laws of the jurisdiction of the Company's incorporation on November 12, 2014. Paragraph FIRST of the Application for Authority is amended to read as follows:

"FIRST: The name of the foreign corporation is: The University of Vermont Health Network, Inc."

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned affirms under the penalties of perjury that the statements contained herein are true on this 8 day of Sept, 2014.

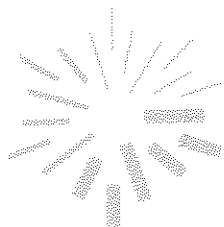

Name: Spencer R. Knapp
Its: Sr. V. P & General Counsel

**CERTIFICATE OF AMENDMENT
OF THE
APPLICATION FOR AUTHORITY
OF
FLETCHER ALLEN PARTNERS, INC.**

Under Section 1309 of the Not-for-Profit Corporation Law of the State of New York

Filed by:

Nixon Peabody LLP
677 Broadway, 10th Floor
Albany, NY 12207
(518) 427-2650



NIXON PEABODY

NIXON PEABODY LLP
ATTORNEYS AT LAW

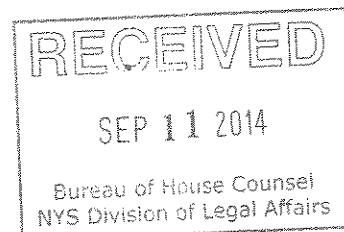
NIXONPEABODY.COM
@NIXONPEABODYLLP

Laurie T. Cohen
Partner
T 518-427-2708
lauriecohen@nixonpeabody.com

677 Broadway, 10th Floor
Albany, NY 12207-2996
518-427-2650

September 10, 2014

Mr. Jason Pfeiffer
Office of House Counsel
NYS Department of Health
Corning Tower, ESP, 24th Floor
Albany, New York 12237



RE: Fletcher Allen Partners, Inc.

Dear Mr. Pfeiffer:

We are seeking approval of the NYS Department of Health to change the name of Fletcher Allen Partners, Inc., a Vermont not-for-profit corporation, to the University of Vermont Health Network, Inc.

Enclosed please find the following documents for your review:


1. A copy of the Certificate of Amendment of the Application for Authority of Fletcher Allen Partners, Inc. changing its name to "The University of Vermont Health Network, Inc."
2. A copy of the original Application for Authority of Fletcher Allen Partners, Inc.
3. A copy of the Amended and Restated Certificate of Incorporation for Fletcher Allen Partners, Inc. which was filed in the State of Vermont on August 22, 2014 with an effective date of November 12, 2014.
4. A letter from the University of Vermont which acknowledges permission for the use of the "University of Vermont Health Network, Inc."

By way of background, in December 2012, Fletcher Allen Partners, Inc. was approved by the NYS Public Health and Health Planning Council as the active parent of Community Providers, Inc. (CPI) and Fletcher Allen Partners, Inc. and CPI were established as the active parents of Champlain Valley Physicians Medical Center and Elizabethtown Community Hospital. Fletcher Allen Partners, Inc. was established to develop a more coordinated system of care and includes four hospitals, Fletcher Allen Health Care in Burlington, Vermont, Central Vermont Medical Center in Barre, Vermont, CVPH Medical Center in Plattsburgh, New York and Elizabethtown Community Hospital in Elizabethtown, New York.

Earlier this year, Fletcher Allen Partners, Inc. announced plans to change its name to The University of Vermont Health Network, Inc. The hospitals in the system will also be changing their names or using assumed names to include reference to the University of Vermont in their respective names. Fletcher Allen Health Care, a Vermont not-for-profit hospital, will change its name to The University of Vermont Medical Center. Champlain Valley Physicians Hospital Medical Center in Plattsburgh, New York will be filing a Certificate of Assumed Name to use the name University of Vermont Health Network - Champlain Valley Physicians Hospital and Elizabethtown Community Hospital in Elizabethtown, New York will be filing a Certificate of Assumed Name to use the name University of Vermont Health Network - Elizabethtown Community Hospital.

If there are any questions regarding the enclosed form or the information set forth in this letter, please contact me at 518 427-2708.

Sincerely,



Laurie T. Cohen
Partner

LTC/db
Enclosures

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy for FLETCHER ALLEN PARTNERS, INC., File Number 130528000359 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.



WITNESS my hand and official seal of the
Department of State, at the City of Albany, on
September 05, 2014.

Daniel E. Shapiro

Daniel E. Shapiro
First Deputy Secretary of State

130528000 359

APPLICATION FOR AUTHORITY OF FLETCHER ALLEN PARTNERS, INC.

Under Section 1304 of the Not-for-Profit Corporation Law

FIRST:

The name of the foreign corporation is: Fletcher Allen Partners, Inc.

SECOND:

The jurisdiction in which the corporation was organized is: Vermont

The date of its incorporation is: June 16, 2011.

THIRD:

The corporation is a foreign corporation as defined in section 102(a)(7) of the Not-for-Profit Corporation Law.

FOURTH:

The corporation is a Type B corporation under Section 201 of the Not-for-Profit Corporation Law.

FIFTH:

The purpose or purposes to be pursued in this state and the activities which it proposes to conduct in this state include the following purposes:

- a) To establish an integrated regional health care system that aligns the missions of Fletcher Allen Health Care Inc., Community Providers, Inc., Champlain Valley Physicians Hospital Medical Center and Elizabethtown Community Hospital and other nonprofit, tax exempt health care providers that are or become members of the system;
- b) To engage in collaborative regional planning to develop a highly coordinated health care network that will improve the quality, increase the efficiencies, and lower the costs of health care delivery in the communities served by the system; and
- c) To engage in such other charitable, educational, and/or scientific activities as are consistent with the corporation's status as an exempt organization under Section 501(c) of the Internal Revenue Code. Subject to the foregoing, the corporation shall be permitted to engage in any lawful act or activity for which corporations may be organized under the New York Not-for-Profit Corporation Law.

130528000359

The corporation is authorized to conduct the above activities in its jurisdiction of incorporation.

SIXTH:

The county within this state in which the office of the corporation is to be located is: Albany

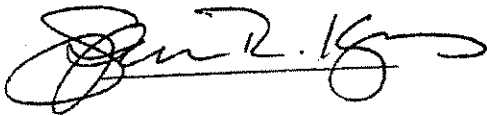
SEVENTH:

The Secretary of State is designated as agent of the corporation upon whom process against the corporation may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the corporation is:

Spencer Knapp
Fletcher Allen Health Care
111 Colchester Avenue
Burlington, Vermont 05401

EIGHTH:

The corporation has not since its incorporation or since the date its authority to do business in New York was last surrendered, engaged in any activity in this state except as set forth in paragraph (b) of Section 1301 of the Not-for-Profit Corporation Law.



SPENCER R. KNAPP
Print Name of Officer

SENIOR VICE PRESIDENT AND GENERAL COUNSEL
Title

STATE OF VERMONT
OFFICE OF SECRETARY OF STATE

Certificate of Good Standing

I, James C. Condos, Vermont Secretary of State, do hereby certify that according to the records of this office

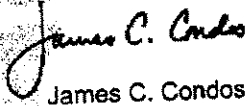
FLETCHER ALLEN PARTNERS, INC.

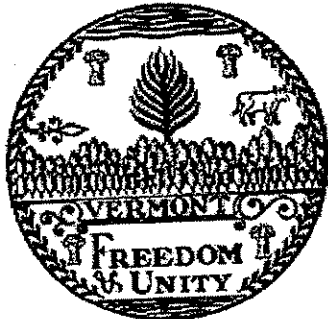
a domestic non-profit corporation formed under the laws of the State of Vermont, was filed for record in this office on June 16, 2011.

I further certify that the company has perpetual duration, that its most recent biennial report is on file, and that as of this date, articles of dissolution / withdrawal have not been filed.

March 22, 2013

Given under my hand and the seal of the State of Vermont, at Montpelier, the State Capital.


James C. Condos
Vermont Secretary of State



Business ID: 0091003
Certificate Number: 2013019272001

PHHPC

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

433 River Street, 6th Floor
Troy, New York 12180

(518) 402-0964
PHHPC@health.state.ny.us

April 17, 2013

Mr. Frank M Cicero
Consultant
Cicero Consulting Associates VCC, Inc.
701 Westchester Avenue
White Plains, New York 10604

Re: Application for Authority of Fletcher Allen Partners, Inc.

Dear Mr. Cicero:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 11th day of October, 2012, I hereby certify that the Public Health and Health Planning Council consents to the filing of the Application for Authority of Fletcher Allen Partners, Inc., dated April 3, 2013.

Sincerely,



Colleen M. Frost
Executive Secretary

130528000 359

APPLICATION FOR AUTHORITY
OF
FLETCHER ALLEN PARTNERS, INC.

Under Section 1304 of the Not-for-Profit Corporation Law

Filed by: Laurie T. Cohen
Nixon Peabody
677 Broadway, 10th Floor
Albany, NY 12207

RECEIVED
2013 MAY 16 AM 10:09

RECEIVED
2013 MAY 28 AM 10:01

2013 MAY 28 PM 12:13

FILED

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED MAY 28 2013
BY: IMB
Albany

IMB

4/14

STATE OF VERMONT
OFFICE OF SECRETARY OF STATE

Certificate of Amendment

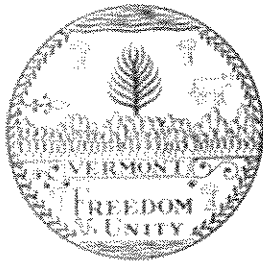
I, James C. Condos, Vermont Secretary of State, do hereby certify that
attached is a true copy of the
ARTICLES OF AMENDMENT

For

**THE UNIVERSITY OF VERMONT HEALTH
NETWORK INC.**

Formerly Known as
FLETCHER ALLEN PARTNERS, INC.

As filed in this department effective November 12, 2014



August 21, 2014

Given under my hand and the seal
of the State of Vermont, at
Montpelier, the State Capital

A handwritten signature in cursive script that reads "James C. Condos".

James C. Condos
Secretary of State



**VERMONT SECRETARY OF STATE
Corporations Division**

MAILING ADDRESS: Vermont Secretary of State, 128 State Street, Montpelier, VT 05633-1104
DELIVERY ADDRESS: Vermont Secretary of State, 128 State Street, Montpelier, VT 05633-1104
PHONE: 802-828-2386 WEBSITE: www.sec.state.vt.us

BUSINESS AMENDMENT

****ELECTRONICALLY FILED****

FILING NUMBER: 0001976022

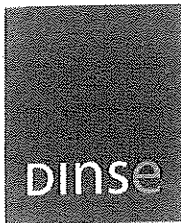
FILING DATE/TIME: 8/21/2014 3:11:00 PM

EFFECTIVE DATE: 11/12/2014

BUSINESS INFORMATION	
BUSINESS ID	0091003
BUSINESS TYPE	Domestic Non-profit Corporation
BUSINESS DESCRIPTION	Any Legal Purpose
BUSINESS EMAIL	kkittredge@dinse.com

The following items were amended :

BUSINESS INFORMATION	
BUSINESS NAME	THE UNIVERSITY OF VERMONT HEALTH NETWORK INC.



Burlington, Vermont Plattsburgh, New York

Jeffrey J. McMahan
E-mail: jmcmahan@dinse.com

August 20, 2014

VIA ELECTRONIC FILING

Vermont Secretary of State
Corporations Division
128 State Street
Montpelier, VT 05633-1104

Dear Sir or Madam:

Please find enclosed for filing with the Vermont Secretary of State's Office Amended and Restated Articles of Incorporation for the following entities:

Fletcher Allen Partners, Inc.
Fletcher Allen Health Care, Inc.
Fletcher Allen Health Care Foundation, Inc.
Fletcher Allen Health Ventures, Inc.

Also included for filing with your office are Amended and Restated Articles of Organization for the following entities:

Fletcher Allen Coordinated Transport, LLC
Fletcher Allen Executive Services, LLC
Fletcher Allen Skilled Nursing, LLC

We have obtained a letter from the President of the University of Vermont (also included) confirming the use of its name by the above-referenced entities. *Please be aware that the effective date of these amendments is November 12, 2014.* Our recent trade name reservation under my name filed on May 20, 2014 for "The University of Vermont Health Network" as well as "The University of Vermont Medical Center" can be withdrawn upon the filing of these Amendments.

Should you require additional information from us in regard to these filings please do not hesitate to contact our office at any time. Thank you.

Very truly yours,

DINSE, KNAPP & McANDREW, P.C.

Jeffrey J. McMahan

JJM/kak
Enclosure



The University of Vermont

E. Thomas Sullivan
President

John R. Brumsted, M.D.
President and Chief Executive Officer
Fletcher Allen Partners, Inc.
111 Colchester Avenue
Burlington, VT 05401

Re: **Use of "The University of Vermont" in Corporate Names**

Dear John:

This letter confirms that The University of Vermont and State Agricultural College (the "University") has entered into an agreement with Fletcher Allen Partners authorizing Fletcher Allen Partners and its affiliated organizations to use the phrase "The University of Vermont" in the following names:

The University of Vermont Health Network, Inc.
The University of Vermont Medical Center, Inc.
The University of Vermont Medical Center Foundation, Inc.
The University of Vermont Health Network Specialty Care Transport LLC
The University of Vermont Medical Center Health Ventures, Inc.
The University of Vermont Medical Center Executive Services LLC
The University of Vermont Medical Center Skilled Nursing LLC
The University of Vermont Medical Center Auxiliary, Inc.

The University has also authorized the same organizations to file and use tradenames consisting of the names listed above without their corporate or company modifiers.

We understand that you will present this letter to the Vermont Secretary of State in connection with your filing of amended and restated articles or incorporation and organization to make these name changes and any related tradename registrations.

Very truly yours,

E. Thomas Sullivan
President

AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF
FLETCHER ALLEN PARTNERS, INC.

(A Public Benefit Nonprofit Corporation organized under the provisions
Of the Vermont Non-Profit Corporation Act, 11B V.S.A. §§ 1.01 *et seq.*)

1. Corporate Name. The current name of the corporation is FLETCHER ALLEN PARTNERS, INC.

2. Text and Date of Amendments. The Articles of Incorporation of the corporation are amended to: (i) change the corporation's name to: THE UNIVERSITY OF VERMONT HEALTH NETWORK INC. and (ii) delete the name and address of the original registered agent and incorporator. The effective date of the amendments set forth in these Amended and Restated Articles of Incorporation shall be at 12:00 a.m. on November 12, 2014.

3. Approval by Directors. The amendments reflected in paragraph 4 of this instrument were approved by the directors of the corporation.

4. Text of Amended and Restated Articles of Incorporation. The articles of incorporation of the corporation are hereby amended and restated to read in full as follows:

(See following pages)

**AMENDED AND RESTATED
ARTICLES OF INCORPORATION**

OF

THE UNIVERSITY OF VERMONT HEALTH NETWORK INC.

(A Public Benefit Nonprofit Corporation organized under the provisions
of the Vermont Non-Profit Corporation Act, 11B V.S.A. §§ 1.01 *et seq.*)

FIRST: The name of the corporation shall be The University of Vermont Health Network Inc.

SECOND: This Corporation is a public benefit corporation.

THIRD: The corporation will not have members.

FOURTH: In addition to having all of the powers accorded to a nonprofit corporation under the laws of the State of Vermont, and without limiting the generality thereof, this Corporation shall have the powers set forth in (A) below with respect to each corporation of which this Corporation is the sole member as defined in 11B V.S.A. § 17.05 or the New York Not-For-Profit Corporation Law and Champlain Valley Physicians Hospital Medical Center ("CVPH") and Elizabethtown Community Hospital ("ECH") (each such corporation being a "Subsidiary"), and none of the actions set forth in (B) through (K) below on the part of a Subsidiary shall be effective without the affirmative approval of this Corporation:

- (A) election of the Trustees of the Subsidiary, apart from those Trustees serving *ex officio*, from nominees submitted to this Corporation by the Board of Trustees of the Subsidiary;
- (B) adoption of annual operating and capital budgets of the Subsidiary and any change to a budget previously approved by this Corporation;
- (C) adoption of strategic plans;
- (D) sale, lease, disposition, mortgage, or encumbrance of all or substantially all of the assets of the Subsidiary;
- (E) any merger, consolidation, business combination or joint venture, or the creation or acquisition of any subsidiary organization, other than as included in a strategic or financial plan previously approved by this Corporation;
- (F) the filing of a voluntary petition or application under federal or state bankruptcy laws;
- (G) the commencement of any project or the making of any expenditure requiring issuance of a certificate of need;
- (H) amendment of these Articles of Incorporation or the Bylaws of the Subsidiary;
- (I) the incurrence of any long-term indebtedness;

- (J) developing or terminating programs and services, other than those included within a strategic or financial plan previously approved by this Corporation; and
- (K) election or appointment of the President/CEO of the Subsidiary.

Additionally, this Corporation may initiate any of the above actions on behalf of a Subsidiary, provided, however, that such action of this Corporation has been adopted by a Super-Majority Vote of the Board of Trustees. For purposes of this right of initiation, a "Super-Majority Vote" shall mean the affirmative vote of at least three-quarters (3/4) of the Trustees.

FIFTH: The corporation is organized and shall be operated exclusively for the benefit of, to perform the functions of, and to carry out the exclusively charitable, educational, and/or scientific purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, of The University of Vermont Medical Center Inc. ("the Medical Center"), Central Vermont Medical Center, Inc. ("CVMC") and Community Providers, Inc. ("CPI"), CVPH, ECH and any other nonprofit, tax exempt health care providers that become members of an integrated regional health care system established by the corporation, the Medical Center, CVMC, CPI, CVPH and ECH including the following purposes:

(A) To establish an integrated regional health care system that aligns the missions and economic interests of the Medical Center, CVMC, CPI, CVPH, ECH and other nonprofit, tax exempt health care providers that are or become members of the system;

(B) To engage in collaborative regional planning to develop a highly coordinated health care network that will improve the quality, increase the efficiencies, and lower the costs of health care delivery in the communities served by the system;

(C) to engage in such other charitable, educational, and/or scientific activities as are consistent with the corporation's status as an exempt organization under Section 501(c)(3) of the Internal Revenue Code, and including for such purposes the making of distributions of property or cash to organizations that qualify as exempt organizations under Section 501(c) of the Internal Revenue Code. All section references in these Articles of Incorporation refer to the Internal Revenue Code of 1986, Title 26 of the United States Code, and comparable provisions of later law. Subject to the foregoing, the corporation shall be permitted to engage in any lawful act or activity for which corporations may be organized under the Vermont Nonprofit Corporation Act.

SIXTH: No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its directors, officers, or other private persons except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered (excepting directors, who may not be compensated for services as directors) and to make payments and distributions in furtherance of the purposes set forth in Article FIFTH hereof.

SEVENTH: No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (it being acknowledged, however, that the corporation may make, as well as revoke, a section 501(h) election), and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of (or in opposition to) any candidate for public office. Notwithstanding any other provision of these Articles of Incorporation, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code (or corresponding section of any future federal tax code) or (b) by a corporation contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code (or corresponding section of any future federal tax code).

EIGHTH: Upon the dissolution and liquidation of the corporation, the net assets of the corporation shall be distributed to the Medical Center, CVMC, CPI, CVPH, ECH and other nonprofit, tax exempt health care providers that may become affiliated with the integrated regional health care system established by the corporation that are exempt from federal income tax by reason of being described in section 501(c)(3) and that best promote the purposes of the corporation, subject to the restriction that no distribution will be made that would subject the corporation to any termination tax. Any assets not so disposed of shall be disposed of by a court of competent jurisdiction of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, as are described in section 501(c)(3) and are organized and operated exclusively for purposes which best promote the purposes of this corporation.

NINTH: (A) Subject to the restrictions imposed by section 8.51(d) of the Vermont Nonprofit Corporation Act (enumerating proceedings for which indemnification may not be made), the corporation shall indemnify any individual made a party to a proceeding because the individual is or was a director of the corporation against liability incurred in the proceeding if the individual meets the requirements of section 8.51 of the Vermont Nonprofit Corporation Act (or the corresponding section of any future Vermont statute).

(B) The corporation shall pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if the director meets the requirements of section 8.53 of the Vermont Nonprofit Corporation Act (or the corresponding section of any future Vermont statute).

(C) The right of indemnification and reimbursement provided by this Article NINTH shall continue as to a person who has ceased to be a director and shall inure to the benefit of the heirs, executors and administrators of such person.

(D) The right of indemnification provided by this Article NINTH shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any law (including, but not limited to, section 8.52 of the Vermont Nonprofit Corporation Act), bylaw, agreement, vote of disinterested directors or otherwise, as to action in his or her

official capacity, and shall continue as to a person who has ceased to be such director and shall inure to the benefit of the heirs, executors and administrators of such person.

(E) The right of indemnification provided by this Article NINTH shall be deemed to be a contract between this corporation and each director of this corporation who serves in such capacity, as to action in his or her official capacity, at any time while this Article NINTH and the relevant provisions of the Vermont Nonprofit Corporation Act and other applicable law, if any, are in effect, and any repeal or modification thereof shall not affect any rights or obligations then existing with respect to any state of facts then or theretofore existing or any action, suit or proceeding theretofore or thereafter brought or threatened based in whole or in part upon any such state of facts.

(F) The corporation shall indemnify and advance expenses to any officer or employee of the corporation who is not a director to the same extent as a director.

TENTH: (A) In the event that the corporation should be determined to be a private foundation as defined in section 509(a) of the Internal Revenue Code, the corporation will act or refrain from acting so as not to subject itself to the taxes under section 4941 on self-dealing, to the taxes under section 4943 on excess business holdings, to the taxes under section 4944 on investments that jeopardize charitable purpose, and to the taxes under section 4945 on taxable expenditures.

(B) In the event that the corporation should be determined to be a private foundation but not to be an operating foundation as defined in section 4942(j)(3), the corporation will also act or refrain from acting so as not to subject itself to the taxes under section 4942 on failure to distribute income.

ELEVENTH: The Corporation reserves the right to restate these Articles of Incorporation and to amend, alter, change or repeal any provision contained in these Articles of Incorporation in the manner now or hereafter prescribed by law, and all rights and powers conferred herein are subject to this reserved power.

IN WITNESS WHEREOF, these Amended and Restated Articles of Incorporation have been signed by an authorized officer of the Corporation on this 20th day of August, 2014.

By: 

John R. Brumsted, M.D.
President and Chief Executive Officer
111 Colchester Avenue
Burlington, VT 05401



The University of Vermont

E. Thomas Sullivan
President

John R. Brumsted, M.D.
President and Chief Executive Officer
Fletcher Allen Partners, Inc.
111 Colchester Avenue
Burlington, VT 05401

Re: Use of "The University of Vermont" in Corporate Names

Dear John:

This letter confirms that The University of Vermont and State Agricultural College (the "University") has entered into an agreement with Fletcher Allen Partners authorizing Fletcher Allen Partners and its affiliated organizations to use the phrase "The University of Vermont" in the following names:

The University of Vermont Health Network, Inc.
The University of Vermont Medical Center, Inc.
The University of Vermont Medical Center Foundation, Inc.
The University of Vermont Health Network Specialty Care Transport LLC
The University of Vermont Medical Center Health Ventures, Inc.
The University of Vermont Medical Center Executive Services LLC
The University of Vermont Medical Center Skilled Nursing LLC
The University of Vermont Medical Center Auxiliary, Inc.

The University has also authorized the same organizations to file and use tradenames consisting of the names listed above without their corporate or company modifiers.

We understand that you will present this letter to the Vermont Secretary of State in connection with your filing of amended and restated articles or incorporation and organization to make these name changes and any related tradename registrations.

Very truly yours,

E. Thomas Sullivan
President

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 4th day of December, 2014, approves the filing of the Certificate of Amendment of the Application for Authority of Fletcher Allen Partners, Inc., dated September 8, 2014.



STATE OF NEW YORK - DEPARTMENT OF HEALTH

MEMORANDUM

TO: Public Health and Health Planning Council

FROM: James E. Dering, General Counsel *JED*

DATE: October 27, 2014

SUBJECT: Proposed Certificate of Amendment to the Application of Authority for the Debutante Cotillion and Christmas Ball, Inc. ("the Foundation")

Attached is the proposed Application of Authority for the Debutante Cotillion and Christmas Ball, Inc. This Delaware not-for-profit corporation seeks to amend its Application for Authority to specifically name the New York and Presbyterian Hospital and New York-Presbyterian/Lower Manhattan Hospital as recipient to fundraising activities. The corporation was formed to continue a multi-generation tradition of holding the Debutante Cotillion and Christmas Ball, which has been held every year in New York City since 1935. The corporation also intends to conduct other activities with charitable fundraising in mind. Monies raised from the event benefited New York Hospital, which was merged with and into New York and Presbyterian Hospital ("NYPH") in July 2013. It is currently a division of NYPH known as New York-Presbyterian/Lower Manhattan Hospital – which will be specifically named in the Application of Authority. Public Health and Health Planning Council approval for a change of corporate name is required by Not-for-Profit Corporation Law § 804(a), § 404(o) and (t) and 10 NYCRR § 600.11(a)(2).

The following documents and information are attached in support of the Foundation's request for approval.

1. A letter dated September 2, 2014, from Victor Cohen, counsel to the Foundation, requesting the approval of the Certificate of Amendment to the Application of Authority for the Foundation and a description of the fundraising activities to be undertaken by the Foundation;
2. A copy of the Certificate of Incorporation filed with the Secretary of State of the State of Delaware on February 25, 2013;
3. A copy of the Application of Authority filed with New York State's Department of State on March 4, 2013;

4. The proposed Certificate of Amendment of the Application of Authority;
5. A copy of the Foundation's Bylaws;
6. A letter from New York Presbyterian Hospital acknowledging that it will accept funds raised by the Foundation;
7. A list of the Board of Directors of the Foundation, which includes their names, addresses, occupations, employers and affiliations in the past ten years with other charitable affiliations.

The Department has no objection to the proposed changes and the proposed certificate of amendment of the application of authority is in legally acceptable form.

JD/DY

Attachments

LEVIN & GLASSER, P.C.

420 LEXINGTON AVENUE – 28TH FLOOR
NEW YORK, NEW YORK 10170
(212) 867-3636
FACSIMILE (212) 661-2446

STEVEN I. LEVIN
DAVID G. GLASSER
DAVID J. NATHAN
VICTOR COHEN
ROSEMARY B. BOLLER
DOUGLAS M. LEHMAN
STEPHEN C. GREENE
JAY GINSBERG

OF COUNSEL
MICHAEL J. FIRESTONE
PAUL G. BURNS

JESSICA L. MILLER

September 2, 2014

Via E-mail and Federal Express

Ms. Mary Callahan, Esq.
Director, Bureau of House Counsel
Division of Legal Affairs
NYS Department of Health
Corning Tower
Rm 2484
Empire State Plaza
Albany, New York 12237



Re: Debutante Cotillion and Christmas Ball, Inc./Request for Approval
of the Public Health and Health Planning Council

Dear Ms. Callahan:

We are counsel to Debutante Cotillion and Christmas Ball, Inc. (“DCCB”), a Delaware corporation formed for charitable purposes. DCCB submits this letter and the accompanying documents to request the Public Health and Health Planning Council’s (“PHHPC”) approval of the enclosed Certificate of Amendment to DCCB’s Application for Authority and its filing with the Department of State of New York. The Certificate includes the stated purpose to solicit contributions for the benefit of a licensed hospital located in New York, to wit, The New York and Presbyterian Hospital (“NYPH”), and we understand approval or consent of the PHHPC is required pursuant to sections 404 (o) and (t) and 1304 of the New York Not-For-Profit Corporation Law.

By way of background, DCCB was formed by its initial Board of Directors to continue a multi-generation tradition and activities conducted with charitable fundraising in mind. Each year since 1935, the Debutante Cotillion and Christmas Ball has been held in New York. Historically, the monies raised from the event benefited New York Downtown Hospital and its predecessors (“Downtown Hospital”) and the Ball was often referred to as the “Infirmary Ball.” Effective July 1, 2013, Downtown Hospital merged with and into NYPH, and by operation of

law became a division of NYPH known as New York-Presbyterian/Lower Manhattan Hospital. DCCB's Directors intend to continue the tradition of holding the aforementioned annual event and the net proceeds raised from the event and any other activities will be used to benefit NYPH through its New York-Presbyterian/Lower Manhattan Hospital. DCCP has conducted no activities to date since its formation. Although it has been formed with the approval of NYPH, DCCP will have no corporate relationship with NYPH or any other licensed supported organization nor will it be controlled by NYPH or any other entity.

The following documents are enclosed in support of DCCB's request for approval:

1. Copy of DCCB's Certification of Incorporation filed with the Secretary of State of the State of Delaware on February 25, 2013
2. Copy of DCCB's Application for Authority filed with the New York's Department of State on March 4, 2013
3. The proposed Certificate of Amendment of the Application for Authority
4. A copy of DCCB's Bylaws
5. A letter from New York Presbyterian Hospital acknowledging that it will accept funds raised by DCCB
6. A list of the Board of Directors of DCCB which includes their names, addresses, occupations, employers, and affiliations in the past ten years with other charitable affiliations.

Please direct any official communications regarding this request to the undersigned and do let me know should you have any questions or requests for additional information.

Very truly yours,



Victor Cohen

cc: Board of Directors of DCCB

CERTIFICATE OF INCORPORATION

OF

THE DEBUTANTE COTILLION AND CHRISTMAS BALL, INC.

The UNDERSIGNED, for the purpose of forming a nonstock corporation pursuant to Section 101 of the General Corporation Law of the State of Delaware, hereby certifies:

FIRST: The name of the corporation is: The Debutante Cotillion and Christmas Ball, Inc. (the "Corporation").

SECOND: The address of the Corporation's registered office in the State of Delaware is 3500 S. Dupont Highway, Dover, Delaware 19901, County of Kent. The name of its registered agent at such address is W/K Incorporating Services, Inc.

THIRD: The Corporation is organized and shall be operated exclusively for charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as now in effect or as may hereafter be amended (the "Code"). In furtherance of such purposes, the Corporation shall raise money to benefit non-for-profit organizations in the State of New York. The Corporation may engage in any and all other charitable activities within the meaning of Section 501(c)(3) of the Code and shall engage in any and all lawful activities incidental to the foregoing purposes, including any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

In furtherance of its corporate purposes, the Corporation shall have all the general powers enumerated in Sections 121 and 122 of the General Corporation Law of the State of Delaware as now in effect or as may hereafter be amended.

FOURTH: The Corporation shall not have the authority to issue capital stock.

FIFTH: The Corporation shall have no members and the number of directors shall be fixed by, or in the manner provided in the bylaws.

SIXTH: The name and mailing address of the Incorporator is:
Lawrence A. Kirsch, 90 State Street, Suite 815, Albany, NY 12207.

SEVENTH: The duration of the existence of the Corporation is perpetual.

EIGHTH: Except as otherwise provided by law, or in any bylaw of the Corporation, the business of the Corporation shall be managed and all of the powers of

the Corporation shall be exercised by the Board of Directors of the Corporation.

NINTH: No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to any director or officer of the Corporation, or any private person, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered to or for the Corporation and to make payments and distributions in furtherance of the purposes set forth in Article THIRD hereof.

No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (except as otherwise permitted by Section 501(h) of the Code and in any corresponding laws of the State of Delaware), and the Corporation shall not participate in or intervene in (including the publishing or distribution of statements concerning) any political campaign on behalf of (or in opposition to) any candidate for public office.

Notwithstanding any other provision of this Certificate of Incorporation, the Corporation shall not directly or indirectly carry on any activity which would prevent it from obtaining exemption from federal income taxation as a corporation described in Section 501(c)(3) of the Code, or cause it to lose such exempt status, or carry on any activity not permitted to be carried on by a corporation, contributions to which are deductible under Section 170(c)(2) of the Code.

TENTH: In the event of dissolution or final liquidation of the Corporation, all of the remaining assets and property of the Corporation, after paying or making provision for the payment of all of the liabilities and obligations of the Corporation and for the necessary expenses thereof, shall be distributed to such organization or organizations organized and operated exclusively for charitable, scientific, or educational purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Code as the Board of Directors shall determine, or shall be distributed to one or more state or local governmental units to be used exclusively for public purposes. Any such assets not so disposed of shall be disposed of by a court of competent jurisdiction of the county or district in which the principal office of the Corporation is then located exclusively for such purposes or to such organization or organizations, as said court shall determine which are organized and operated exclusively for such purposes. In no event shall any of such assets or property be distributed to any director or officer or any private individual.

ELEVENTH: To the fullest extent permitted by the General Corporation Law of the State of Delaware, as now in effect or as may hereafter be amended, no director of the Corporation shall be personally liable to the Corporation for monetary damages for any breach of fiduciary duty as a director; provided,

however, such relief from liability shall not apply in any instance where such relief is inconsistent with any provision of the Code applicable to corporations described in Section 501(c)(3) of the Code.

IN WITNESS WHEREOF, I have signed this Certificate of Incorporation this 25th day of February, 2013.

Lauren A. Kirsch

H:\Clients\Debutante Cotillion&Christmas Ball\645-13 Incorporation\Documents\Debutante cert of incorp..DOCX

DBV 715826802

Delaware

PAGE 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "THE DEBUTANTE COTILLION AND CHRISTMAS BALL, INC." IS DULY INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE FIRST DAY OF MARCH, A.D. 2013.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "THE DEBUTANTE COTILLION AND CHRISTMAS BALL, INC." WAS INCORPORATED ON THE TWENTY-FIFTH DAY OF FEBRUARY, A.D. 2013.


AND I DO HEREBY FURTHER CERTIFY THAT THE FRANCHISE TAXES HAVE NOT BEEN ASSESSED TO DATE.



5294040 8300

130259929

You may verify this certificate online
at corp.delaware.gov/authver.shtml


Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 0250923

DATE: 03-01-13

New York State
Department of State
Division of Corporations, State Records and Uniform Commercial Code
One Commerce Plaza, 99 Washington Avenue
Albany, NY 12231
www.dos.state.ny.us

APPLICATION FOR AUTHORITY
OF
THE DEBUTANTE COTILLION AND CHRISTMAS BALL, INC.

(Insert Name of Foreign Corporation)

Under Section 1304 of the Not-for-Profit Corporation Law

FIRST: The name of foreign corporation is:

THE DEBUTANTE COTILLION AND CHRISTMAS BALL, INC.

If the name of the corporation does not contain a required word or abbreviation indicating corporate character, the corporation agrees to add the following word or abbreviation
_____ to the end of its name for use in this state.

If the corporation's true name is not available for use in this state pursuant to §301 and §302 of the Not-for-Profit Corporation Law, the fictitious name the corporation agrees to use in New York State is: _____

SECOND: The jurisdiction in which the corporation was organized is:

Delaware

The date of its incorporation is: February 25, 2013

THIRD: The corporation is a foreign corporation as defined in section 102(a)(7) of the Not-for-Profit Corporation Law.

FOURTH: The corporation is a Type C corporation under Section 201 of the Not-for-Profit Corporation Law.

FIFTH:

A. The purpose or purposes to be pursued in this state and the activities which it proposes to conduct in this state are:

To organize and operate an an annual Dubutante Collillion and Christmas Ball; to solicit donations from interested individuals and other interested organizations and foundations, agencies, institutions, associations and corporations and to administer and expend such funds for the promotion of the event; to solicit sponsors, contributions and participants to produce the event; to hold, organize and conduct meetings on issues regarding the advertising and promotion of this event; to solicit, collect and otherwise receive funds from public and private sources and to expend same in furtherance of the corporate goals and purposes.

A. Continued.

B. If the corporation is a Type C corporation, the lawful public or quasi-public objective which each business purpose will achieve is:

The lawful public or quasi-public objective which the above business purpose will achieve is to create an opportunity to provide financial support to charitable organizations.

The corporation is authorized to conduct the above activities in its jurisdiction of incorporation.

SIXTH: The county within this state in which the office of the corporation is to be located is: New York. (A county in New York State must be stated. Please note that the corporation is not required to have an actual physical office in this state.)

SEVENTH: The Secretary of State is designated as agent of the corporation upon whom process against the corporation may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the corporation is:

Humes & Wagner, Esqs., 147 Forest Avenue, P.O. Box 546, Locust Valley, NY 11560

EIGHTH: (Please check the appropriate statement.)

The corporation has not since its incorporation or since the date its authority to do business in New York was last surrendered, engaged in any activity in this state except as set forth in paragraph (b) of Section 1301 of the Not-for-Profit Corporation Law.

The consent of the State Tax Commission is attached.

Lawrence A. Kirsch

(Signature)

Authorized Person

(Signer's Title)

Lawrence A. Kirsch

(Print or Type Signer's Name)

APPLICATION FOR AUTHORITY
OF
THE DEBUTANTE COTILLION AND CHRISTMAS BALL, INC.

(Insert Name of Foreign Corporation)

Under Section 1304 of the Not-for-Profit Corporation Law

Filer's Name Humes & Wagner, Esqs.

Address 147 Forest Avenue, P.O. Box 546

City, State and Zip Code Locust Valley, NY 11560

NOTE: The certificate must be submitted with a \$135 filing fee. 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. **Attached to the Application for Authority must be a Certificate of Existence from the official who files and maintains corporate records in the jurisdiction of the corporation.** *(Please Note: This official is generally the Secretary of State and many jurisdictions refer to the Certificate of Existence as a Certificate of Good Standing.)* **Please be sure to review Section 404 of the Not-for-Profit Corporation Law to determine if any consents or approvals are required to be attached to this application for authority.**

For Office Use Only

FILING RECEIPT

=====

ENTITY NAME: THE DEBUTANTE COTILLION AND CHRISTMAS BALL, INC.

DOCUMENT TYPE: APPLICATION FOR AUTHORITY (FOREIGN- NFP TYPE: C COUNTY: NEWY

=====

FILED:03/04/2013 DURATION:PERPETUAL CASH#:130304000509 FILM #:130304000463

FILER:

EXIST DATE

HUMES & WAGNER, ESQS.
147 FOREST AVENUE
P.O. BOX 546
LOCUST VALLEY, NY 11560

03/04/2013

ADDRESS FOR PROCESS:

HUMES & WAGNER, ESQS.
147 FOREST AVENUE
LOCUST VALLEY, NY 11560

P.O. BOX 546

REGISTERED AGENT:



=====

SERVICE COMPANY: GERALD WEINBERG, P.C. - 13

SERVICE CODE: 13

FEES 160.00

FILING 135.00
TAX 0.00
CERT 0.00
COPIES 0.00
HANDLING 25.00

PAYMENTS 160.00

CASH 0.00
CHECK 0.00
CHARGE 0.00
DRAWDOWN 160.00
OPAL 0.00
REFUND 0.00

=====

CERTIFICATE OF AMENDMENT
OF THE APPLICATION FOR AUTHORITY
OF
THE DEBUTANTE COTILLION AND CHRISTMAS BALL, INC.

Under Section 1309 of the Not-for-Profit Corporation Law

1. The name of the corporation as it appears on the index of names in the Department of State is:

THE DEBUTANTE COTILLION AND CHRISTMAS BALL, INC.

2. The jurisdiction of incorporation of the corporation is:

DELAWARE

3. The date on which the corporation was authorized to conduct activities in New York State is:

March 4, 2013

4. Article Fifth of the Application for Authority is hereby amended in its entirety to read as follows:

FIFTH:

- A. The purpose or purposes to be pursued in this state and the activities which it proposes to conduct in this state are:

To organize and operate an annual Debutante Cotillion and Christmas Ball which will serve to raise funds for charities, specifically The New York and Presbyterian Hospital through its New York-Presbyterian/ Lower Manhattan Hospital; to solicit donations from interested individuals and other interested organizations and foundations, agencies, institutions, associations and corporations and to administer and expend such funds for the promotion of the event to raise funds for such purpose; to solicit sponsors, contributions and participants to produce the event; to hold, organize and conduct meetings on issues regarding the advertising and promotion of this event; to solicit, collect and otherwise receive funds from public and private sources and to expand same in furtherance of the corporate goals and purposes.

- B. The lawful public or quasi-public objective which each business purpose will achieve is:

To create an opportunity to provide financial support to charitable organizations, specifically The New York and Presbyterian Hospital through its New York-Presbyterian/ Lower Manhattan Hospital.

The corporation is authorized to conduct the above activities in its jurisdiction of incorporation.

C. Nothing contained in the Certificate of Incorporation, the Application for Authority or this Certificate of Amendment shall authorize 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 adult care facility.

5. The above amendments to the Application for Authority of the corporation were authorized by the Board of Directors.

s/Frances G. Laserson
Frances G. Laserson, President

CERTIFICATE OF AMENDMENT
OF THE APPLICATION FOR AUTHORITY
OF
THE DEBUTANTE COTILLION AND CHRISTMAS BALL, INC.

Under Section 1309 of the Not-for-Profit Corporation Law

Filed by:

Levin & Glasser, P.C.
420 Lexington Avenue
Suite 2818
New York, NY 10170

**Conformed Copy
Adopted as of
April 24, 2013**

Bylaws

of

The Debutante Cotillion and Christmas Ball, Inc.

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ARTICLE I.

NON - MEMBERSHIP

1.1. No Members. The Debutante Cotillion and Christmas Ball, Inc. (the "Corporation") shall be a nonmember corporation. The Corporation shall act through its Board of Directors or any appointed Chief Executive Officer or President as duly authorized representatives.

ARTICLE II.

BOARD OF DIRECTORS

2.1. Initial Directors. The initial Board of Directors of the Corporation shall be : **Fran Laserson, Kathryn George Tyree, Ritchey Howe, Troland S. Link and Alice Ross.**

2.2. General Powers. The business, property and affairs of the Corporation shall be managed by, or under the direction of, the Board. The Board may delegate the management of the day-to-day operations of the Corporation to the officers or other persons provided that the business and affairs of the Corporation shall be managed by and all corporate powers shall be exercised under the ultimate direction of the Board.

2.3. Number, Qualifications, Appointment, and Tenure of the Directors.

(a) The number of directors constituting the entire Board shall be a minimum of three or such greater number as may be fixed from time to time by action of the Member or by a majority of the entire Board. The use of the phrase "entire Board" herein refers to the total number of directors which the Corporation would have if there were no vacancies.

(b) Directors shall be appointed by the Board of Directors. Directors shall serve for one year terms and until their successors are appointed by the Member, or until their earlier resignation or removal.

(c) Directors may serve unlimited successive terms.

2.4. Regular Meetings. Regular meetings of the Board shall be held at such times and places as the Board shall from time to time determine.

2.5. Special Meetings. Special meetings of the Board shall be held whenever called by the Chair of the Board, the President or a majority of the directors then in office.

2.6. Notice. A notice of the place, date and time of each meeting of the Board shall be given to each director by mail or electronic transmission at least two days before a special meeting, or by telephoning or emailing the same or by delivering the same personally not later than the day before the day of the special meeting. Notice need not be given of regular meetings of the Board held at times and places fixed by the Board.

2.7. Quorum and Manner of Acting. A majority of the directors then in office shall constitute a quorum. A majority of the directors present, whether or not a quorum is present, may adjourn a meeting from time to time to another time and place without notice. The affirmative vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board, except as otherwise provided by law or in these bylaws (e.g., § 2.9 (acting by written consent), § 2.12 (filling vacancies), § 3.2 (appointing Board Committees), and § 6.5 (amending bylaws)). Voting by proxy is not permitted.

2.8. Meeting Organization. The Board may elect a Chair of the Board. The Chair shall preside at all meetings of the Board and shall have such other powers and duties as may from time to time be assigned by the Board. The Secretary of the Corporation shall act as secretary at all meetings of the Board when present, and, in the Secretary's absence, the presiding person may appoint any person to act as secretary of the meeting.

2.9. Action by Written Consent. Any action required or permitted to be taken at any meeting of the Board, or any committee thereof, may be taken without a meeting if all the members of the Board or of such committee consent thereto in writing (including by electronic transmission), and the writings are filed with the minutes of the Board or committee.

2.10. Meeting By Telephone or Similar Communications Equipment. The members of the Board, or any committee thereof, may participate in any meeting through conference calls or other forms of communication that permit participants to hear and be heard by all other participants, and participation in such meeting shall constitute the presence in person by such member at such meeting.

2.11. Resignation and Removal. Any director may resign at any time upon written notice to the Corporation and such resignation shall take effect upon receipt thereof by the Chair, President, or Secretary, unless otherwise specified in the resignation. One or more of the directors may be removed, with or without cause, by a majority of the directors at a Board meeting at which a quorum is present, provided that written notice of such removal is given to any director so removed.

2.12. Vacancies. Vacancies on the Board, whether caused by resignation, death, disqualification, removal, an increase in the authorized number of directors or otherwise, may be filled by the affirmative vote of a majority of the remaining directors, although less than a quorum, or by a sole remaining director, or by

action of the Member. A director elected to fill a vacancy shall serve for the unexpired portion of the term.

ARTICLE III.

COMMITTEES

3.1. Board Committees. The Board may establish one or more Committees, which shall have the duties and responsibilities set forth by the Board. The Board may, by a resolution adopted by a majority of the directors then in office, appoint directors to serve at the pleasure of the Board. Appointments to any Board Committee shall be by a majority vote of the directors then in office. Each Board Committee shall have one or more directors. Board Committees shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation to the extent provided in the resolution of the Board or in the bylaws; but no Board Committee shall have the power or authority in reference to: (a) amending the certificate of incorporation or bylaws, (b) adopting an agreement of merger or consolidation, (c) recommending to the Member the sale, lease or exchange of all or substantially all of the Corporation's assets, (d) recommending to the Member a dissolution of the Corporation or a revocation of a dissolution, (e) any other actions which require the approval of the entire Board or the Member under applicable law or these bylaws, (f) filling vacancies in the Board or any committee, (g) fixing compensation of the directors for serving on the Board or on any committee, (h) electing, appointing or removing any member of any committee or any director or officer, or (i) amending or repealing any resolution of the Board. Each Board Committee shall keep minutes of its proceedings, and actions taken by a Board Committee shall be reported to the Board.

3.2. Advisory Committees. The Board may establish one or more Advisory Committees to the Board. Advisory Committees may consist of directors or non-directors and may be appointed as the Board determines. Advisory Committees may not exercise the authority of the Board to make decisions on behalf of the Corporation, but shall be restricted to giving advice and making non-binding recommendations to the Board, Board Committees or the President, and implementing Board or Board Committee decisions and policies under the supervision and control of the Board, Board Committee, or President.

3.3. Executive Committee. The Board may, by resolution, establish an Executive Committee, which shall have the authority to make decisions on behalf of the Board on administrative matters and time-critical matters that arise between Board meetings. The Executive Committee shall have such other duties and responsibilities as may be set forth in more detail in the Committee charter as approved by the Board from time to time.

3.4. Quorum and Manner of Acting. Except as otherwise provided by law or Board resolution, the presence of a majority of the members of a committee shall

constitute a quorum for the transaction of business by that committee, and in every case where a quorum is present the affirmative vote of a majority of the members of the committee present shall be the act of the committee. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not the member or members constitute a quorum, may unanimously appoint another director to act at the meeting in the place of such absent or disqualified member.

3.5. Term and Termination. In the event any person shall cease to be a director of the Corporation, such person shall simultaneously therewith cease to be a member of any Board Committee.

ARTICLE IV.

OFFICERS

4.1. Election and Qualifications. The Board shall elect the officers of the Corporation, which shall include a President, a Treasurer, and a Secretary. The officers may include, by election or appointment, one or more Vice-Presidents (any one or more of whom may be given an additional designation of rank or function), and such assistant secretaries, such assistant treasurers and such other officers as the Board may from time to time deem proper. Each officer shall have such powers and duties as may be prescribed by these bylaws and as may be assigned by the Board or the President. Any two or more offices may be held by the same person except that no one person may hold the offices of both President and Treasurer.

4.2. Election and Term. All officers shall be elected by the Board and shall serve one year and thereafter until such time as their respective successors are elected and qualified or until their earlier resignation or removal. Any vacancy in any office arising from any cause may be filled for the unexpired portion of the term by the Board.

4.3. Resignation and Removal. Any officer may resign at any time upon written notice to the Corporation and such resignation shall take effect upon receipt thereof by the President or Secretary, unless otherwise specified in the resignation. Any officer may be removed from office, with or without cause, at any time by the Board.

4.4. President. The President shall be the President of the Corporation, and shall have such duties as customarily pertain to that office. The President shall have general management and supervision of the property, business and affairs of the Corporation and over its other officers and may execute and deliver in the name of the Corporation powers of attorney, contracts, and other obligations and instruments.

4.5. Vice President. A Vice-President may execute and deliver in the name of the Corporation contracts and other obligations and instruments pertaining to the

regular course of the duties of said office, and shall have such other authority as from time to time may be assigned by the Board or the President.

4.6. Treasurer. The Treasurer shall in general have all duties incident to the position of Treasurer including custody of all funds and securities of the Corporation, shall be responsible for the receipt and disbursement of all monies of the Corporation, and shall perform such other duties as may be assigned by the Board. The Treasurer shall keep proper books of accounts of such receipts and disbursements and shall prepare financial statements consistent with generally accepted accounting principles in such forms and at such times as may be required by the Board.

4.7. Secretary. The Secretary shall in general have all duties incident to the position of Secretary including custody of the books, records, and documents (other than those maintained by the Treasurer), and shall attest deeds, contracts, leases and other legal instruments and formal documents and shall perform such other duties as may be assigned by the Board or the President.

4.8. Assistant Officers. Any assistant officer shall have such powers and duties of the officer such assistant officer assists as such officer or the Board shall from time to time prescribe.

4.9. Other Officers. Other officers may be elected by resolution of the Board and shall have such powers and duties as may be prescribed in such resolution.

ARTICLE V.

BOOKS, RECORDS AND AUDITS

5.1. Books and Records. The Corporation shall keep correct and complete books and records of account, shall keep minutes of the proceedings of its Board and the Board Committees.

5.2. Audits. The accounts of the Corporation shall be audited as required by the Board, in accordance with generally accepted auditing standards, by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a state or other political subdivision of the United States.

ARTICLE VI.

MISCELLANEOUS PROVISIONS

6.1. Indemnification of Directors and Officers.

(a) The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended,

any person ("Indemnified Person") who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative ("Proceeding"), by reason of the fact that such person is or was a director or officer of the Corporation, or while serving as a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, trustee, officer, employee or agent of another company, partnership, joint venture, employee benefit plan, trust or other enterprise, against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such person in such Proceeding. Notwithstanding the preceding sentence, except as provided in paragraph (c) of this Article the Corporation shall be required to indemnify an Indemnified Person in connection with a Proceeding (or part thereof) commenced by such Indemnified Person only if the commencement of such Proceeding (or part thereof) by the Indemnified Person was authorized in advance by the Board.

(b) The Corporation shall, to the fullest extent not prohibited by law, pay the expenses (including attorneys' fees) incurred by an Indemnified Person in defending any Proceeding in advance of its final disposition; *provided, however*, that, to the extent required by law, such payment of expenses in advance of the final disposition of the Proceeding shall be made only upon receipt of an undertaking by the Indemnified Person to repay all amounts advanced if it is ultimately determined that the Indemnified Person is not entitled to be indemnified under this Article or otherwise.

(c) If a claim for indemnification (following the final disposition of the Proceeding for which indemnification is sought) under this Article is not paid in full within sixty days after a written claim therefor by the Indemnified Person has been received by the Corporation, or a claim for advancement of expenses under this Article is not paid in full within thirty days after any statement therefor has been received by the Corporation, the Indemnified Person shall thereupon be entitled to file suit to recover the unpaid amount of such claim. If successful in whole or in part, the Indemnified Person shall be entitled to be paid the expense of prosecuting such claim to the fullest extent permitted by law. In any such action the Corporation shall have the burden of proving that the Indemnified Person is not entitled to the requested indemnification or advancement of expenses under applicable law.

(d) Any right to indemnification or to advancement of expenses of any Indemnified Person arising hereunder shall not be eliminated or impaired by an amendment to or repeal of this Article after the occurrence of the act or omission that is the subject of the Proceeding for which indemnification or advancement of expenses is sought.

(e) The rights conferred on any Indemnified Person by this Article shall not be exclusive of any other rights that such Indemnified Person may have or hereafter acquire under any statute, the Certificate of Incorporation, these Bylaws or any agreement, or any action of disinterested directors or otherwise. This Article shall not limit the right of the Corporation, to the extent and in the manner permitted by law, to

indemnify or to advance expenses to persons other than Indemnified Persons when and as authorized by appropriate corporate action.

(f) In no case, however, shall the Corporation indemnify, reimburse or insure any person for any taxes imposed on such individual under Chapter 42 of the Internal Revenue Code of 1986, as now in effect or as hereafter may be amended (the "Code"). Further, if at any time the Corporation is deemed to be a private foundation within the meaning of Section 509 of the Code then, during such time, no payment shall be made under this Article if such payment would constitute an act of self-dealing or a taxable expenditure as defined in Section 4941(d) or Section 4945(d), respectively, of the Code.

6.2. Manner of Notice. Except as otherwise provided herein or permitted by law, notices to directors shall be in writing and delivered in any manner permitted by the DGCL.

6.3. Waiver of Notice. Notice need not be given to any director who submits a written waiver of notice signed by him or her whether before or after the time stated therein. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except when the person attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the directors need be specified in any waiver of notice.

6.4. Amendments to Bylaws. These bylaws may be amended or repealed, and new bylaws may be adopted by a majority of the directors then in office.

Adopted by the Board of Directors on April 24, 2013

Michael J. Fosina
Senior Vice President
Chief Operating Officer

NewYork-Presbyterian
Lower Manhattan Hospital
170 William Street
New York, NY 10038

TEL 212 312 5175
FAX 212 312 5977

mfosina@nyp.org

August 20, 2014

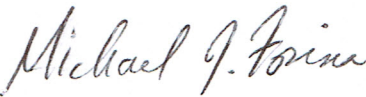
Ms. Mary Callahan
Director, Bureau of House Counsel
Division of Legal Affairs
NYS Department of Health
Corning Tower
Rm 2484
Empire State Plaza
Albany, New York 12237

Dear Ms. Callahan:

We are advised that Debutante Cotillion and Christmas Ball, Inc. ("DCCB") intends to file an amended Application for Authority with the NYS Department of State, which includes the stated purpose of soliciting funds to benefit The New York and Presbyterian Hospital ("NYPH") through its NewYork-Presbyterian/Lower Manhattan Hospital. We further understand that pursuant to section 404 of the Not-For-Profit Corporation Law, the consent of the Public Health and Health Planning Council ("PHHPC") is required with respect to the aforementioned filing and that as part of its review to grant consent, PHHPC requires an acknowledgment that the supported organization will accept the funds raised for the organization's benefit.

The undersigned officer of NYPH confirms by this letter that NYPH will accept funds raised for its benefit by DCCB.

Very truly yours,



Michael J. Fosina, FACHE

Debutante Cotillion and Christmas Ball, Inc.

Board of Directors and Officers

Name and Address; Title with DCCB	Occupation and Address	Affiliations
<p>Frances G. Laserson 1130 Park Avenue New York, NY 10128</p> <p>Director; Chair of the Board, President</p>	<p>President The Moody's Foundation 7 World Trade Center at 250 Greenwich St. New York, NY 10007</p>	<p>Present: Board member, Autism360; Board member, Prep for Prep; Board member, The Center for Talent Innovation</p> <p>Past: President, Board of Trustees of Brick Presbyterian Church of New York; Vice Chairman, New York Downtown Hospital; Emerita Trustee, Kent Place School and Sweet Briar College</p>
<p>Troland S. Link 211 Central Park West New York, NY 10024</p> <p>Director; Secretary</p>	<p>Senior Counsel Davis Polk & Wardwell LLP 450 Lexington Avenue New York, NY 10017</p>	<p>Present: Board member, American University in Cairo; Knickerbocker Club; Board member, Provident Loan Society of New York; Board member, Shakespeare Society; Board member, William and Mary Greeve Foundation</p> <p>Past: Board member: New York Downtown Hospital</p>
<p>Ritchey Howe 45 East 72nd Street New York, NY 10021</p> <p>Director</p>		<p>Present: Board member, The Meadow Club of Southampton; Board Secretary, The Bathing Corporation of Southampton; Executive Committee member, The Women's Board of the Boys Club of New York</p> <p>Past: Board member, The Knickerbocker Cotillion, Inc.</p>
<p>Alice Ross 1130 Park Avenue New York, NY 10128</p> <p>Director</p>		<p>Present: Board member, The Preservation Society of Newport; Member, Boys Club of New York Women's Board; Board member, Johnson Center for Child Health and Development</p> <p>Past: Member, New York Advisory Board for Fellowship of Christian Schools and Universities</p>
<p>Kathryn George Tyree 126 East 65th Street New York, NY 10065</p> <p>Director; Treasurer</p>	<p>Partner Brown Brothers Harriman & Co. 140 Broadway New York, NY 10005</p>	<p>Present: President, The Gillen Brewer School; Trustee of Episcopal High school</p> <p>Past: Treasurer of the Board of New York Downtown Hospital; Member, Board of Fellows of Trinity College</p>

RESOLUTION


RESOLVED, that the Public Health and Health Planning Council, on this 4th day of December, 2014, approves the filing of the Certificate of Amendment of the Application for Authority of The Debutant Cotillion and Christmas Ball, Inc., dated March 4, 2013.



STATE OF NEW YORK - DEPARTMENT OF HEALTH

MEMORANDUM

TO: Public Health and Health Planning Council

FROM: James E. Dering, General Counsel 

DATE: November 4, 2014

SUBJECT: Proposed Certificate of Amendment of the Certificate of Incorporation of The Health Science Center Foundation at Syracuse, Inc.

Attached is the proposed Certificate of Amendment of the Certificate of Incorporation of The Health Science Center Foundation at Syracuse, Inc. This not-for-profit corporation seeks approval to change its name to "Upstate Foundation, Inc." The corporation currently solicits contributions to support SUNY Upstate Medical University. Public Health and Health Planning Council approval for a change of corporate name is therefore required by Not-for-Profit Corporation Law § 804 (a) and 10 NYCRR § 600.11 (a) (2).

Also attached is a letter dated October 31, 2014 from Scott R. Leuenberger, attorney for the corporation. As explained in that letter, the name change is in addition to amendments that clarify the corporations purposes and to ensure that all necessary language is included relating to the Internal Revenue Code § 501(c)(3). These other amendments do not require the Council's approval.

The Department has no objection to the proposed name change, and the proposed Certificate of Amendment is in legally acceptable form.

Attachments

SCOTT R. LEUENBERGER, ESQ.
sleuenger@bsk.com
P: 315.218.8393
F: 315.218.8467

October 31, 2014

VIA E-MAIL

Megan Mutolo, Esq.
Bureau of House Counsel
New York State Department of Health
Dept. of Legal Affairs
Corning Tower; Room 2482
Empire State Plaza
Albany, New York 12237

Re: *Restated Certificate of Incorporation of The Health Science Center Foundation at Syracuse, Inc.*

Dear Ms. Mutolo:

As you know, we represent The Health Science Center Foundation at Syracuse, Inc. (the "Foundation"), a not-for-profit corporation formed to support the education programs and health care services provided by the State University of New York Health Science Center at Syracuse (the "University"). The Foundation intends to change its name to "The Upstate Foundation" and has prepared a Restated Certificate of Incorporation to effect this change, to clarify its purposes and to ensure that all necessary language related to its Internal Revenue Code Section 501(c)(3) tax-exempt status is updated and in compliance with current requirements (the "Restated Certificate").

Enclosed please find a copy of the executed Restated Certificate. Also, additional information in the form of a resolution of the Foundation's Board of Directors adopting the Restated Certificate and copies of the Foundation's original certificate of incorporation and all amendments as filed with the Department of State, were submitted for your review pursuant to our letter dated October 8, 2014.

We are writing to request Public Health and Health Planning Council approval of the Foundation's name change as set forth in the Restated Certificate in accordance with 10 NYCRR § 600.11(a)(2). The Foundation has determined that changing its name to The Upstate Foundation is necessary because the University operates under the name and/or is commonly known as "SUNY Upstate Medical University", "SUNY Upstate" or "Upstate Medical University" (see www.upstate.edu), and the teaching hospital it operates is generally known as or commonly referred to in the community as "Upstate",

Sandra M. Jensen, Esq.
October 31, 2014
Page 2

"Upstate Hospital" or "Upstate University Hospital" (*see* www.upstate.edu/hospital/) and the Foundation is commonly referred to as The Upstate Foundation. Therefore, changing the Foundation's name to The Upstate Foundation will formalize the Foundation's current common practices and create a closer alignment with the University in the public's perception, thereby promoting its goal of soliciting funds in support of the University.

Accordingly, we respectfully request that this matter be processed at the November 13, 2014 meeting of the Public Health and Health Planning Council. Please forward to me the Public Health and Health Planning Council's approval of the filing of the Restated Certificate as soon as this action has been taken.

If you need any further information, please contact me at (315) 218-8393.

Very truly yours,

BOND, SCHOENECK & KING, PLLC



Scott R. Leuenberger, Esq.

SRL/srl
Enclosures

**RESTATED CERTIFICATE OF INCORPORATION
OF
THE HEALTH SCIENCE CENTER FOUNDATION AT SYRACUSE, INC.**

Under Section 805 of the Not-for-Profit Corporation Law

The undersigned, being the Chair of THE HEALTH SCIENCE CENTER FOUNDATION AT SYRACUSE, INC., does hereby certify:

1. The name of the corporation is The Health Science Center Foundation at Syracuse, Inc. (the "Corporation"). The Corporation was originally formed under the name "Upstate Medical Center Foundation, Inc." The name was changed by Certificate of Amendment filed in the Office of the Secretary of State of the State of New York on April 14, 1987.

2. The Certificate of Incorporation of Upstate Medical Center Foundation, Inc. was filed in the Office of the Secretary of State of the State of New York on June 3, 1976.

3. The amendments to the Certificate of Incorporation set forth herein are intended to change the Corporation's name, clarify the Corporation's purposes, clarify and set forth that the Corporation is formed exclusively for charitable purposes and shall operate in accordance with the restrictions applicable to an entity exempt from tax under Section 501(c)(3) of the Internal Revenue Code of 1986 or corresponding provision of any subsequent federal tax law (the "Code") and to amend the Corporation's address for service of process.

4. The Certificate of Incorporation as now in full force and effect is hereby amended to change the format of the numbering of the paragraphs from 1., 2., 3., etc. to labeling each paragraph as follows: FIRST, SECOND, THIRD, etc.; and to effect the following changes authorized in Section 801 of the Not-for-Profit Corporation Law:

A. Paragraph 1. of the Certificate of Incorporation reads as follows:

1. The name of the corporation is: THE HEALTH SCIENCE CENTER FOUNDATION AT SYRACUSE, INC.

The corporation is not an agency of the State of New York and is not an entity of the State University of New York or the Research Foundation of the State University of New York.

B. Paragraph 1. of the Certificate of Incorporation is hereby amended to read as follows:

FIRST: The name of the corporation is "The Upstate Foundation, Inc." (the "Corporation").

C. Paragraph 2. of the Certificate of Incorporation reads as follows:

2. The corporation has not been formed for pecuniary profit or financial gain, and no part of the assets, income or profit of the corporation is distributable to, or enures to the benefit of, its member, directors, or officers except to the extent permitted under the Not-for-Profit Corporation Law. The corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law.

D. Paragraph 2. of the Certificate of Incorporation is hereby amended to read as follows:

SECOND: The Corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-for-Profit Corporation Law.

E. Paragraph 3. of the Certificate of Incorporation is hereby renumbered to be Paragraph FOURTH and a new Paragraph THIRD is hereby added to the Certificate of Incorporation to read as follows:

THIRD: The Corporation is a charitable corporation as defined in Section 201 of the Not-For-Profit Corporation Law (the "N-PCL"). The Corporation is not an agency of the State of New York and is not an entity of the State University of New York or the Research Foundation of the State University of New York.

F. Paragraph 3. of the Certificate of Incorporation reads as follows:

3. The purposes for which the corporation is to be formed are:

- (a) To be a vehicle to receive and administer gifts and bequests, to pay over monies to State University of New York Upstate Medical Center for its corporate purposes, and to that end to take and hold by bequest, devise, gift, grant, contribution, endowment, purchase, lease or otherwise either absolutely or jointly with any other person, persons, or corporations any property, real, personal, tangible or intangible or any undivided interest therein without limitation as to amount or value to sell, convey or otherwise dispose of any such property and to invest, re-invest, or deal with the principal or the income thereof in such manner as, in the judgment of the directors will best promote the purposes of the corporation and State University of New York Upstate Medical Center without limitation, except such limitations, if any, as may be contained in the instrument under which such bequest is received, this Certificate of Incorporation, the By-Laws of the corporation or any laws applicable thereto.
- (b) To apply the funds received by the corporation in furtherance of particular programs of the State University of New York Upstate Medical Center or the Research Foundation including but not limited to those in the areas of:
 - 1) Student programs
 - 2) Educational programs
 - 3) Patient care programs
 - 4) Capital program
 - 5) Endowed research

- (c) In general, to do any and all things and to exercise any and all powers which it may now or hereafter be lawful for the corporation to do or exercise under and pursuant to the Laws of the State of New York for the purposes of accomplishing any of the purposes of the corporation.
- (d) The purposes for which this corporation is organized shall be confined to those which are strictly scientific, educational and charitable as more specifically described above.
- (e) The corporation shall not engage, nor shall any of its funds, property or income, be used in carrying on propaganda or otherwise attempting to influence legislation, nor shall the corporation participate in or intervene in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office.
- (f) To do any other act or thing incidental to or connected with the foregoing purposes or any advancement thereof, but not for pecuniary profit or financial gain of its members, directors or officers except as permitted under Article V of the Not-for-Profit Corporation Law. Upon dissolution of the corporation any assets after the payment of debts shall be turned over to State University of New York Upstate Medical Center as a fund to be held for such specific purposes as the Council of the State University of New York Upstate Medical Center shall direct.
- (g) The corporation shall be operated in a manner consistent with the applicable rules, regulations, guidelines and policies of the State University of New York for campus-related foundations.
- (h) Nothing herein contained shall authorize the corporation to operate a hospital or to provide hospital service or health related service as defined in Article 28 of the Public Health Law.

G. Paragraph 3. of the Certificate of Incorporation is hereby renumbered as Paragraph FOURTH and amended to clarify the description of the Corporation's purposes and to read as follows:

FOURTH: The Corporation is formed to receive and administer gifts and bequests exclusively for charitable purposes and, except as may otherwise be restricted in a gift instrument, to distribute the same to other entities qualified under Section 501(c)(3) of the Internal Revenue Code of 1986 as amended (the "Code") in the central region of Upstate New York with a focus on (1) the provision of patient healthcare, (2) the education of healthcare providers, (3) community health and wellbeing, and (4) scientific research. The distributions shall in particular be oriented towards the support of those activities conducted by the State University of New York Health Science Center at Syracuse as of November 30, 2014. Notwithstanding anything to the contrary, nothing herein shall authorize the Corporation to operate, maintain or manage a charter school, a nursery school, an elementary school, a secondary school, a college, university or to advertise or offer credit-bearing courses or degrees in New York State or to engage in or include among its purposes either directly or indirectly, any of the activities described in the N-PCL Section 404(a) through 404(v).

The Corporation shall not engage in any activities for the pecuniary profit or financial gain of its directors or officers.

H. Paragraph 4. of the Certificate of Incorporation reads as follows:

4. The corporation is a Type B corporation.

I. Paragraph 4. of the Certificate of Incorporation is deleted in its entirety, the subject matter formerly addressed in Paragraph 4. is stated in the new Paragraph THIRD of the Certificate of Incorporation.

J. Paragraph 5. of the Certificate of Incorporation reads as follows:

5. The City and County in which its office is to be located are the City of Syracuse and County of Onondaga.

K. Paragraph 5. of the Certificate of Incorporation shall be amended to read as follows:

FIFTH: The office of the Corporation is to be located in the County of Onondaga, State of New York.

L. Paragraph 6. of the Certificate of Incorporation reads as follows:

6. The territory in which the corporation's activities are principally to be conducted is Central New York.

M. Paragraph 6. of the Certificate of Incorporation is deleted in its entirety.

N. Paragraph 7. of the Certificate of Incorporation reads as follows:

7. The number of directors of the corporation shall be not less than six (6) or more than twenty-five (25).

O. Paragraph 7. of the Certificate of Incorporation is renumbered as Paragraph SIXTH and amended to read as follows:

SIXTH: The Corporation shall be operated by a Board of Directors, the number of which is to be no fewer than three (3) nor more than thirty-five (35). The directors shall be elected by the Board of Directors in accordance with N-PCL Section 703.

P. Paragraph 8. of the Certificate of Incorporation listing the initial directors of the corporation shall be omitted in its entirety.

Q. Paragraph 9. of the Certificate of Incorporation reads as follows:

8. The post office address to which the Secretary of State shall mail a copy of any notice required by law is 750 East Adams Street, Syracuse, New York 13210.

- R. Paragraph 9. of the Certificate of Incorporation shall be renumbered as Paragraph SEVENTH and amended to read as follows:

SEVENTH: The Secretary of State is designated as an agent of the Corporation upon whom process against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him or her is: 750 E. Adams St. CAB326, Syracuse, NY 13210.

- S. Paragraphs 10. and 11. of the Certificate of Incorporation regarding the age of the subscriber and required consents shall be omitted in their entirety.

- T. Paragraphs EIGHTH, NINTH, TENTH, and ELEVENTH shall replace the former Paragraphs 8., 9., 10., and 11., which have been renumbered or omitted, and Paragraph TWELFTH shall be added to address: (1) that the Corporation is organized exclusively for purposes specified in Section 501(c)(3) of the Code; (2) that no part of the Corporation's net earnings nor any distribution of assets on the dissolution of the Corporation shall inure to the benefit of any private person; (3) that no substantial part of the activities of the Corporation shall be carrying on propaganda, otherwise influencing legislation or participating in any political campaign; (4) the distribution of the Corporation's assets in the event of the Corporation's liquidation; and (5) the distribution of the Corporation's income in any taxable year in which the Corporation is a private foundation as described in Code Section 509(a). Paragraphs EIGHTH, NINTH, TENTH, ELEVENTH and TWELFTH shall read as follows:

EIGHTH: Notwithstanding any other provision of this Certificate of Incorporation, the Corporation is organized exclusively for one or more of the purposes, as specified in Code Section 501(c)(3) and shall not carry on any other activities not permitted to be carried on by (a) a corporation exempt from Federal Income Tax under Code Section 501(c)(3) or (b) by a corporation, contributions to which are deductible under Code Section 170(c)(2).

NINTH: No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to its directors, officers or any other private persons, except that the Corporation shall be authorized to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of its purposes as set forth in this Certificate of Incorporation.

TENTH: No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (except as otherwise provided by Code Section 501(h)), and the Corporation shall not participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of or in opposition to any candidate for public office.

ELEVENTH: In the event of dissolution or final liquidation of the Corporation, the Board of Directors shall, after paying or making provisions for the payment of all the lawful debts and liabilities of the Corporation, distribute all the assets of the Corporation to one or more of the following categories of recipients as the Board of Directors of the Corporation shall determine:

- a) An organization which may have been created to succeed the Corporation, as long as such successor organization shall then qualify as an organization exempt from federal income taxation under Code Section 501(a) as an organization described in Code Section 501(c)(3); or
- b) if the Corporation's successor fails to qualify as an organization exempt from federal income taxation under Code Section 501(a) as an organization described in Code Section 501(c)(3) then a non-profit organization or organizations having similar aims and objectives as the Corporation and which may be selected as an appropriate recipient of such assets, as long as such organization or each of such organizations shall then qualify as an organization exempt from federal income taxation under Code Section 501(a) as an organization described in Code Section 501(c)(3).

TWELFTH: In any taxable year in which the Corporation is a private foundation as described in Code Section 509(a), the Corporation shall distribute its income for said period at such time and in such manner as not to subject it to tax under Code Section 4942; and the Corporation shall not (a) engage in any act of self dealing as defined in Code Section 4941(d); (b) retain any excess business holdings as defined in Code Section 4943(c); (c) make any investments in such manner as to subject the corporation to tax under Code Section 4944; or (d) make any taxable expenditures as defined in Code Section 4945(d).

- U. Paragraph THIRTEENTH shall be added to the Certificate of Incorporation to clarify that the Corporation has no members and shall read as follows:

THIRTEENTH: The Corporation shall not have members.

- V. Paragraph FOURTEENTH is added to the Certificate of Incorporation regarding the personal liability of directors and officers to the Corporation and shall read as follows:

FOURTEENTH: Directors or officers of the Corporation shall not be personally liable to the Corporation for monetary damages because of their breach of duty as directors or officers unless such liability is based upon a judgment or other final adjudication adverse to the director or officer which establishes (i) that the acts or omissions of the director or officer were in bad faith or involved intentional misconduct or a knowing violation of the law that were material to the cause of action so adjudicated, (ii) that the director or officer personally gained in fact a financial profit or other advantage to which the director or officer was not legally entitled, or (iii) that the acts of the director or officer violated N-PCL Section 719. If the N-PCL is amended to authorize the further elimination or limitation of the liability of directors or officers, the limitation on personal liability established by this Certificate of Incorporation shall be further expanded to the fullest extent permitted by the amended N-PCL.

9. There being no members, the amendments to the Certificate of Incorporation were authorized by a vote of a majority of all members of the Board of Directors of the Corporation entitled to vote thereon at a duly called meeting of the Board of Directors on June 11, 2014.

10. The amendments to the Certificate of Incorporation were approved by the Public Health and Health Planning Council in accordance with Section 804(a)(i) of the N-PCL, and by the Office of the New York State Attorney General in accordance with Section 804(a)(ii) of the N-PCL, copies of such approvals are attached hereto. Pursuant to Section 804(a)(i) of the N-PCL, the Corporation shall provide the New York State Department of Education with notice of the filing of this Amended and Restated Certificate of Incorporation within thirty (30) days of receiving confirmation from the Department of State that this Amended and Restated Certificate of Incorporation has been accepted for filing.

11. The Certificate of Incorporation is hereby restated to set forth its entire text, as amended, as follows:

FIRST: The name of the corporation is "The Upstate Foundation, Inc." (the "Corporation").

SECOND: The Corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-for-Profit Corporation Law.

THIRD: The Corporation is a charitable corporation as defined in Section 201 of the Not-For-Profit Corporation Law (the "N-PCL"). The Corporation is not an agency of the State of New York and is not an entity of the State University of New York or the Research Foundation of the State University of New York.

FOURTH: The Corporation is formed to receive and administer gifts and bequests exclusively for charitable purposes and, except as may otherwise be restricted in a gift instrument, to distribute the same to other entities qualified under 501(c)(3) of the Internal Revenue Code of 1986 as amended (the "Code") in the central region of Upstate New York with a focus on (1) the provision of patient healthcare, (2) the education of healthcare providers, (3) community health and wellbeing, and (4) scientific research. The distributions shall in particular be oriented towards the support of those activities conducted by the State University of New York Health Science Center at Syracuse as of November 30, 2014. Notwithstanding anything to the contrary, nothing herein shall authorize the Corporation to operate, maintain or manage a

charter school, a nursery school, an elementary school, a secondary school, a college, university or to advertise or offer credit-bearing courses or degrees in New York State or to engage in or include among its purposes either directly or indirectly, any of the activities described in the N-PCL Section 404(a) through 404(v).

The Corporation shall not engage in any activities for the pecuniary profit or financial gain of its directors or officers.

FIFTH: The office of the Corporation is to be located in the County of Onondaga, State of New York.

SIXTH: The Corporation shall be operated by a Board of Directors, the number of which is to be no fewer than three nor more than thirty-five. The directors shall be elected by the Board of Directors in accordance with N-PCL Section 703.

SEVENTH: The Secretary of State is designated as an agent of the Corporation upon whom process against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him or her is: 750 E. Adams St. CAB326, Syracuse, NY 13210.

EIGHTH: Notwithstanding any other provision of this Certificate of Incorporation, the Corporation is organized exclusively for one or more of the purposes, as specified in Code Section 501(c)(3) and shall not carry on any other activities not permitted to be carried on by (a) a corporation exempt from Federal Income Tax under Code Section 501(c)(3) or (b) by a corporation, contributions to which are deductible under Code Section 170(c)(2).

NINTH: No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to its directors, officers or any other private persons, except that the Corporation shall be authorized to pay reasonable compensation for services rendered and to

make payments and distributions in furtherance of its purposes as set forth in this Certificate of Incorporation.

TENTH: No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (except as otherwise provided by Code Section 501(h)), and the Corporation shall not participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of or in opposition to any candidate for public office.

ELEVENTH: In the event of dissolution or final liquidation of the Corporation, the Board of Directors shall, after paying or making provisions for the payment of all the lawful debts and liabilities of the Corporation, distribute all the assets of the Corporation to one or more of the following categories of recipients as the Board of Directors of the Corporation shall determine:

- a) An organization which may have been created to succeed the Corporation, as long as such successor organization shall then qualify as an organization exempt from federal income taxation under Code Section 501(a) as an organization described in Code Section 501(c)(3); or
- b) if the Corporation's successor fails to qualify as an organization exempt from federal income taxation under Code Section 501(a) as an organization described in Code Section 501(c)(3) then a non-profit organization or organizations having similar aims and objectives as the Corporation and which may be selected as an appropriate recipient of such assets, as long as such organization or each of such organizations shall then qualify as an organization exempt from federal income taxation under Code Section 501(a) as an organization described in Code Section 501(c)(3).


TWELFTH: In any taxable year in which the Corporation is a private foundation as described in Code Section 509(a), the Corporation shall distribute its income for said period at such time and in such manner as not to subject it to tax under Code Section 4942; and the Corporation shall not (a) engage in any act of self dealing as defined in Code Section 4941(d); (b) retain any excess business holdings as defined in Code Section 4943(c); (c) make

any investments in such manner as to subject the corporation to tax under Code Section 4944; or
(d) make any taxable expenditures as defined in Code Section 4945(d).

THIRTEENTH: The Corporation shall not have members.

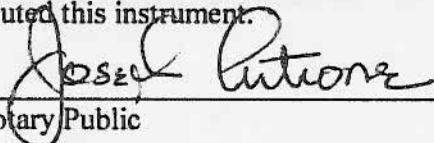
FOURTEENTH: Directors or officers of the Corporation shall not be personally liable to the Corporation for monetary damages because of their breach of duty as directors or officers unless such liability is based upon a judgment or other final adjudication adverse to the director or officer which establishes (i) that the acts or omissions of the director or officer were in bad faith or involved intentional misconduct or a knowing violation of the law that were material to the cause of action so adjudicated, (ii) that the director or officer personally gained in fact a financial profit or other advantage to which the director or officer was not legally entitled, or (iii) that the acts of the director or officer violated N-PCL Section 719. If the N-PCL is amended to authorize the further elimination or limitation of the liability of directors or officers, the limitation on personal liability established by this Certificate of Incorporation shall be further expanded to the fullest extent permitted by the amended N-PCL.

IN WITNESS WHEREOF, the undersigned has made and signed this certificate this 3 day of November, 2014 and affirms that the statements contained therein are true under penalty of perjury.


Name: Paul P. Mello
Title: Chair

STATE OF NEW YORK)
) ss.:
COUNTY OF ONONDAGA)

On the 3RD day of NOVEMBER in the year 2014 before me, the undersigned, a notary public in and for said State, personally appeared PAUL MELLO, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed this instrument.



Notary Public

JOSEPH M. CUTRONE
Notary Public, State of New York
Qual. in Onond. Co. No. 170557
My Commission Expires July 20, 15.

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RESTATED CERTIFICATE OF INCORPORATION

OF

THE HEALTH SCIENCE CENTER FOUNDATION AT SYRACUSE, INC.

Under Section 805 of the Not-for-Profit Corporation Law

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DRAWDOWN ACCOUNT #42
BS&K BOX #92

Customer Reference No. 343359

Filed by: Scott Leuenberger, Esq.
Bond, Schoeneck & King, PLLC
One Lincoln Center
Syracuse, NY 13202
Ph: (315) 218-8393

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 4th day of December, 2014, approves the filing of the Restated Certificate of Incorporation of The Health Science Center Foundation at Syracuse, Inc., dated November 3, 2014.

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Agincare Homecare Services, Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 2191-L

Description of Project:

Agincare Homecare Services, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock, which are owned as follows: Lan Chen owns 20 Shares and Yong Hong Xie owns 20 Shares. The remaining 160 shares are unissued.

The Board of Directors of Agincare Homecare Services, Inc. comprises the following individuals:

Lan Chen – President
Operation Director, Confucius Social Day Care Center

Yong Hong Xie, RN, Acupuncturist – Vice President
Nursing Director, JS Homecare Agency of NY

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 professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 844 50th Street, Apt. 1A, Brooklyn, New York 11220:

Bronx	Kings	Queens
New York	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech-Language Pathology
Medical Social Services	Nutrition	

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: October 21, 2014

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: September 12, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Anderson Care, LLC d/b/a Home Helpers/Direct Link
Address: Albany
County: Albany
Structure: Limited Liability Company
Application Number: 2236-L

Description of Project:

Anderson Care, LLC d/b/a Home Helpers/Direct Link, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Anderson Care, LLC has proposed to operate as a Franchisee of H. H. Franchising Systems, Inc.

The sole member of Anderson Care, LLC d/b/a Home Helpers/Direct Link comprises the following individual:

James Anderson, 100%
CEO/Administrator, Anderson Care, LLC d/b/a Home Helpers/Direct Link (Companion Care)

The individual named above completed the Home Helpers Franchise Management Training Program in August of 2012 and was given Franchise #58674.

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant disclosed that he was convicted of Criminal Sale of a Controlled Substance, 3rd Degree, a Class B Felony, in October 1988 in Bronx, New York before Justice L. Safer-Espinoza. Pursuant to Correction Law § 753, the Department's recommendation takes into account:

- The public policy of this state to encourage the licensure and employment of persons previously convicted of one or more criminal offenses, as expressed in Correction Law Article 23-A
- The specific duties and responsibilities necessarily related to the license sought by the applicant and the bearing this criminal conviction will have on his fitness or ability to perform such duties or responsibilities.
- The fact that the criminal offense for which the applicant was convicted took place 16 years ago, when the applicant was 17 years of age.
- The seriousness of the offense, Class B Felony.
- Any information produced by the person, or produced on his behalf, in regards to his rehabilitation and good conduct.
- The Department's interest in protecting property, and the safety and welfare of patients.

The applicant proposes to serve the residents of the following counties from an office located at 110 Wellington Avenue, Albany, New York 12203:

Albany Schenectady

The applicant proposes to provide the following health care services:

Nursing Personal Care Housekeeper Homemaker

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: October 9, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Angel Home Care Agency, Inc.
Address: Staten Island
County: Richmond
Structure: For-Profit Corporation
Application Number: 2187-L

Description of Project:

Angel Home Care Agency, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock, which are owned as follows: Alla Gayan owns 100 Shares. The remaining 100 shares are unissued.

The Board of Directors of Angel Home Care Agency, Inc. comprises the following individuals:

Alla Gayan, RN, President/Secretary/CEO
Phlebotomy Technician
Administrative RN, S & A Unified Home Care, Inc.

Yuliya Gayan, Treasurer/COO
Business Analyst, Healthfirst, Inc.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the licenses of the health care professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 42 Strawberry Lane, Staten Island, New York 10312:

Kings	New York	Bronx
Richmond	Queens	

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Homemaker	Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: October 30, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Angel's Touch Home Care, LLC
Address: Brooklyn
County: Kings
Structure: Limited Liability Company
Application Number: 2174-L

Description of Project:

Angel's Touch Home Care, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The sole member of Angel's Touch Home Care, LLC is:

Elena Fishman – 100%
NYS Licensed Real Estate Broker
Human Resources Manager/HPN Coordinator/Compliance Officer, All American Homecare Agency

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Department of State, Division of Licensing Services indicates no issues with the license of the professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 950 East 14th Street, #3C, Brooklyn, New York 11230:

Kings	Queens	New York
Richmond	Bronx	Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory 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: October 2, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Axzons Health System Corporation
Address: Garden City
County: Nassau
Structure: For-Profit Corporation
Application Number: 2252-L

Description of Project:

Axzons Health System Corporation, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned solely by Sandeep Kalra.

The Board of Directors of Axzons Health System Corporation is comprised of the following individual:

Sandeep Kalra, MD, Director
Axzons Health System Corporation
Medical Doctor, licensed in India

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 38 Grove Street, Garden City, NY 11530:

Nassau Westchester Suffolk Queens

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Respiratory Therapy	Occupational Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: October 30, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Compassionate Home Health Care, LLC
Address: Bronx
County: Bronx
Structure: Limited Liability Company
Application Number: 2060-L

Description of Project:

Compassionate Home Health Care, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Compassionate Home Health Care, LLC is comprised of the following members:

Thanh Nguyen, RN, Manager, 70%
Dialysis Position, Davita (Boston Post Road Dialysis Center)

Alejandrei Siron, RN, 30%
RN, Absolute 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 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 to be located in Bronx County.

New York	Kings	Queens
Bronx	Richmond	Westchester

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: October 24, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Customize Care, LLC
Address: Bronx
County: Bronx
Structure: Limited Liability Company
Application Number: 2257-L

Description of Project:

Customize Care, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The sole member of Customize Care, LLC is:

Jeffrey A. Morris -100%
President, Customize Care, LLC (companion care)
Attorney, retired

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 600 West 239th Street, Suite 2M, Bronx, New York 10463:

Bronx	Kings	New York
Queens	Richmond	Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	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.

A Certificate of Good Standing has been received for the attorney.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: October 30, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Eva Homecare Agency, Inc.
Address: Forest Hills
County: Queens
Structure: For-Profit Corporation
Application Number: 2164-L

Description of Project:

Eva Homecare Agency, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock, which are owned solely by Yijia (Eva) Zhang.

The Board of Directors of Eva Homecare Agency, Inc. comprises the following individual:

Yijia (Eva) Zhang, RDMS, RVT
Sonographer, Vascular Tech, Sinai North Shore Medical Center

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 104-70 Queens Boulevard, Suite 503, Forest Hills, New York 11375:

Bronx	Kings	New York
Queens	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Medical Social Services	Nutrition
Medical Supplies, Equipment and Appliances		

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: September 23, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: First Baana Corp.
Address: New York
County: New York
Structure: For-Profit Corporation
Application Number: 2230-L

Description of Project:

First Baana Corp., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares, which are owned solely by Sue Monroe.

The Board of Directors of First Baana Corp. comprises the following individuals:

Sue Monroe, MA
Health Care Consultant, AZA Group, Inc. (2011 – Present)
Instructor of Science and Allied Health Care, Hunter High School (2001 – Present)

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 185 Avenue C, #6F, New York, New York 10009:

New York	Kings	Queens
Bronx	Richmond	Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: October 28, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Fun & Fit, LLC d/b/a Home Instead Senior Care
Address: White Plains
County: Westchester
Structure: Limited Liability Company
Application Number: 2232-L

Description of Project:

Fun & Fit, LLC d/b/a Home Instead Senior Care, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Fun & Fit, LLC has proposed to operate as a Franchisee of Home Instead Senior Care.

The managing members of Fit & Fun, LLC are:

Brian Trainor – 50%
President, Home Instead Senior Care (Companion Care Agency)

Tina Trainor – 50%
Educator, Yorktown Central Schools
Member, Home Instead Senior Care (Companion Care Agency)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The New York State Education Department indicates no issues with the teaching professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 77 Tarrytown Road, White Plains, New York 10607:

Westchester	Putnam	Dutchess	Bronx
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The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical 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: October 21, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Janette Homecare of NY, Inc.
Address: Kew Gardens
County: Queens
Structure: For-Profit Corporation
Application Number: 2189-L

Description of Project:

Janette Homecare of NY, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock, which are solely owned by Kaveh Askari.

The Board of Directors of Janette Homecare of NY, Inc., comprises the following individual:

Kaveh Askari, RPh, President
Pharmacist, Manhasset Park Drug

Affiliations:

Manhasset Park Drug (1997-present)
Sina Drug Corp d/b/a Onco360 (2002 - 2014)

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

Kaveh Askari is currently licensed as a Pharmacist in the States of New York, Louisiana, Tennessee, Maryland, Massachusetts, Nebraska and Mississippi.

The Office of the Professions of the State of New York Education Department entered a violation against Kaveh Askari's professional license. A settlement in the amount of five hundred dollars (\$500.00) was issued in March of 2009, for violations of NYS Education Law Section 6509(9) – Definitions of Professional Misconduct and 8 NYCRR 29.7(a)(17)(i) – Holding for sale, offering for sale or selling any drug after the expiration date.

The State of Nebraska issued an Assurance of Compliance regarding the license of the health care professional associated with this application for not promptly reporting the New York State settlement. It is indicated that this Assurance of Compliance is not considered disciplinary action against the health care professional's license to practice pharmacy.

The States of Louisiana, Tennessee, Maryland, Massachusetts and Mississippi indicated no issues with the license of the health care professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 119-40 Metropolitan Avenue, Suite 108, Kew Gardens, New York 11415:

New York	Kings	Queens
Bronx	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper
Medical Supplies and Equipment		

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: October 24, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Long Beach Home Care Services, Inc.
Address: Queens
County: Queens
Structure: For-Profit Corporation
Application Number: 2087-L

Description of Project:

Long Beach Home Care Services, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Long Beach Home Care Services, Inc. has authorized 200 shares of stock which are owned as follows:

Adinah Rubin, RN – 200 Shares

The proposed sole Board Member of Long Beach Home Care Services, Inc., comprises the following individual:

Adinah Rubin, RN – CEO
Nurse Care Manager, Centerlight Healthcare

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 licensure of the health professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located in Queens County:

Bronx	New York	Kings	Queens
Richmond	Nassau		

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Social Services
Physical Therapy	Occupational Therapy	Nutrition	Speech-Language Pathology
Respiratory Therapy	Housekeeper	Homemaker	

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: October 24, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Safe and Prudent, LLC
Address: Brooklyn
County: Kings
Structure: Limited Liability Company
Application Number: 2182-L

Description of Project:

Safe and Prudent, 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 sole member of Safe and Prudent, LLC is:

Dr. Thomas Steinmetz – 100%
Optometrist – Private Practice

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.

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 the proceeding with the proposal is appropriate.

The applicant proposes to serve the residents of the following counties from an office located at 1320 52nd Street, Brooklyn, New York 11219:

New York	Kings	Queens
Bronx	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: September 23, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: SHARE of New Square, Inc.
Address: Spring Valley
County: Rockland
Structure: Not-For-Profit Corporation
Application Number: 2208-L

Description of Project:

SHARE of New Square, Inc., a not-for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The Board of Directors of SHARE of New Square, Inc. is comprised of the following individuals:

Jacob Goldmunzer, EMT, President
Self Employed, Residential Real Estate Appraiser

Aaron Grunwald, Treasurer
Bakery Manager, Ostreicher's Bakery

Samson Gluck, Secretary
Insurance Broker, Gluck Insurance Agency

Pinchas Braun, Member
Real Estate Investment/Management, Green View Estates, Inc.

Isaac Breuer, Member
Owner, Fax Unlimited

Yitzchok Fischer, Member
Student Advisor, Avir Yaakov School

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 Emergency Medical Services indicates no issues with the licensure of the EMT associated with this application. Certified Paramedic (EMT) 250347 with the expiration date of 8/31/2016. Has been a Certified Paramedic (EMT) since 1999.

The applicant proposes to serve the residents of the following counties from an office located at 286 North Main Street, Spring Valley, New York 10977:

Rockland	Westchester	Orange
Sullivan	Dutchess	Ulster
Putnam	Bronx	

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	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: October 28, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Skilled Home Care Services of New York, LLC d/b/a Skilled Home Care Services of New York
Address: Rego Park
County: Queens
Structure: Limited Liability Company
Application Number: 2159-L

Description of Project:

Skilled Home Care Services of New York, LLC d/b/a Skilled Home Care Services of New York, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The sole member of Skilled Home Care Services of New York, LLC is:

Omofolarin Kasumu, 100%
Interim Administrator/Assistant Administrator, Marathon Healthcare

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 92-29 Queens Boulevard, Suite 18D, Rego Park, New York 11374:

Bronx	Kings	New York
Queens	Richmond	Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: October 21, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Supreme Generation, Inc
Address: Flushing
County: Queens
Structure: For-Profit
Application Number: 1728-L

Description of Project:

Supreme Generation, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Supreme Generation, Inc. has authorized 200 shares of stock which are owned as follows:

Boris P. Gulkarov – 180 Shares Lyudmila Gulkarova, RN – 20 Shares

The proposed Board Members of Supreme Generation, Inc. is comprised of the following individuals:

Boris P. Gulkarov – President/Director Lyudmila Gulkarova, RN - Director
President/Wholesaler Jewelry, Aqua Techno, Inc. Registered Nurse – Nursing Supervisor, Hillside
Manor Rehabilitation and Extended Care Center

The Office of the Professions of the State Education Department indicate no issues with the licensure of Lyudmila Gulkarova as a Registered Nurse.

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 147-66 77th Avenue, Flushing, New York 11367:

Bronx Kings New York Richmond
Queens

The applicant proposes to provide the following health care services:

Nursing Home Health Aide Personal Care Housekeeper

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: October 9, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: The Heinlein Group, Inc. d/b/a Synergy HomeCare of Westchester
Address: Hastings on Hudson
County: Westchester
Structure: Proprietary Corporation
Application Number: 2183-L

Description of Project:

The Heinlein Group, Inc. d/b/a Synergy HomeCare of Westchester, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The Heinlein Group, Inc. d/b/a Synergy HomeCare of Westchester has proposed to operate as a Franchisee of SYNERGY Home Care. The proposed operator and managing member of Synergy HomeCare of Westchester will be Joseph Heinlein III.

The Heinlein Group, Inc. has authorized 200 shares of stock which are owned as follows:

Joseph Heinlein III - 180 Shares Owner/The Heinlein Group, Inc. Sales-Director of Global Foreign Exchange/Bank of America Merrill Lynch	Stacey Levine-Silverman, RN - 20 Shares RN-Director of Nursing/Synergy Home Care of Westchester RN/Synergy Home Care of Manhattan Management/Greenwich Woods Health Care Center
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The Board of Directors of The Heinlein Group, Inc. is comprised of the following individual:

Joseph Heinlein III - President
(Previously Disclosed)

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 and the Office of Professional Medical Conduct, where appropriate, indicates no issue with the license of the medical professional associated with this application.

The applicant proposes to serve the residents in the following counties from an office located at 52 Main Street, Hastings on Hudson, NY 10706

Westchester

Bronx

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical 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: September 24, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Visiting Nurse Service Care at Home, Inc.
 Address: Schenectady
 County: Schenectady
 Structure: Not-For-Profit Corporation
 Application Number: 2197-L

Description of Project:

Visiting Nurse Service Care at Home, Inc., a not-for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. The sole corporate member of Visiting Nurse Service Care at Home, Inc. is Visiting Nurse Service Association of Schenectady County, Inc. d/b/a Visiting Nurse Service of Northeastern New York, a not-for-profit corporation that currently operates a certified home health agency and a long term home health care program.

The Board of Directors of Visiting Nurse Service Care at Home, Inc. and Visiting Nurse Service of Schenectady County, Inc. d/b/a Visiting Nurse Service of Northeastern New York comprise the following individuals:

Paul A. Milton, Chairman COO/Executive VP, Ellis Hospital	Marc D. Mesick, CPA, Treasurer VP Finance/CFO, Ellis Hospital
Stephanie L. Scuderi, RN, Secretary Grant Specialist, Schenectady County Public Health Service	Joanne R. Cocozzoli, RN Interim Director of Prevention & Pt. Services, Schenectady County Public Health Service
James R. Barnes, Esq. Attorney, Burke & Casserly, PC	Joseph Gambino CEO, Home Town Health Center
James W. Connolly President/CEO, Ellis Hospital	David S. Pratt, MD Medical Director, Visiting Nurse Service of Northeastern New York
William J. Mather, Sr. CFO, HMS Agency, Inc.	Michael F. Saccocio Executive Director/CEO, City Mission of Schenectady
Wendy Rosher VP Service Lines & Physician Relations, Ellis Hospital	Joseph D. Twardy, Ex Officio Member President/CEO, Visiting Nurse Service of Northeastern New York
Debra L. Schimpf Executive Director, Schenectady Community Action Program, Inc.	

Ellis Hospital, Inc. d/b/a Ellis Medicine is the sole corporate member of Visiting Nurse Service Association of Schenectady County, Inc. d/b/a Visiting Nurse Service of Northeastern New York. The members of the Board of Trustees of Ellis Hospital, Inc. d/b/a Ellis Medicine comprise the following individuals:

Deborah G. Mullaney, Chair Retired	Stephen Pagano, Vice Chair Retired
Laura Schweitzer, Ph.D., Secretary President, Union Graduate College	William B. Faubion, Treasurer VP, NBT Bank
Linda S. Breault Payroll & Accounts Payable, Breault & McGovern, DDS, PC	Cristine Cioffi, Esq. President, Cioffi, Slezak & Wildgrube, PC
Michael W. Cocca, CPA Assistant Treasurer, Stewart's Shops Corp.	Janet Colon Sapio-Mayta, LMSW Director of Bureau of Interagency Coordination, NYS Council on Children & Families
James W. Connolly Disclosed above	Thomas W. Donovan, CPA Director of Tax Services, Marvin & Co.
D. Joseph Gersuk Retired	Michael S. Idelchik VP Advanced Technology, GE Global Research
Carolyn M. Jones Publisher, The Business Review	Robert A. Joy, MD Physician, Cardiology Associates of Schenectady
Patrick L. Kehoe, Esq. Partner, Allen & Desnoyers, LLP	Robert J. Kennedy, MD Kennedy Ophthalmology Association, PLLC
Brian A. McDonald, MD Physician, Schenectady Pulmonary and Critical Care Associates	Judith B. McIlduff Retired
Sarah J. Schermerhorn Retired	Raymond D. Sweeney Retired
John K. Tobison COO, Chequed.com	Richard Toll, MD Partner, Capital Care Medical Group
Barbara Zittel, RN, Ph.D. Retired	

The applicant proposes to serve the residents of the following counties from an office located at 108 Erie Boulevard, Schenectady, New York 12305

Albany	Clinton	Essex	Franklin	Fulton
Montgomery	Rensselaer	Saratoga	Schenectady	Schoharie
Warren	Washington			

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	Nutrition	Medical Social Services
Homemaker	Housekeeper	Medical Supplies/Equipment & Appliances

The applicant assessed the proposed financial/referral structure in light of anti-kickback and self-referral laws and with the consultation of legal counsel concluded that proceeding with the proposal is appropriate.

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 licenses of the medical professionals associated with this application.

A Certificate of Good Standing has been received for all attorneys.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A seven (7) year review of the operations of the following facilities/agencies was performed as part of this review (unless otherwise noted):

Visiting Nurse Service of Northeastern New York (CHHA and LTHHCP)
Ellis Hospital (Hospital)
Ellis Residential and Rehabilitation Center (RHCF)

The Bureau of Quality Assurance for Nursing Homes has provided the following enforcement information on Ellis Residential and Rehabilitation Center:

Ellis Residential and Rehabilitation Center was fined fourteen thousand dollars (\$14,000.00) pursuant to a stipulation and order dated December 4, 2009 for surveillance findings of October 24, 2008. Deficiencies were found under 10 NYCRR 415.12 Quality of Care, 415.12(m)(2) Quality of Care: Medication Errors and 415.27 Quality Assessment and Assurance.

The Information provided by the Bureau of Quality Assurance for Nursing Homes has indicated that the residential health care facility reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Home and Community Based Services has indicated that the home care agency has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Hospitals and Diagnostic & Treatment Centers has indicated that the hospital 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: October 27, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Golden Eagle Homecare Agency, Inc.
Address: Flushing
County: Queens
Structure: For-Profit Corporation
Application Number: 2055-L

Description of Project:

Golden Eagle Homecare Agency, Inc., a business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Advocare, Inc. was previously approved as a home care services agency by the Public Health Council at its October 22, 1999 meeting and subsequently licensed as 0769L001. At that time, Jeanne Towers was the sole stockholder of the corporation.

The applicant has authorized 200 shares of stock, which are owned as follows:

Yacun Huang – 100 Shares

Jian Yuan Yang – 100 Shares

The Board of Directors of Golden Eagle Homecare Agency, Inc. comprises the following individuals:

Yacun Huang – President
Owner/Operator, New York Senior Care In the Valley, LLC

Jian Yuan Yang – Vice President
Owner/Operator, New York Senior Care In the Valley, LLC

Affiliations:

- New York Seniorcare in the Valley, LLC d/b/a Valley Vista Adult Home and Assisted Living Program (2007 – Present)
- New York SeniorCare in the Valley, LLC Valley d/b/a Vista Home Care Agency (2007 – Present)

Affiliations:

- New York Seniorcare in the Valley, LLC d/b/a Valley Vista Adult Home and Assisted Living Program (2007 – Present)
- New York SeniorCare in the Valley, LLC Valley d/b/a Vista Home Care Agency (2007 – Present)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

Advocare, Inc. proposed to enter into a management agreement with Golden Eagle Homecare Agency, Inc. which is currently under review by the Department of Health.

The applicant proposes to serve the residents of the following counties from an office located 37-12 Prince Street, 1st Floor, Flushing, New York 11354:

Bronx
Queens

Kings
Nassau

New York

Richmond

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Supplies, Equipment & Appliances
Physical Therapy	Occupational Therapy	Respiratory Therapy	Speech-Language Pathology
Nutrition	Medical Social Services		

A review of the operations of the following facilities was performed as part of this review:

- New York Senior Care in the Valley, LLC dba Valley Vista Adult Home and Assisted Living Program: 2007 – Present
- New York SeniorCare in the Valley, LLC dba Valley Vista Home Care Agency (LHCSA): 2007 – Present

Valley Vista Adult Home & Assisted Living Program was fined three thousand dollars (\$3,000.00) pursuant to a stipulation and order dated May 30, 2012 for surveillance findings of January 15, 2009, May 5, 2009, October 28, 2009, March 19, 2010, October 6, 2010 and March 8, 2011. Deficiencies were found under 18 NYCRR Part 487.11(k)(1-3): Environmental Standards.

The information provided by the Division of Adult Care Facility and Assisted Living Surveillance 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: October 24, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: JS Homecare Agency of NY, Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 2391-L

Description of Project:

JS Homecare Agency of NY, Inc., a business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

JS Homecare Agency of NY, Inc. was previously approved as a home care services agency by the Public Health and Health Planning Council at its April 5, 2012 meeting and subsequently licensed 1906L001. At that time the sole shareholder was Janette Shtaynberg – 200 shares. Since obtaining licensure, Janette Shtaynberg sold 19.8 shares (9.90%) of her stock to Lan Chen.

The applicant has authorized 200 shares of stock, which are owned as follows:

Kay Kun Yi Zeng – 80 Shares
Yong Hong Xie – 60 Shares
Lan Chen – 60 Shares

The proposed Board of Directors of JS Homecare Agency of NY, Inc. is comprised of the following individuals:

Kay Kun Yi Zeng – Vice-President & Treasurer
Case Manager, JS Homecare Agency of NY
Yong Hong Xie, RN – Secretary
Nurse Director, JS Homecare Agency of NY
Lan Chen – President
Administrator, JS Homecare Agency of NY

Affiliations:

- Shareholder, JS Homecare Agency of NY
(12/2012 - present)

The Office of the Professions of the State Education Department indicates no issues with the licensure of Yong Hong Xie as a Registered Nurse.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A review JS Homecare Agency of NY, Inc. (12/12-present) was conducted as part of this review.

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The applicant proposes to serve the residents of the following counties from an office located at 4318 8th Avenue, Brooklyn, New York 10538.

Bronx	Kings	New York	Queens
Richmond	Nassau		

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Social Services
Occupational Therapy	Physical Therapy	Nutrition	Speech-Language Pathology
Homemaker	Housekeeper		

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: October 28, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Premier Home Health Care Services, Inc.
Address: White Plains
County: Westchester
Structure: For Profit Corporation
Application Number: 2127-L

Description of Project:

Premier Home Health Care Services, Inc., a business corporation, requests approval to acquire Girling Health Care Services, Inc., a licensed home care services agency, under Article 36 of the Public Health Law.

Girling Health Care Services, Inc. was previously approved as a home care services agency by the Public Health Council at its September 18, 1987 meeting and subsequently licensed as 0134L001.

Premier Home Health Care Services, Inc. has out-of-state home health care subsidiaries in the following states: North Carolina, New Jersey, Florida, Massachusetts, Connecticut, Ohio and Illinois.

The proposed shareholders and members of the Board of Directors of Premier Home Health Care Services, Inc. are the following:

Arthur Schwabe, 100 shares President & Chief Executive Officer Premier Home Health Care Services, Inc.	Paul Schwabe, 100 shares Vice President, Secretary & Treasurer Premier Home Health Care Services, Inc.
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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 9802 Fifth Avenue, Brooklyn, New York 11209:

Kings New York	Queens Richmond	Bronx
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The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	Speech Language Pathology
Physical Therapy	Occupational Therapy	

A seven (7) year review of the operations of the following agencies was performed as part of this review (unless otherwise noted):

Premier Home Health Care Services, Inc. (NY)
Priority Home Care, Inc. (NY)
Barele, Inc. d/b/a Omega Home Health Services (NY) (2011 – present)
At Home, Ltd. (NY) (2011 – present)
Premier Home Health Care Services, Inc. (CT)
Premier Home Health Care Services, Inc. (IL) (2011 – present)
Premier Home Care of Florida, Inc. d/b/a A Better Health Care (FL)

Premier Home Health Care Services, Inc. (MA)
Premier Home Health Care Services, Inc. (NC) (2008 – present)
Premier Home Health Care Services, Inc. (NJ)
Premier Home Health Care of Ohio (OH)

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 patients and to prevent recurrent code violations.

The information provided by the States of North Carolina, Connecticut, Illinois, New Jersey, Massachusetts, and Florida indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The State of Ohio did not respond to requests for a compliance history of the homecare agency located in that state.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: October 29, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Premier Home Health Care Services, Inc.
Address: White Plains
County: Westchester
Structure: For Profit Corporation
Application Number: 2256-L

Description of Project:

Premier Home Health Care Services, Inc., a business corporation, requests approval to acquire PHC Services, Ltd., a licensed home care services agency, under Article 36 of the Public Health Law.

PHC Services, Ltd. was previously approved as a home care services agency by the Public Health Council at its February 26, 1993 meeting and subsequently licensed as 9350L001 at the Yonkers location, 9350L003 at the Hempstead location, 9350L004 at the Bronx location and 9350L005 at the Brooklyn location. Premier Home Health Care Services, Inc. proposes to operate out of the current PHC Services, Ltd. office located in Yonkers, but will consolidate the offices in located in Hempstead, Bronx and Brooklyn into existing Premier offices in the service region.

Premier Home Health Care Services, Inc. has out-of-state home health care subsidiaries in the following states: North Carolina, New Jersey, Florida, Massachusetts, Connecticut, Ohio and Illinois.

The proposed shareholders and members of the Board of Directors of Premier Home Health Care Services, Inc. are the following:

Arthur Schwabe, 100 shares President & Chief Executive Officer Premier Home Health Care Services, Inc.	Paul Schwabe, 100 shares Vice President, Secretary & Treasurer Premier Home Health Care Services, Inc.
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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 One Executive Boulevard, Yonkers, New York 10701:

Westchester	Putnam	Rockland	Bronx
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The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech Language Pathology
Respiratory Therapy	Medical Social Services	Nutrition
Homemaker	Housekeeper	

A seven (7) year review of the operations of the following agencies was performed as part of this review (unless otherwise noted):

Premier Home Health Care Services, Inc. (NY)
Priority Home Care, Inc. (NY)
Barele, Inc. d/b/a Omega Home Health Services (NY) (2011 – present)

At Home, Ltd. (NY) (2011 – present)
Premier Home Health Care Services, Inc. (CT)
Premier Home Health Care Services, Inc. (IL) (2011 – present)
Premier Home Care of Florida, Inc. d/b/a A Better Health Care (FL)
Premier Home Health Care Services, Inc. (MA)
Premier Home Health Care Services, Inc. (NC) (2008 – present)
Premier Home Health Care Services, Inc. (NJ)
Premier Home Health Care of Ohio (OH)

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 patients and to prevent recurrent code violations.

The information provided by the States of North Carolina, Connecticut, Illinois, New Jersey, Massachusetts, and Florida indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The State of Ohio did not respond to requests for a compliance history of the homecare agency located in that state.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: October 29, 2014

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 4th day of December, 2014, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

<u>NUMBER:</u>	<u>FACILITY:</u>
2162L	24/7 Homecare Agency of NY, Inc. (Bronx, Queens, Kings, Richmond, New York and Nassau Counties)
2172L	Able Body Homecare Agency of NY, Inc. (Bronx, Kings, New York, Richmond, Queens and Westchester Counties)
2191L	Agincare Homecare Services, Inc. (Bronx, New York, Kings, Richmond, Queens, and Nassau Counties)
2161L	Allied Partners Home Care, LLC (Nassau and Queens Counties)

2236L Anderson Care, LLC d/b/a Home Helpers/Direct Link
(Albany and Schenectady Counties)

2187L Angel Home Care Agency, Inc.
(Kings, Richmond, New York, Queens, and Bronx
Counties)

2174L Angel's Touch Home Care, LLC
(Kings, Richmond, Queens, Bronx, New York and
Westchester Counties)

2252L Axzons Health System Corporation
(Nassau, Westchester, Suffolk and Queens Counties)

2226L Beech Development Corp.
d/b/a ComForcare Senior Services – Rochester East
(Monroe, Livingston, Ontario and Wayne Counties)

2207L Blissful Healthcare, Inc.
(Bronx, New York, Kings, Richmond and Queens
Counties)

2060L Compassionate Home Health Care, LLC
(New York, Bronx, Kings, Richmond, Queens, and
Westchester Counties)

2257L Customize Care, LLC
(Bronx, Queens, Kings, Richmond, New York and
Westchester Counties)

2164L Eva Homecare Agency, Inc.
(Bronx, Queens, Kings, Richmond, New York and
Nassau Counties)

2230L First Baana Corp.
(New York, Bronx, Kings, Richmond, Queens and
Westchester Counties)

2232L Fun & Fit, LLC d/b/a Home Instead Senior Care
(Westchester, Putnam, Dutchess and Bronx Counties)

2189L Janette Homecare of NY, Inc.
(New York, Bronx, Kings, Richmond, Queens and
Nassau Counties)

- 2087L Long Beach Home Care Services, Inc.
(Bronx, Richmond, New York, Nassau, Kings, and
Queens Counties)
- 2241L New York Congregational Licensed Home Care
Services Agency, Inc.
(Bronx, Queens, Kings, Richmond, New York and
Nassau Counties)
- 2182L Safe and Prudent, LLC
(New York, Bronx, Kings, Richmond, Queens, and
Nassau Counties)
- 2201L SafeCare Home Care Agency, Inc.
(Nassau, Suffolk and Queens Counties)
- 2208L SHARE of New Square, Inc.
(Rockland, Sullivan, Putnam, Westchester, Dutchess,
Bronx, Orange and Ulster Counties)
- 2159L Skilled Home Care Services of New York, LLC
d/b/a Skilled Home Care Services of New York
(Bronx, Queens, Kings, Richmond, New York and
Westchester Counties)
- 1728L Supreme Generation, Inc.
(Bronx, Queens, Kings, New York and Richmond
Counties)
- 2183L The Heinlein Group, Inc.
d/b/a Synergy HomeCare of Westchester
(Westchester and Bronx Counties)
- 2197L Visiting Nurse Service Care at Home, Inc.
(Albany, Montgomery, Warren, Clinton, Rensselaer,
Washington, Essex, Saratoga, Franklin, Schenectady,
Fulton and Schoharie Counties)
- 2316L Rehekah Rehab Licensed Home Care Services Agency,
Inc.
(Bronx County)
- 2449L The Gardens by Morningstar, LLC
(Oswego, Onondaga and Cayuga Counties)

- 2055L Golden Eagle Homecare Agency, Inc.
(Bronx, Queens, Kings, Nassau, New York, and
Richmond Counties)
- 2391L JS Homecare Agency of NY, Inc.
(Bronx, Richmond, Kings, Nassau, New York and
Queens Counties)
- 2211L UCSL, LLC d/b/a focus Home Care of Central New
York
(Herkimer, Oswego, Lewis, Oneida, Madison, and
Onondaga Counties)
- 2127L Premier Home Health Care Services, Inc.
(Kings, New York, Queens, Richmond, and Bronx
Counties)
- 2256L Premier Home Health Care Services, Inc.
(Westchester, Putnam, Rockland, and Bronx Counties)
- 2331 L Shire Senior Living LLC
(Monroe, Ontario, Schuyler, Yates, Chemung, Wayne,
Seneca, Livingston, Genesee, and Steuben Counties)



Public Health and Health Planning Council

Project # 142108-E
Long Island Jewish Medical Center

Program: Hospital
Purpose: Establishment

County: Queens
Acknowledged: September 11, 2014

Executive Summary

Description

Long Island Jewish Medical Center (LIJMC), a 1,025-bed not-for-profit acute care facility, requests approval to become the operator of two hospitals through mergers: Forest Hills Hospital, a 312 bed not-for-profit acute care facility in Queens County and Franklin Hospital, a 305 bed not-for-profit acute care facility in Nassau County. Franklin includes a Residential Health Care Facility (RHCF) known as North Shore-LIJ Orzac Center for Rehabilitation, a 120 bed RHCF also located in Nassau County. Both hospitals will become divisions of LIJMC. The Franklin Hospital Certified Home Health Agency is not a part of this application, as it is being closed and the license transferred to another entity under CON 142068.

LIJMC expects that the proposed mergers with Forest Hills and Franklin hospitals will result in savings and efficiencies that will enable the two facilities to remain financially viable and to serve their communities more effectively. Expected benefits include;

Cost Savings

- Reduction in management and administrative costs due to right sizing span of control.
- Improved utilization of resources through standardization of processes across the hospitals and elimination of duplicative costs.
- Integration into a single EMR, as well as a single registration and scheduling system, resulting in several back-end efficiencies in managing IT systems for three separate hospitals.

Additional Benefits

- Facilitate the coordination and the quality of care

provided in this region.

- Ensure flexibility in delivering the most appropriate level of care to patients within the North Shore – LIJ Health System’s Queens and Southwest Nassau regions.
- Streamline administrative oversight resulting in a positive impact to the communities served as measured through quality, efficiency, and patient experience scores.
- A single integrated medical staff across the campuses will improve the timeliness of provider communication, increase the integration of best clinical practices, and provide greater ability for physicians to refer and follow patients across the care continuum, regardless of which facility patients choose.

North Shore Long Island Jewish Health Care, Inc. is the active parent/co-operator of LIJMC. Franklin and Forest Hills are already members of the North Shore-Long Island Jewish Health System, Inc. (NS-LIJ), a comprehensive integrated delivery system formed to ensure the delivery of a broad range of quality healthcare services to the communities it serves and to achieve economies of scale through consolidation, cooperation and joint planning among its members. Also, the Hospitals are members of the NS-LIJ Obligated Group, formed to provide its members an enhanced credit position and expanded access to capital markets

OPCHSM Recommendation
Contingent Approval

Need Summary

This project will not change utilization, services, or beds in any of the involved facilities. They will continue to operate but as different campuses of a single article 28 facility operated by Long Island Jewish Medical Center.

There is no anticipated change in utilization rates due to this project.

Program Summary

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicants'

character and competence or standing in the community.

Financial Summary

There are no project costs associated with this application.

Budget:	Revenues:	\$1,654,476,100
	Expenses:	<u>\$1,647,440,500</u>
	Gain(Loss):	\$7,035,600

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 Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of documentation of approval by the Office of Mental Health. [PMU]
2. Submission of the executed Certificate of Merger of Forest Hills Hospital into Long Island Jewish Medical Center, acceptable to the Department. [CSL]
3. Submission of the executed Agreement of Merger between Forest Hills Hospital and Long Island Jewish Medical Center, acceptable to the Department. [CSL]
4. Submission of the executed Certificate of Merger of Franklin Hospital into Long Island Jewish Medical Center, acceptable to the Department. [CSL]
5. Submission of the executed Agreement of Merger between Franklin Hospital and Long Island Jewish Medical Center, acceptable to the Department. [CSL]
6. Submission of an executed amendment to the Certificate of Incorporation of Long Island Jewish Medical Center, acceptable to the Department. [CSL]
7. Submission of executed Certificates of Assumed Name of Long Island Jewish Medical Center, 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

December 4, 2014

Need Analysis

Background

Long Island Jewish Medical Center (LIJMC) is seeking approval to acquire through mergers two hospitals, which will become division of LIJMC. LIJMC is a 1,025-bed hospital located at 270-05 76th Ave, New Hyde Park, 11040, in Queens County. The two facilities to be acquired are Forest Hills Hospital, a 312 bed hospital at 102-01 66th Road, Forest Hills, 11375, in Queens County and Franklin Hospital, a 305 bed hospital located at 900 Franklin Ave, Valley Stream, 11580, in Nassau County. There would be no change in beds and services at these facilities as a result of this CON. Franklin Hospital includes a Residential Health Care Facility, the North Shore-LIJ Orzac Center for Rehabilitation, a 120 bed nursing home located at 900 Franklin Ave, Valley Stream 11580.

Analysis

The average Medicaid admission rate for residential healthcare facilities in Nassau County was 18.7% in 2012. The average occupancy rate for Nassau County in that year was 92.6%. Utilization and Medicaid admission rates for the Orzac Center for Rehabilitation are given below.

Year	Medicaid Admission Rate	Occupancy Rate
2010	6.1%	95.6%
2011	7.4%	96.2%
2012	4.9%	96.6%

This facility has Medicaid admission rates lower than the 75% of county-average Department standard; It is expected that the applicant will implement measures to increase Medicaid admissions going forward.

The bed charts for the involved hospitals are provided below. There will be no changes in bed counts upon completion of this project.

Bed Category	Certified Beds	Requested Action	Certified Capacity Upon Completion
Bone Marrow Transplant	4	0	4
Coronary Care	10	0	10
Intensive Care	62	0	62
Maternity	76	0	76
Medical / Surgical	435	0	435
Neonatal Continuing Care	4	0	4
Neonatal Intensive Care	24	0	24
Neonatal Intermediate Care	29	0	29
Pediatric	108	0	108
Pediatric ICU	37	0	37
Psychiatric	236	0	236
Total	1025	0	1025

Table 3: Forest Hills Hospital Bed Chart

Bed Category	Certified Beds	Requested Action	Certified Capacity Upon Completion
Intensive Care	28	0	28
Maternity	20	0	20
Medical / Surgical	251	0	251
Neonatal Continuing Care	9	0	9
Neonatal Intermediate Care	1	0	1
Pediatric	3	0	3
Total	312	0	312

Table 4: Franklin Hospital Bed Chart

Bed Category	Certified Beds	Requested Action	Certified Capacity Upon Completion
Coronary Care	8	0	8
Intensive Care	8	0	8
Medical / Surgical	248	0	248
Pediatric	20	0	20
Psychiatric	21	0	21
Total	305	0	305

Conclusion

This project will have no impact on patient access to healthcare or utilization rates. It should improve efficiencies and allow the organizations involved to more effectively deliver their services to the communities they serve in Nassau and Queens Counties.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

Long Island Jewish Medical Center (LIJMC) seeks approval to acquire through mergers Forest Hills Hospital and Franklin Hospital and certify them as divisions of LIJMC. Franklin Hospital includes a Residential Health Care Facility known as the North Shore-LIJ Orzac Center for Rehabilitation. There are no anticipated changes to hospital services provided. [Of note, the Franklin Hospital Certified Home Health Agency (PFI 3032) is being closed and the license transferred to another entity (under CON 142068) and is not part this application.]

Combining these hospitals into a single Article 28 facility will result in a single integrated medical staff across campuses that is likely to contribute to improvements in timeliness of provider communication and the sharing best practices. Further, it will provide physicians the ability to refer and follow patients across the care continuum-- regardless of which facility they chose to receive services. In time, the three facilities will integrate into a single EMR as well as a single registrations/scheduling system. Streamlined administrative oversight should contribute to a more financially stable framework through operational effectiveness and efficiencies.

A full Character and Competence Review was conducted on all members of the Long Island Jewish Medical Center board and disclosures were made as part of project CON #141004 which was approved by PHHPC in June 2014.

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

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Operating Budget

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

<u>Inpatient and Outpatient</u>	<u>Year One and Three</u>
Total Net Patient Revenue	\$1,556,640,300
Other Operating Revenue*	<u>97,835,800</u>
Total Revenue	\$1,654,476,100
 Expense:	
Operating	\$1,533,762,700
Interest	37,433,800
Depreciation	<u>76,244,000</u>
Total Expense	\$1,647,440,500
 Excess Revenue(Loss)	 \$7,035,600
 Inpatient Discharges	 83,197
Visits	524,857

*Other Operating Revenues are made up of physician practice revenues, net assets released from restrictions which are donations that offset operating expenses, capitation and grant revenues, distributions from the hemophilia consortium and cafeteria revenue.

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

<u>Inpatient</u>	<u>Year One and Three</u>
Commercial Managed Care	35.2%
Medicare-Fee-For-Service	20.5%
Medicare Managed Care	12.9%
Medicaid Managed Care	27.4%
Private Pay	4.0%
<u>Outpatient</u>	<u>Year One and Three</u>
Commercial Managed Care	33.3%
Medicare-Fee-For-Service	19.8%
Medicare Managed Care	6.2%
Medicaid Managed Care	31.7%
Private Pay	9.0%

Expenses and utilization assumptions are based on the combined historical operations of LIJMC, Franklin Hospital and Forest Hill Hospital, as well as market trends. Projected revenues and expenses exclude the Orzac Center for Rehabilitation, off-site CFAM ambulatory surgery and cancer clinics, home care and medical groups.

Capability and Feasibility

There are no project costs for this application.

The submitted budget projects a net profit for the first and third years of \$7,035,600. Management continues to focus on various initiatives such as revenue cycle improvement, supply chain savings and productivity and efficiency initiatives to counteract programmatic losses. Revenues are based on prevailing payment methodologies and current payment rates. The budget appears reasonable.

As shown on BFA Attachments B and C, for the year ending December 31, 2013, and the six-months ended June 30, 2014, LIJMC has maintained positive working capital, net asset position, and experienced net operating loss of \$2,987,000 and a net operating income of \$27,935,000, respectively. LIJMC's net loss in 2013 is due to the inclusion of the full value of certain paid time off and third party liabilities that may be resolved and paid in more than a one year period.

As shown within BFA Attachments B and C, for the year ending December 31, 2013, and the six-months ended June 30, 2014, Forest Hills and Franklin experienced negative working capital and net assets. Forest Hills had maintained positive net operating income of \$8,418,000 and \$6,006,000, respectively, and Franklin has experienced a \$3,036,000 net operating loss for the year ending December 31, 2013, and maintained a \$732,000 net operating profit as of June 30, 2014.

Management is continually working to improve net assets by managing operating expenses and investing in the facility's programs to enhance capacity. This includes:

- Strategic program growth and physician recruitment to improve volume,
- Managing overtime utilization and flexing staff levels in conjunction with volume.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Organization Chart- Current and Proposed
BFA Attachment B	2013 Financial Summary for North Shore-Long Island Jewish System Inc. and Obligated Group
BFA Attachment C	June 30, 2014 Financial Summary for North Shore-Long Island Jewish System Inc. and Obligated Group
BFA Attachment D	Pro Forma Balance Sheet- Long Island Jewish Medical Center

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 4th day of December, 2014, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Forest Hills Hospital and Franklin Hospital as divisions of the Long Island Jewish Medical Center (LIJ) and establish LIJ as the operator of Orzac Center for Extended Care and Rehabilitation , and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

142108 E

Long Island Jewish Medical Center

APPROVAL CONTINGENT UPON:

1. Submission of documentation of approval by the Office of Mental Health. [PMU]
2. Submission of the executed Certificate of Merger of Forest Hills Hospital into Long Island Jewish Medical Center, acceptable to the Department. [CSL]
3. Submission of the executed Agreement of Merger between Forest Hills Hospital and Long Island Jewish Medical Center, acceptable to the Department. [CSL]
4. Submission of the executed Certificate of Merger of Franklin Hospital into Long Island Jewish Medical Center, acceptable to the Department. [CSL]
5. Submission of the executed Agreement of Merger between Franklin Hospital and Long Island Jewish Medical Center, acceptable to the Department. [CSL]
6. Submission of an executed amendment to the Certificate of Incorporation of Long Island Jewish Medical Center, acceptable to the Department. [CSL]
7. Submission of executed Certificates of Assumed Name of Long Island Jewish Medical Center, 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]

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

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



Public Health and Health Planning Council

Project # 142105-E
Mount St Marys Hospital and Health Center

Program: Hospital
Purpose: Establishment

County: Niagara
Acknowledged: September 10, 2014

Executive Summary

Description

Catholic Health System, Inc. (CHS), a not-for-profit corporation which is currently the active parent of several licensed health care facilities and agencies in Western New York, requests approval to become the active parent/co-operator of Mount St. Mary's Hospital of Niagara Falls (Mt. St. Mary's), a 175-bed not-for-profit hospital located at 5300 Military Road (Erie County), Lewiston, NY.

Mt. St. Mary's sole corporate member is Ascension Health. Ascension Health entered into an affiliation agreement with CHS on August 18, 2014, to effectuate this CON. Upon completion of the CON CHS will replace Ascension Health as the sole corporate member and active parent.

Mt. St. Mary's is currently the sole corporate member of Our Lady of Peace, Inc. (OLP), a 250-bed freestanding not-for-profit nursing home located at 5285 Lewiston Road, Lewiston, NY, and Mount St. Mary's Child Care Center, Inc. (CCC), a not-for-profit employee daycare organization located at 5310 Military Road, Lewiston, NY. The consolidated financial statements of Mt. St. Mary's, shown as BFA Attachment C, also include the financial results of OLP and CCC.

Prior to CHS becoming the active parent of Mt. St. Mary's, Ascension Health will have OLP amend its certificate of incorporation and by-laws in order to cease Mt. St. Mary's corporate membership of OLP. Mt. St. Mary's Child Care Center, Inc. will remain with Mt. St. Mary's.

The proposed active parent/co-operator structure will allow for the following benefits and efficiencies:

- Elimination of duplicative functions by coordinating and centralizing strategic planning activities, operating and capital budgets, marketing and other administrative and management activities;
- Integration of CHS's and Mount St. Mary's quality assurance systems to improve the quality of care to the service area residents;
- Integration of the overall Western New York health care delivery system to achieve economies of scale and cost savings.

BFA Attachment B is the list of all of the licensed health care facilities and agencies operated with CHS as the active parent.

OPCHSM Recommendation Contingent Approval

Need Summary

The project will allow the health system to operate more efficiently with anticipated cost savings and improved quality of patient care through a more streamlined process.

There will not be any change in beds or services and there are no anticipated utilization changes for this project.

Program Summary

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

Financial Summary

There are no project costs associated with this application.

Budget:	Revenues	\$99,459,000
	Expenses	<u>\$98,459,000</u>
	Net Income/(Loss)	\$1,000,000

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 Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of documentation of approval by the Office of Alcohol and Substance Abuse Services. [PMU]
2. Submission of the revised executed Certificate of Incorporation and Bylaws for Our Lady of Peace, Inc. (OLP), showing that Mount St. Mary's Hospital of Niagara Falls is no longer a member of the facility. [BFA]
3. Submission of an executed restated Certificate of Incorporation for Mount St. Mary's Hospital of Niagara Falls, acceptable to the Department of Health. [BFA]
4. Submission of an Amended and Restated Bylaws of Mount St. Mary's Hospital of Niagara Falls, acceptable to the Department of Health. [BFA]
5. Submission of the executed Restated Certificate of Incorporation of Mount St. Mary's Hospital of Niagara Falls, acceptable to the Department. [CSL]
6. Submission of the finalized and adopted Amended and Restated Bylaws of Mount St. Mary's Hospital of Niagara Falls, acceptable to the Department. [CSL]
7. Submission of an executed amendment to the Certificate of Incorporation of Catholic Health System, 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

December 4, 2014

Need Analysis

Background

<u>Bed Category</u>	<u>Certified Capacity</u>
Chemical Dependence – Rehab	20
Coronary Care	6
Intensive Care	6
Maternity	10
Medical/Surgical	133
Total	175

Conclusion

There will be no change to beds or services as a result of this CON. Benefits will include the elimination of duplicate functions, improved quality of care, and cost savings.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

Catholic Health System, Inc. (CHS) is seeking approval to become the active parent/co-operator of Mount St. Mary's Hospital of Niagara Falls. CHS is an existing not-for-profit corporation that is currently the active parent of numerous licensed health care facilities and agencies in Western New York.

Approval will allow CHS to exercise active powers over Mount St. Mary's Hospital. Further, the applicant contends that the elimination of duplicative functions and efficiencies produced through the coordination and centralization of activities will result in the preservation of health care for residents in the service area. The applicant does not anticipate any change in authorized services or number or type of beds.

Character and Competence

The proposed members of the board for Catholic Health System are:

James R. Boldt - Chairman	Li Lin, PhD
John Notaro, MD - Vice-Chair	Michael Murray
William Buscaglia, Jr. - Treasurer	Sr. Patricia Prinzing, RSM
Arthur A. Russ, Jr. - Secretary	Sharon D. Randaccion
Louis Baumann, MD	David Rogers
Carlton N. Brock, Jr.	Joseph Saffire
Peggy Choong, PhD	Hugh B. Scott
Joseph D. McDonald	Sheldon K. Smith
Candace S. Johnson, PhD	Cynthia A. Zane, EdD
Kevin Keenan	Monsignor Robert E. Zapfel
Marsha Lewis, PhD	

All proposed board members were 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.

Dr. Notaro disclosed 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.

On May 22, 2008, Catholic Health System was named in a class action lawsuit seeking declaratory relief and monetary damages for alleged violation of the Fair Labor Standards Act and alleged failure to pay non-exempt employees for all hours worked and/or statutory overtime for hours worked over 40 per week, violating New York State Labor Law. Mr. McDonald disclosed that he is a defendant in this open suit.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Affiliation Agreement

Date: August 18, 2014

Affiliation Partners: Ascension Health
Catholic Health System, Inc.

Affiliation Goals:

- Recruit primary care physicians, specialists and mid-level providers to Niagara County to fill service gaps;
- Develop an effective primary and ambulatory care network strategy in Niagara County through investments and partnerships with like-minded providers;
- Expand home health services for Niagara County;
- Expand joint hospital/physician contracting through Catholic Medical Partners focusing on value based contracting, pay for performance and gain sharing;
- Develop new revenue streams through service line development and expand operational efficiencies to improve operating performance;
- Enhance marketing efforts to support: in-network utilization of services, clinical integration programs in collaboration with Catholic Medical Partners, and physician and ambulatory network strategies.

Operating Budget

The applicant has submitted operating budgets, in 2014 dollars, for the current year of operations and for years 1 and 3 subsequent to becoming the active parent/co-operator of the facility, as shown below:

<u>INPATIENT</u>	<u>Current Year</u>	<u>Year 1</u>	<u>Year 3</u>
Revenues:			
Operating	\$47,485,000	\$47,442,000	\$49,872,000
Non-Operating	\$2,321,847	\$1,820,851	\$1,315,364
Total Revenues	\$49,806,847	\$49,262,851	\$51,187,364
Expenses:			
Operating	\$42,710,408	\$45,262,294	\$47,564,680
Capital	\$1,730,033	\$1,632,229	\$1,566,361
Total Expenses	\$44,440,441	\$46,894,523	\$49,131,041
Net Inpatient Income/(Loss):	\$5,366,406	\$2,368,328	\$2,056,323

OUTPATIENT

Revenues:			
Operating	\$40,245,000	\$42,886,000	\$46,951,000
Non-Operating	<u>\$2,331,153</u>	<u>\$1,828,149</u>	<u>\$1,320,636</u>
Total Revenues	\$42,576,153	\$44,714,149	\$48,271,636
Expenses:			
Operating	\$42,881,592	\$45,443,706	\$47,755,320
Capital	<u>\$1,736,967</u>	<u>\$1,638,771</u>	<u>\$1,572,639</u>
Total Expenses	\$44,618,559	\$47,082,477	\$49,327,959
Net Outpatient Income/(Loss):	(\$2,042,406)	(\$2,368,328)	(\$1,056,323)
Total Net Income/(Loss):	\$3,324,000	\$0	\$1,000,000
Utilization (inpatient discharges)	4,894	4,750	4,680
Cost per inpatient discharge	\$9,080.60	\$9,872.53	\$10,498.09
Utilization (outpatient visits)	154,437	155,100	155,100
Cost per visit	\$288.91	\$303.56	\$318.04

Inpatient utilization by payor source is as follows:

	<u>Current year</u>		<u>Year 1</u>		<u>Year 3</u>	
	<u>Disch.</u>	<u>%</u>	<u>Disch.</u>	<u>%</u>	<u>Disch.</u>	<u>%</u>
Commercial	1,005	20.54%	978	20.59%	978	20.90%
Medicare	2,965	60.58%	2,874	60.51%	2,804	59.91%
Medicaid	776	15.86%	726	15.28%	726	15.51%
Private Pay/Other	<u>148</u>	<u>3.02%</u>	<u>172</u>	<u>3.62%</u>	<u>172</u>	<u>3.68%</u>
Total	4,894	100.00%	4,750	100.00%	4,680	100.00%

Outpatient utilization by payor source is as follows:

	<u>Current year</u>		<u>Years 1 and 3</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Commercial	59,518	38.54%	59,773	38.54%
Medicare	62,101	40.21%	62,367	40.21%
Medicaid	21,887	14.17%	21,981	14.17%
Private Pay/Other	<u>10,931</u>	<u>7.08%</u>	<u>10,979</u>	<u>7.08%</u>
Total	154,437	100.00%	155,100	100.00%

Capability and Feasibility

There are no project costs associated with this application.

The submitted budget indicates break even in year 1 and excess of revenues over expenses of \$1,000,000 in year 3. Revenues are based on current inpatient and outpatient reimbursement methodologies for hospitals. The budget is reasonable.

BFA Attachment C is the 2012 and 2013 consolidated certified financial summary for Mount St. Mary's Hospital and Health Center, which shows average positive working capital and equity positions. The entity also has an average net income of \$60,000 for the period shown.

BFA Attachment D is the 2012 and 2013 certified financial summary for Catholic Health Systems, Inc. and Subsidiaries, which shows average positive working capital and equity positions. The entity also has an average positive net income of \$32,394,500 for the period shown.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Organizational Chart for Mt. St. Mary's before and after CON 142105
BFA Attachment B	List of licensed health facilities and agencies for which CHS is the active parent
BFA Attachment C	2012-2013 consolidated certified financial summary for Mount St. Mary's Hospital and Health Center
BFA Attachment D	2012-2013 certified financial summary for Catholic Health Systems, Inc. and Subsidiaries

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 4th day of December, 2014, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Catholic Health System, Inc. as the active parent/co-operator of Mount St. Marys Hospital and Health Center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

142105 E

Mount St Marys Hospital and Health Center

APPROVAL CONTINGENT UPON:

1. Submission of documentation of approval by the Office of Alcohol and Substance Abuse Services. [PMU]
2. Submission of the revised executed Certificate of Incorporation and Bylaws for Our Lady of Peace, Inc. (OLP), showing that Mount St. Mary's Hospital of Niagara Falls is no longer a member of the facility. [BFA]
3. Submission of an executed restated Certificate of Incorporation for Mount St. Mary's Hospital of Niagara Falls, acceptable to the Department of Health. [BFA]
4. Submission of an Amended and Restated Bylaws of Mount St. Mary's Hospital of Niagara Falls, acceptable to the Department of Health. [BFA]
5. Submission of the executed Restated Certificate of Incorporation of Mount St. Mary's Hospital of Niagara Falls, acceptable to the Department. [CSL]
6. Submission of the finalized and adopted Amended and Restated Bylaws of Mount St. Mary's Hospital of Niagara Falls, acceptable to the Department. [CSL]
7. Submission of an executed amendment to the Certificate of Incorporation of Catholic Health System, 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]

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

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



Public Health and Health Planning Council

Project # 142039-E

North Country Orthopaedic Ambulatory Surgery Center, LLC

Program: Diagnostic and Treatment Center **County:** Jefferson
Purpose: Establishment **Acknowledged:** September 8, 2014

Executive Summary

Description

North Country Orthopaedic Ambulatory Surgery Center, LLC, an existing limited liability company that operates a single-specialty freestanding ambulatory surgery center (FASC) in orthopedics, requests approval to add three new members, withdraw four founding members, and change the ownership interest for three existing members. There are no programmatic changes and the applicant will continue to be located at 1571 Washington Street, Watertown, New York.

North Country Orthopaedic Ambulatory Surgery Center, LLC began operating on February 24, 2003, at which time ownership interest was equally divided among seven physicians, approximately 14.2857% per member. From June 2005 through October 2012 the following four founding members sold their entire membership interest back to the company: Richard Withington, M.D., Arthur Peckham, M.D., David O. Van Eenenaam, M.D. and Perry Shuman, M.D. On December 10, 2007, and on December 28, 2007, Howard Huang, M.D. and Bruce Baird, M.D., respectively, became new members by each acquiring a 12.5% interest in the FASC.

The applicant indicates that, through an oversight, they did not file the required Certificate of Need (CON) application for the two new members. This oversight

was recently recognized when North Country Orthopaedic Ambulatory Surgery Center, LLC proposed to sell a 10.71% membership to Anel Abreu, D.O. Presented as BFA Attachment A is North Country Orthopaedic Ambulatory Surgery Center, LLC's ownership interest, as originally approved under CON 011022, and the proposed ownership interest per this application.

OPCHSM Recommendation
Contingent Approval

Need Summary
There will not be any changes in services as a result of this request.

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

Financial Summary
There are no project costs associated with this application and 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 Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a photocopy of the applicants executed Operating Agreement, and any amendments thereto, acceptable to the Department. [CSL]
2. Submission of a photocopy of an executed purchase and sale agreement for membership interest being transferred and any additional transfer documents, which are 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

December 4, 2014

Need Analysis

Background

North Country Orthopaedic Ambulatory Surgery Center, LLC, an existing ambulatory surgery center, requests approval for a transfer of ownership interest for three (3) existing members, three (3) new members, and four (4) withdrawing members. The facility is located at 1571 Washington Street, Watertown, 13601, Jefferson County.

Analysis

North Country Orthopaedic Ambulatory Surgery Center served a total of 1,574 patients in 2011, 1,547 patients in 2012, and 1,702 patients in 2013 (Source: SPARCS). There will be no changes in services as a result of this request.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Project Proposal

North Country Orthopaedic Ambulatory Surgery Center (ASC), LLC, an existing ambulatory surgery center, requests approval for a transfer of ownership interest for three (3) existing members, three (3) new members and four (4) withdrawing members. Other than the proposed changes in membership (and membership percentages), there are no programmatic changes proposed in this request.

North Country Orthopaedic ASC began operations in 2003 at which time, ownership was split equally among seven (7) physicians. Since 2003, four (4) of the founding physicians relinquished ownership in the ASC and, in 2007, two (2) physicians (Drs. Baird and Huang) became part of the ownership group. However, in an oversight, the applicant did not file the required CON applications to have the two new physician members approved. The oversight was recently recognized when the ASC initiated action to include another physician (Dr. Abreu) in the ownership group. This application seeks approval of Dr. Abreu and delayed approval for Drs. Baird and Huang.

The following table details the proposed changes in ownership:

<u>Member Name</u>	<u>Membership Interest</u>	<u>Membership Interest Proposed by this Application</u>
David O. VanEenenaam, MD	14.285%	-----
D. Peter VanEenenaam, MD	14.285%	17.858%
Richard Withington, MD	14.285%	-----
Arthur Peckham, MD	14.285%	-----
Edward N. Powell, MD	14.285%	17.858%
Perry Shuman, MD	14.285%	-----
Steven B. Fish, MD	14.285%	17.858%
Howard H. Huang, MD**	-----	17.858%
Bruce L. Baird, MD**	-----	17.858%
Anel Abreu, DO**	-----	10.710%

**Members subject to review

Character and Competence

The three new proposed individual members, Drs. Huang, Baird and Abreu are physicians who are currently performing procedures at the Center.

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Capability and Feasibility

There are no project costs associated with this application.

The applicant has stated that both Howard Huang, M.D. and Bruce Baird, M.D. have satisfied the memberships' purchase price of \$125,000. On July 15, 2014, Anel Abreu D.O. entered into a membership interest purchase agreement to acquire 10.71% in North Country Orthopaedic Ambulatory Surgery Center, LLC for \$75,000. BFA Attachment B is the proposed members' net worth summaries which reveals sufficient resources to meet the equity requirement.

BFA Attachments C and D are North Country Ambulatory Surgery Center, LLC's 2011, 2012 and 2013 financial summaries, which show average working capital of \$407,636 and average net assets of \$1,086,891. During the three year period net operating income averaged \$321,413.

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	Ownership Interest – North Country Orthopaedic Ambulatory Surgery Center, LLC
BFA Attachment B	Net Worth of Proposed Members, North Country Orthopaedic Ambulatory Surgery Center, LLC
BFA Attachment C	Financial Summary for 2011 and 2012, North Country Orthopaedic Ambulatory Surgery Center, LLC
BFA Attachment D	Internal Financial Summary for 2013, North Country Orthopaedic Ambulatory Surgery Center, LLC

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 4th day of December, 2014, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to change in ownership interest for three (3) existing members, three (3) new members and four (4) withdrawing members , and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

142039 E

North Country Orthopaedic Ambulatory
Surgery Center

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the applicants executed Operating Agreement, and any amendments thereto, acceptable to the Department. [CSL]
2. Submission of a photocopy of an executed purchase and sale agreement for membership interest being transferred and any additional transfer documents, which are 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]

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

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



Public Health and Health Planning Council

Project # 142073-E
Buffalo Surgery Center, LLC

Program: Diagnostic and Treatment Center **County:** Erie
Purpose: Establishment **Acknowledged:** September 3, 2014

Executive Summary

Description

Buffalo Surgery Center (BSC), LLC, an existing for-profit, freestanding ambulatory surgery center (FASC) located at 3925 Sheridan Drive in Amherst, Erie County, proposes a change in 49.96% of the membership interest to admit nine new physicians as members of the company, and to issue additional units of ownership to one current member.

BSC has been contingently approved under CON 141116 to relocate the facility and add Gastroenterology services. BFA Attachment B, Membership Interest List, shows the timing of the changes as they relate to the not-yet-completed CON. One current member is purchasing additional units of membership and one new member is being added to the ownership prior to the completion of CON 141116. The remaining eight proposed members will become equal owners in BSC subject to the terms and conditions of a separate Purchase, Sale, and Joinder Agreement and in accordance with a new Operating Agreement that will become effective for all members once the CON 141116 is complete. Ownership for these eight prospective members is contingent on the completion of CON 141116. The proposed members have executed a guarantee of the lease for when the site is relocated.

BSC proposes to issue 100 units of ownership to 9 new members in exchange for \$131,578 each. BSC will also issue 50 additional units to Dr. Siddiqui in exchange for \$12,500. The 49.96% of ownership in the company will be transferred as part of these

transactions.

OPCHSM Recommendation
Contingent Approval

Need Summary

Buffalo Surgery Center, LLC is requesting approval to transfer 49.95% membership interest to nine (9) new members and one (1) current member. It is an existing Article 28 ambulatory surgery center providing orthopedic and ophthalmology surgery services. It has been contingently approved under CON 141116 to relocate and add Gastroenterology services. It is located at 3925 Sheridan Drive, Amherst, 14226, Erie County. BSC served a total of 4,822 patients in 2013.

Program Summary

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

Financial Summary

There are no project costs or budgets associated with this application. The 49.96% of the ownership will be purchased for \$1,196,702 at \$131,578 for each of the nine new members and \$12,500 for one current member acquiring additional units.

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed building lease, acceptable to the Department. [BFA]
2. Submission of proof of completion of CON 141116 which was contingently approved on August 7, 2014. [BFA]
3. Submission of a photocopy of the applicants executed Operating Agreement, 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

December 4, 2014

Need Analysis

Background

Buffalo Surgery Center currently provides orthopedic and ophthalmology surgery services. Under CON 141116 Buffalo Surgery Center was approved with contingencies to relocate its current site from 3925 Sheridan Drive in Amherst to 3901 Sheridan Drive in Amherst in Erie County and to add gastroenterology services. CON 141116 is not yet complete.

BSC served a total of 4,358 patients in 2011, 5,721 patients in 2012, and 4,822 patients in 2013. (Source: SPARCS)

The applicant reports the percent of charity care provided was two (2) percent and Medicaid was three (3) percent in 2013.

Conclusion

The applicant reports that there will be no changes in services as a result of the proposed change in ownership.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

Buffalo Surgery Center, LLC (BSC), an existing Article 28 diagnostic and treatment center in Erie County, requests approval to transfer 49.95% membership interest to nine (9) new members and one (1) current member.

Upon approval, two (2) physicians (James Kelly, DO and Jafar Siddiqui, MD) will become equal owners of BSC under the company's current Operating Agreement. The remaining eight (8) prospective members (4 colorectal physicians and 4 gastrointestinal surgeons) will become equal owners in BSC in accordance with a new Operating Agreement that will eventually become effective for all members.

Character and Competence

Buffalo Surgery Center, LLC's current and proposed ownership and membership interest is detailed in the table below:

Member Name	Current Membership Interest	Proposed Final Membership Interest
Lisa Daye, MD	11.80%	5.56%
Andrew Stoeckl, MD	11.80%	5.56%
Paul Paterson, MD	11.80%	5.56%
John Callahan, MD (Manager)	11.80%	5.56%
Peter Shields, MD	11.80%	5.56%
Stephen Rycyna, MD	11.80%	5.56%
David Bagnall, MD (Manager)	11.80%	5.56%
James Slough, MD (Manager)	11.80%	5.56%
Jafar Siddiqui, MD	5.55%	5.56%
James Kelly, DO*	---	5.56%
Bryan Butler, MD*	---	5.55%
Matthew Cywinski, MD*	---	5.55%
Mohammad Fayyaz, MD*	---	5.55%

Alok Gupta, MD*	---	5.55%
Joseph Leberer, MD*	---	5.55%
Jehad Miqdadi, MD*	---	5.55%
James Piscatelli, MD*	---	5.55%
Jeffrey Visco, MD*	---	5.55%
*Members subject to review		
Total	100%	100%

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

Drs. Fayyaz and Visco have each disclosed one (1) pending malpractice case. Drs. Kelly and Miqdadi have each disclosed one (1) settled malpractice case.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Purchase, Sale and Joinder Agreement

The applicant has submitted an executed purchase, sale and joinder agreement for the change of 49.96% membership interests of BSC, the terms of which are summarized below:

Date:	March 1, 2014
Purpose:	The sale of 49.96% membership interests of Buffalo Surgery Center, LLC
Sellers:	Buffalo Surgery Center, LLC
Purchasers:	James Kelly, M.D. at 5.56%, and eight Class 1A prospective members at 5.55% membership interests.
Purchase Price:	Each proposed class 1A member and Dr. Kelly will purchase their membership interests for \$131,578 each for a total of \$1,184,702.
Payment of Purchase Price:	To be paid in full at closing.

All eight physicians who are Class 1A members and Dr. Kelly can provide equity from personal funds to pay the purchase price, but will be using a personal guaranty to fund their purchase. A letter of interest has been given for each of the eight Class 1A physicians from M&T Bank.

Capability and Feasibility

The proposed members' ability to meet their respective membership purchase prices will be provided from equity. Review of BFA Attachment A reveals sufficient funds for this purpose.

Ownership for eight prospective members is contingent on completion of CON 141116, contingently approved in August 2014, which is to move BSC's current site location, expand capacity, and add gastroenterology as a licensed service.

BFA Attachment C is a financial summary of Buffalo Surgery Center, LLC, which shows the facility achieved a net income of \$720,884 during 2013, and maintained positive working capital and members' equity. BFA Attachment D is a financial summary of Buffalo Surgery Center, LLC, which shows the facility achieved a net income of \$345,022 as of August 31, 2014, and maintained positive members' equity and experienced negative working capital which was due to new current debt from the financing of equipment.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statement
BFA Attachment B	Current and Proposed Membership
BFA Attachment C	Financial Summary - Buffalo Surgery Center, LLC, 2013
BFA Attachment D	Financial Summary - Buffalo Surgery Center, LLC, as of August 31, 2014

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 4th day of December, 2014, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer of 49.96% membership interest to nine (9) new members and one (1) current member, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

142073 E

Buffalo Surgery Center, LLC

APPROVAL CONTINGENT UPON:

1. Submission of an executed building lease, acceptable to the Department. [BFA]
2. Submission of proof of completion of CON 141116 which was contingently approved on August 7, 2014. [BFA]
3. Submission of a photocopy of the applicants executed Operating Agreement, 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]

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

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



Public Health and Health Planning Council

Project # 141210-B

Peninsula Continuum Services, LLC d/b/a Cassena Care
Dialysis at Peninsula

Program: Diagnostic and Treatment Center
Purpose: Establishment and Construction

County: Queens
Acknowledged: May 15, 2014

Executive Summary

Description

Peninsula Continuum Services, LLC d/b/a Cassena Care Dialysis of Peninsula requests approval for the establishment and construction of a new twenty (20) station End Stage Renal Disease facility. The proposed facility will be located in a designated space at Cardiff Bay Center for Rehabilitation and Nursing (Cardiff Bay Center), a 200-bed residential health care facility located at 50-15 Beach Channel Drive, Far Rockaway, New York (Queens County). There is a relationship between the applicant and Cardiff Bay Center, LLC, the newly established operator of Cardiff Bay Center approved under CON 122219 (completion date 4/8/2014), in that Michael Melnicke and Leopold Friedman have ownership interest in the nursing home.

The proposed members of Peninsula Continuum Services, LLC and ownership percentages are as follows:

<u>Members:</u>	<u>% Interest</u>
Michael Melnicke	23.75%
Leopold Friedman	23.75%
Pasquale DeBenedictis	23.75%
Alex Solovey	23.75%
Miles Davis	<u>5.00%</u>
Total	100.00%

The members of Cardiff Bay Center, LLC and ownership percentages are as follows:

<u>Members:</u>	<u>% Interest</u>
Joseph Brunner	37.5%
Michael Melnicke	37.5%
Leopold Friedman	<u>25.0%</u>
Total	100.0%

OPCHSM Recommendation

Contingent Approval

Need Summary

The need for dialysis services in Queens County continues to grow each year. In 2012 there was an unmet need of 160 stations. The addition of these 20 net new stations will help make services available to patients in need in the area. The minority population in this area is much higher than the state average. Minority populations are a target group for needing dialysis care.

Program Summary

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

Financial Summary

Project costs of \$3,245,947 will be met as follows: Equity of \$502,065 from the proposed members, and a bank loan of \$2,743,882 at an interest rate of 6.00% for a ten year term.

Budget:

Revenues	\$5,543,679
Expenses	<u>3,628,720</u>
Net Income	\$1,915,359

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 Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a bank loan commitment that is acceptable to the Department of Health. [BFA]
3. Submission of an executed sublease rental agreement that is acceptable to the Department of Health. [BFA]
4. Submission of a working capital loan commitment that is acceptable to the Department of Health. [BFA]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-03 Outpatient Facilities. [AER]
7. Submission of an executed Operating Agreement that is acceptable to the Department. [CSL]
8. Submission of an executed Amended Article of Organization that is acceptable to the Department. [CSL]
9. Submission of an executed License Agreement that is acceptable to the Department. [CSL]
10. Submission of an executed Consulting and/or Administrative Agreement 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]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The applicant shall start construction on or before March 1st, 2015 and complete construction by August 31st, 2015 upon the filing of Final Construction Documents in accordance with 10 NYCRR section 710.7. In accordance with 10 NYCRR Part 710.2(b)(5), if construction is not started on or before the start date, this shall constitute abandonment of the approval. In accordance with Part 710.10(a), this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner [AER].
7. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's request for, and Department's granting approval for the start of construction. [AER]

Council Action Date

December 4, 2014

Need Analysis

Analysis

The primary service area for the Cassena Care Dialysis at Peninsula is Queens County, which had a population estimate of 2,296,175 for 2013. The percentage of the population aged 65 and over was 13.2%. The nonwhite population percentage was 72.8%. These are the two population groups that are most in need of end stage renal dialysis service. Comparisons between Queens County and New York State are listed below.

	<u>Queens</u>	<u>NYS</u>
Ages 65 and Over:	13.2%	14.1%
Nonwhite:	72.8%	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 556 free standing chronic dialysis stations operating in Queens County and there are an additional 66 stations in pipeline.
- Based upon DOH methodology, the 556 existing free standing stations in Queens County could treat a total of 2502 patients annually. Including the additional pipeline stations the county could treat a total of 2,799 patients.

Projected Need

	2012		2017	
	Total Patients Treated	Total Residents Treated	*Projected Total Patients Treated	*Projected Residents Treated
	3350	3609	3884	4062
Free Standing Stations Needed	745	802	864	903
Existing Stations	556	556	556	556
Total Stations (Including Pipeline)	622	622	622	622
Net new stations from this project	20	20	20	20
Unmet Need With Approval	103	160	220	259

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 556 stations in Queens County currently serve a population of 2,296,175. Currently there are not enough stations to treat the 3609 residents that need treatment. Approval of these 20 additional stations will help address that need.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

Peninsula Continuum Services, LLC d/b/a Cassena Care Dialysis at Peninsula (Cassena) requests approval to establish and construct a new 20-station nursing home based chronic hemodialysis center to be located on the first floor of the Cardiff Bay Center for Rehabilitation and Nursing (Cardiff Bay), an existing skilled nursing facility located in Queens County. Cassena will enter into a licensing agreement with Cardiff Bay in an effort to establish the requisite site control.

Proposed Operator	Peninsula Continuum Services, LLC
Doing Business As	Cassena Care Dialysis at Peninsula
Site Address	5015 Beach Channel Drive, Far Rockaway (Queens County)
Approved Services	Chronic Renal Dialysis (20 Stations)
Shifts/Hours/Schedule	At least 12 hours per day, six days per week, with additional hours as indicated by demand.
Staffing (1 st Year / 3 rd Year)	14.4 FTEs / 25.5 FTEs
Medical Director(s)	Rajbir Chopra, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by provided by St. John's Episcopal Hospital 1.6 miles / 5 minutes

Character and Competence

The proposed members of Peninsula Continuum Services, LLC will be:

<u>Name</u>	<u>Percentage</u>
Pasquale DeBenedictis (Manager)	23.75%
Alex Solovey (Manager)	23.75%
Leopold Friedman	23.75%
Michael Melnicke	23.75%
Miles Davis	5.0%

Each of the aforementioned individuals has experience operating health related facilities and associated programs, including nursing home-based dialysis programs.

Disclosure information was submitted and reviewed for the proposed Medical Director. Dr. Rajbir Chopra is a New York State licensed physician, board-certified in internal medicine with a sub-certification in nephrology.

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

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

Messrs. DeBenedictis 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.

Mr. Melnicke disclosed ownership interest in several skilled nursing facilities, to include: Hempstead Park Nursing Home, Park Nursing Home, and Regency Extended Care Center. A Stipulation and Order and fine of \$10,000 and \$8,000, respectively, was issued to Hemstead Park for January 9, 2009 surveillance findings related to Quality of Care and September 28, 2011 surveillance findings in multiple areas (i.e., Mistreatment/Neglect; Policies and Procedures; Investigate/Report Allegations; Medically Related Social Services; and Administration). Park Nursing Home was fined \$5,000 pursuant to a Stipulation and Order for Surveillance findings on May 14, 2008 for Quality of Care issues (i.e., physician and pharmacy services). Regency Extended Care was fined \$2,000 pursuant to a Stipulation and Order for November 17, 2005 surveillance findings related to Quality of Care.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Financial Summary

Project costs of \$3,245,947 will be met as follows: Equity of \$502,065 from the proposed members, and a bank loan of \$2,743,882 at an interest rate of 6.00% for a ten year term.

Budget:

Revenues	\$5,543,679
Expenses	<u>3,628,720</u>
Net Income	\$1,915,359

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.

Lease Rental Agreement

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

Premises: 8,100 sq. ft. located at 50-15 Beach Channel Drive, Far Rockaway, New York.
Lessor: Cardiff Bay Center, LLC
Lessee: Peninsula Continuum Services, LLC
Term: Fifteen Years
Rental: Year One - \$572,208 (\$70.64 per sq. ft.)
Year Two - \$578,283 (\$71.39 per sq. ft.)
Year Three - \$584,540 (\$72.17 per sq. ft.)
Year Four - \$590,985 (\$72.96 per sq. ft.)
Year Five - \$597,624 (\$73.78 per sq. ft.)
Year Six - \$604,461 (\$74.62 per sq.ft.)
Year Seven - \$611,504 (\$75.49 per sq.ft.)
Year Eight - \$618,757 (\$76.39 per sq.ft.)
Year Nine - \$626,229 (\$77.31 per sq.ft.)
Year Ten - \$633,925 (\$78.26 per sq.ft.)
Year Eleven - \$272,143 (\$33.60 per sq.ft.)
Year Twelve - \$280,307 (\$34.61 per sq.ft.)
Year Thirteen - \$288,717 (\$35.64 per sq.ft.)
Year Fourteen - \$297,378 (\$36.71 per sq.ft.)
Year Fifteen - \$306,299 (\$37.81 per sq.ft.)
Provisions: The lessee shall be responsible for maintenance, utilities and real estate taxes.

The applicant has indicated that the lease arrangement will be a non-arm's length (common membership with landlord) lease arrangement. The applicant has indicated that the lease rental payments include base rent plus improvements.

Total Project Cost and Financing

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$3,245,947, further broken down as follows:

Renovation and Demolition	\$2,013,193
Design Contingency	181,987
Construction Contingency	181,987
Architect/Engineering Fees	161,055
Other Fees (Consultant)	75,000
Moveable Equipment	482,320
Financing Costs	78,397
Interim Interest Expense	52,264
CON Fee	2,000
Additional Processing Fee	17,744
Total Project Cost	\$3,245,947

Project costs are based on a March 1, 2015 construction start date and a six month construction period.

The applicant's financing plan appears as follows:

Equity	\$502,065
Bank Loan (6.00% interest rate for ten year term)	<u>2,743,882</u>
Total	\$3,245,947

Operating Budget

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

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Medicaid Fee For Service	\$274,903	\$549,806
Medicare Fee For Service	2,126,592	4,338,673
Commercial Managed Care	<u>327,600</u>	<u>655,200</u>
Total Revenues	\$2,729,095	\$5,543,679
Expenses:		
Operating	\$1,650,260	\$3,023,673
Capital	<u>656,496</u>	<u>604,647</u>
Total Expenses	\$2,306,756	\$3,628,320
Net Income	\$422,339	\$1,915,359
Utilization: (Treatments)	9,360	18,720
Cost Per Treatment	\$246.45	\$193.82

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

Medicaid Fee For Service	10.00%
Medicare Fee For Service	80.00%
Commercial Managed Care	<u>10.00%</u>
Total	100.00%

Expenses and utilization assumptions are based on the historical experience of other dialysis facilities.

Capability and Feasibility

Project costs of \$3,245,947 will be met as follows: Equity of \$502,065 and \$2,743,882, financed via a bank loan at an interest rate of 6.00% for a ten year term.

Working capital requirements are estimated at \$604,720, which is equivalent to two months of third year expenses. The applicant will finance \$302,360 at an interest rate of 7.00% for a three year term. The remainder, \$302,360, will be provided as equity via the proposed members of Peninsula Continuum Services, LLC.

BFA Attachment A is the personal net worth statements of the proposed members of Peninsula Continuum Services, LLC, which indicates the availability of sufficient funds for the equity contribution to meet the total project cost and the working capital requirements equity contributions. BFA Attachment B is the pro-forma balance sheet of Peninsula Continuum Services, LLC as of the first day of operation, which indicates a positive net asset position of \$804,425.

The submitted budget indicates a net income of \$422,339 and \$1,915,359 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for dialysis services. The submitted 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, contingent approval is recommended.

Attachments

BFA Attachment A Personal Net Worth Statement of Proposed Members
BFA Attachment B Pro-forma Balance Sheet

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 4th day of December, 2014, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a new 20 station end stage renal dialysis center to be located at 50-15 Beach Channel Drive, Far Rockaway in Cardiff Bay center for Rehabilitation and Nursing, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

141210 B

Peninsula Continuum Services, LLC
d/b/a Cassena Care Dialysis at Peninsula

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a bank loan commitment that is acceptable to the Department of Health. [BFA]
3. Submission of an executed sublease rental agreement that is acceptable to the Department of Health. [BFA]
4. Submission of a working capital loan commitment that is acceptable to the Department of Health. [BFA]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-03 Outpatient Facilities. [AER]
7. Submission of an executed Operating Agreement that is acceptable to the Department. [CSL]
8. Submission of an executed Amended Article of Organization that is acceptable to the Department. [CSL]
9. Submission of an executed License Agreement that is acceptable to the Department. [CSL]
10. Submission of an executed Consulting and/or Administrative Agreement 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]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The applicant shall start construction on or before March 1st, 2015 and complete construction by August 31st, 2015 upon the filing of Final Construction Documents in accordance with 10 NYCRR section 710.7. In accordance with 10 NYCRR Part 710.2(b)(5), if construction is not started on or before the start date, this shall constitute abandonment of the approval. In accordance with Part 710.10(a), this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner [AER].
7. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's request for, and Department's granting approval for the start of construction. [AER]

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

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



Public Health and Health Planning Council

Project # 141280-E
Liverpool LD, LLC d/b/a FMS-Liverpool Dialysis Center

Program: Diagnostic and Treatment Center **County:** Onondaga
Purpose: Establishment **Acknowledged:** June 25, 2014

Executive Summary

Description

Liverpool LD, LLC d/b/a FMS-Liverpool Dialysis Center, a for-profit limited liability company, is requesting approval to be established as the new operator of Liverpool Dialysis Center, LLC, a for-profit diagnostic and treatment center (D&TC) that operates an existing 12-station chronic renal dialysis center. The D&TC leases space at 1304 Buckley Road, Syracuse, New York (Onondaga County).

At the time the above two agreements were executed, the members of Liverpool Dialysis Center, LLC were as follows:

St. Joseph's Hospital Health Center	50.000%
D.C. Holdings of Onondaga County, Inc.	45.835%
Herbert S. Lawson	4.165%

Ownership before and after the requested change is as follows:

<u>Current - Liverpool Dialysis Center, LLC</u>	
St. Joseph's Hospital Health Center	100%

On or before December 31, 2012, St. Joseph's Hospital Health Center became the sole member of Liverpool Dialysis Center, LLC, which the DOH approved on December 13, 2012, in accordance with Public Health Law 2801-a (4).

<u>Proposed - Liverpool LD, LLC</u>	
*New York Dialysis Services, Inc.	60%
Salil Gupta, M.D.	20%
Pawan Rao, M.D.	20%
Total	100%

On October 31, 2012, Liverpool LD, LLC entered into an Administrative Service Agreement to provide certain consulting and administrative services to Liverpool Dialysis Center, LLC

**New York Dialysis Services, Inc. is a wholly owned subsidiary of Fresenius Medical Care Holdings, Inc., an operator of a number of dialysis clinics in New York State.*

OPCHSM Recommendation
Contingent Approval

As background, on October 31, 2012, New York Dialysis Services, Inc. purchased the non-Article 28 Assets of Liverpool Dialysis Center, LLC in return for a purchase price of \$3,500,000, and entered into an Operating Asset Transfer Agreement pursuant to which Liverpool Dialysis Center, LLC will sell its Article 28 assets associated with the above clinic to Liverpool LD, LLC for \$100,000, subject to receipt of all required approvals.

Need Summary
Liverpool LD, LLC seeks approval to be established as the owner of Liverpool Dialysis Center, LLC, a 12-station chronic dialysis facility located at 1304 Buckley Rd Syracuse, NY 13212, Onondaga County. The facility will be renamed FMS Liverpool Dialysis Center.

Program Summary

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

Financial Summary

There are no project costs associated with this application.

The \$100,000 purchase price will be provided by Fresenius Medical Care Holdings, Inc., the owner of New York Dialysis Services, Inc.

Budget:	Revenues:	\$3,302,727
	Expenses:	<u>2,440,395</u>
	Gain:	\$862,332

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed administrative service agreement acceptable to the Department of Health. [BFA]
2. Submission of an executed Certificate of Assumed Name that is acceptable to the Department. [CSL]
3. Submission of a signed statement that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws that is acceptable to the Department. [CSL]
4. Submission of an executed Certificate of Amendment to the Articles of Organization of the applicant that is acceptable to the Department. [CSL]
5. Submission of an executed Certificate of Amendment of the Certificate of Incorporation of New York Dialysis Services, Inc. that is acceptable to the Department. [CSL]
6. Submission of Bylaws of New York Dialysis Services, Inc. that is acceptable to the Department. [CSL]
7. Submission of an Assignment and Assumption of Lease/Termination of Sublease that is acceptable to the Department. [CSL]
8. Submission of an executed Operating Agreement from the applicant that is acceptable to the Department. [CSL]
9. Submission of site control that is acceptable to the Department. [CSL]
10. Submission of an executed proposed Certificate of Dissolution that is acceptable to the Department. [CSL]
11. Submission of an Administrative Services Agreement that is acceptable to the Department. [CSL]
12. Submission of a Medicaid Affidavit that is acceptable to the Department. [CSL]
13. Submission of documentation in compliance with Schedule 14B(V)(B)(1) and (2). [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

December 4, 2014

Need Analysis

Background

After approval of this application, Liverpool LD, LLC will be licensed as the operator of Liverpool Dialysis Center, which will become the FMS Liverpool Dialysis Center.

There will be no change in stations, facility structures, or services. No change in current utilization is expected.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

Liverpool LD, LLC seeks approval to become established as the new operator of a 12-station renal dialysis clinic located at 1304 Buckley Road, Syracuse which is currently operated by Liverpool Dialysis Center, LLC. Upon approval, the facility shall be known as FMS-Liverpool Dialysis Center. There are no significant physical environment or programmatic changes anticipated as a result of this proposal.

Character and Competence

The members of Liverpool LD, LLC are:

<u>Member</u>	<u>Percentage</u>
Pawan K. Rao, M.D.	20%
Salil Gupta, M.D.	20%
New York Dialysis Services, Inc.	60%
William Valle – Director	
Ronald J. Kuerbitz – Executive Vice President	
Joseph Ruma – Vice President	
Mark Fawcett – Treasurer	
Paul Colantino – Asst. Treasurer	
Douglas Kott – Secretary	
Jessica Stewart – Asst. Secretary	

The proposed Board of Managers of Liverpool LD, LLC will be:

Salil Gupta, MD
Pawan Rao, MD
Michael S. Weiner
Judith Moran, RN

Drs. Rao and Gupta are board-certified in Internal Medicine and Nephrology and have 11 and 18 years of experience, respectively. New York Dialysis Services, Inc. is a wholly owned subsidiary of Fresenius Medical Care Holdings, Inc. (FMCH) and operates dialysis clinics at various locations throughout New York. Mr. Weiner and Ms. Moran are both employed by Fresenius Medical Care as Regional Vice Presidents.

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.

Summary of Dialysis Facility Compare Statistics

The table below compares the Summary Statistic (which is the percent of scores at, or above, the New York State average) of the dialysis facilities currently operated by Fresenius and Fresenius-affiliated entities with the current operation of Liverpool Dialysis Center, LLC. The Summary Statistic is intended to be a rough indicator of performance. *(Higher is better.)*

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Operator	Sites	Reportable Statistics per Site	Total Statistics Possible (1) x (2)	Statistics Not Available or Do Not Apply	Denominator (3)-(4)	Statistics Not Reported	Statistics worse than NYS Average	Numerator (6)+(7)	Summary Statistic [at or better than NYS Average] 1.00-((8)/(5))
Fresenius	33	10	330	33	297	0	91	91	69%
Liverpool Dialysis Center, LLC	1	10	10	1	9	0	2	2	78%

Source: <http://www.medicare.gov/DialysisFacilityCompare/search.html>

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Operating Asset Transfer Agreement

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

Date:	October 31, 2012
Seller:	Liverpool Dialysis Center, LLC
Purchaser:	Liverpool LD, LLC d/b/a FMS-Liverpool Dialysis Center
Acquired Assets:	Right title and interest, to the extent transferable, in the following assets relating to the operation of the Dialysis Business: any tangible or intangible asset which only an organization established under Articles 28 of the New York Public Health Law to operate health care facilities is permitted to own including as of the transfer date, (1) list of patients being served, (2) records pertaining to the Dialysis Business and the patients treated, (3) pharmaceuticals in inventory, (4) contracts, (5) collect account receivables arising subsequent to the dialysis business transfer date, and to bill for and collect all unbilled work in process as of the dialysis business

transfer date. The Article Assets shall be transferred free and clear of all liens and encumbrances.

Assumed Liabilities: Liabilities arising after closing.
Purchase Price: \$100,000
Payment: \$100,000 at closing

BFA Attachments A and B are the members' net worth statements and Fresenius Medical Care Holdings, Inc. and Subsidiaries 2013 certified financial statement, which shows 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 Liabilities.

Administrative Services Agreement

The applicant has submitted a draft administrative services agreement with New York Dialysis Services, Inc., which is summarized as follows:

Provider: New York Dialysis Services, Inc.
Facility: Liverpool LD, LLC d/b/a FMS-Liverpool Dialysis Center
Services Provided: Use of equipment, assist in selection of equipment and supplies, equipment maintenance, negotiate vendor contracts and assist in evaluation of alternate proposals. Assist in maintaining records and process approved invoices. Provide personnel to manage and operate non-physician aspects of the business. Process billings, verify patient insurance eligibility, and administer owner's collection policy. Prepare for owner's signature: cost reports and other reports to be provided by the owner. Provide standard billing, collection, accounting, tax reporting, and similar systems to the owner. Coordinate credentialing and re-credentialing services for licensed personnel. Provide or arrange accounting and financial services.
If necessary provide working capital (subject to promissory note and security agreement). Assist in providing policies and procedures and make available to owner the opportunity to participate in Ultra Care and PSO (programs owned by the administer affiliate, Fresenius Medical Care). Perform medical record audits, conduct utilization reviews, quality assurance/control review and provide compliance training.
Term: Twenty year term
Compensation: \$17,500 per month, \$210,000 annually (fee adjusted annually to reflect market value rate)

The facility operator will maintain ultimate authority and responsibility for the operations.

There is a common ownership between the administrative services agreement provider and the applicant's 60% owner, New York Dialysis Services, Inc.

Real Property Lease Agreement

The applicant has submitted an executed assignment, assumption and consent agreement and a copy of the executed lease agreement, which the DOH of has already approved under CON 071035. The terms are summarized below:

Premises:	11,974 square feet located at 1304 Buckley Road, Syracuse, New York		
Owner/ Landlord:	O'Neill Intermediary, LLC		
Lessee/Assignor:	Liverpool Dialysis Center, LLC		
Sub-lessee/Assignee:	Liverpool LD, LLC		
Rental:	Years 1-5	\$240,917	\$20.12 sq. ft.
	Years 6-10	\$255,884	\$21.37 sq. ft.
	Years 11-15	\$270,960	\$22.63 sq. ft.
	1 st 5 yr. extension	\$285,819	\$23.87 sq. ft.
	2 nd 5 yr. extension	\$300,787	\$25.12 sq. ft.
	3 rd 5 yr. extension	\$315,754	\$26.37 sq. ft.
Term:	15 year term (ending 8/31/2023) plus 3 five-year extensions		
Provisions:	Maintenance, utilities, and taxes		

The lease is an arm's length arrangement.

Operating Budget

The applicant has submitted first and third years operating budgets, in 2014 dollars, as summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Medicare	\$1,448,011	\$1,568,901
Commercial:	1,320,015	1,430,219
All Other:	<u>280,213</u>	<u>303,607</u>
Total Revenues	\$3,048,239	\$3,302,727
Expenses:		
Operating	\$1,925,228	\$2,040,242
Capital	<u>\$349,039</u>	<u>\$400,153</u>
Total Expenses	\$2,274,267	\$2,440,395
Revenues over Expenses (Loss)	<u>\$773,972</u>	<u>\$862,332</u>
Utilization: (treatments)	8,444	8,819
Cost Per Treatment	\$269.34	\$276.72

The costs per treatment increase in the third year is due to higher labor and depreciation costs.

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

Medicare	69.4%
Commercial	20.4%
Other (Medicare Advantage payors)	10.2%

Expense and utilization assumptions are based on the applicant's historical experiences in operating similar size dialysis clinics. The projected utilization closely matches the 8,169 procedures performed in the prior twelve months. First and third years costs will be covered at approximately 6,300 and 6,500 procedures, respectively.

Capability and Feasibility

There are no project costs associated with this application.

Total purchase price of \$100,000 will be provided by Fresenius Medical Care Holdings, Inc., the owner of New York Dialysis Services, Inc. A review of BFA Attachments A and B, members' net worth statements and Fresenius Medical Care Holdings, Inc. and Subsidiaries 2013 certified financial statement, shows sufficient resources to meet the equity requirement.

The working capital requirement is estimated at \$379,045 and is based on two months of the first year expenses which will be satisfied from Fresenius Medical Care Holdings, Inc. (FMCH). Review of BFA Attachment B, FMCH 2013 certified financial statement, indicates sufficient resources to satisfy the projects' equity requirements. BFA Attachments C and D are the pro forma balance sheet and pro-forma cash flow statement, which shows operations will start off with \$500,000 in cash and during the first year cash is expected to increase by \$318,690, closing at \$816,690.

The submitted budget indicates net income of \$773,972 and \$862,332 for the first and third year, respectively. Revenues reflect current reimbursement methodologies and commercial revenues were based on historical experience. The budget appears reasonable.

As shown on BFA Attachment B, Fresenius Medical Care Holdings, Inc. has maintained an average working capital position of \$2,467,511,000, average net asset position of \$7,657,826,500, and generated an average income from operations of \$801,324,500 for 2012 through 2013.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth Statements
BFA Attachment B	Financial Summary for 2012 and 2013, Fresenius Medical Care Holdings, Inc. and Subsidiaries
BFA Attachment C	Pro-forma Balance Sheet for Liverpool LD, LLC d/b/a FMS-Liverpool Dialysis Center
BFA Attachment D	Pro-forma Cash Flow Statement for Liverpool LD, LLC d/b/a FMS-Liverpool Dialysis Center
HSP Attachment A	Dialysis Facility Compare – Liverpool Dialysis Center, LLC
HSP Attachment B	Dialysis Facility Compare – Fresenius NYC & Outside NYC

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 4th day of December, 2014, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Liverpool LD, LLC as the new operator of the renal dialysis clinic located at 1304 Buckley Road, Syracuse that is currently operated by Liverpool Dialysis Center, LLC, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

141280 E

FACILITY/APPLICANT:

Liverpool LD, LLC
d/b/a FMS-Liverpool Dialysis Center

APPROVAL CONTINGENT UPON:

1. Submission of an executed administrative service agreement acceptable to the Department of Health. [BFA]
2. Submission of an executed Certificate of Assumed Name that is acceptable to the Department. [CSL]
3. Submission of a signed statement that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws that is acceptable to the Department. [CSL]
4. Submission of an executed Certificate of Amendment to the Articles of Organization of the applicant that is acceptable to the Department. [CSL]
5. Submission of an executed Certificate of Amendment of the Certificate of Incorporation of New York Dialysis Services, Inc. that is acceptable to the Department. [CSL]
6. Submission of Bylaws of New York Dialysis Services, Inc. that is acceptable to the Department. [CSL]
7. Submission of an Assignment and Assumption of Lease/Termination of Sublease that is acceptable to the Department. [CSL]
8. Submission of an executed Operating Agreement from the applicant that is acceptable to the Department. [CSL]
9. Submission of site control that is acceptable to the Department. [CSL]
10. Submission of an executed proposed Certificate of Dissolution that is acceptable to the Department. [CSL]
11. Submission of an Administrative Services Agreement that is acceptable to the Department. [CSL]
12. Submission of a Medicaid Affidavit that is acceptable to the Department. [CSL]
13. Submission of documentation in compliance with Schedule 14B(V)(B)(1) and (2). [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]

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

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



Public Health and Health Planning Council

Project # 132128-E
DOJ Operations Associates, LLC d/b/a Triboro Center for Rehabilitation and Specialty Healthcare

County: Bronx
Purpose: Establishment and Construction

Program: Residential Health Care Facility
Acknowledged: September 9, 2013

Executive Summary

Description

DOJ Operations Associates, LLC d/b/a Triboro Center for Rehabilitation and Specialty Healthcare is the current receiver of Daughters of Jacob Nursing Home, a voluntary not-for-profit Corporation and 405-bed Residential Health Care Facility (RHCF) located in the Bronx. DOJ Operations Associates LLC is seeking approval to become the permanent operator of the facility.

The proposed ownership is as follows:

DOJ Operations Associates LLC:

Kenneth Rozenberg	56.0%
Deborah Lerner	10.0%
Shelly Lerner	10.0%
Suzanne Lerner	10.0%
Debbie Mermelstein	10.0%
Jeffrey Sicklick	2.0%
David Gamzeh	2.0%

The real property owner is DOJ Land Associates, LLC, which is solely owned by Daryl Hagler, who has submitted an affidavit disclosing his relationship between landlord and tenant since he has other business relationships with the proposed operator.

OPCHSM Recommendation
Contingent Approval

Need Summary

The new operator will rename the facility upon approval of this application, but there will be no change in total capacity. In 2010 - 2012, Daughters of Jacob Nursing Home's utilization rate was 96.5%, 94.4%, and

96.4% respectively. As of October 18, 2014, utilization was at 93.8%. Since the applicant became receiver of this facility, Daughters of Jacob Nursing Home has begun admitting higher acuity residents, thereby increasing their CMI.

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 operations is \$25,500,000. \$6,375,000 will be paid from proposed members' equity and \$19,125,000 will be from a bank loan.

There are no project costs associated with this application.

Budget:	Revenues:	\$41,432,163
	Expenses:	<u>\$39,760,968</u>
	Gain:	\$1,671,195

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 Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed loan commitment for working capital acceptable to the Department of Health. [BFA]
2. Submission of an executed loan commitment for the purchase price acceptable to the Department of Health. [BFA]
3. Submission of an executed payment agreement for amounts owed the Department, acceptable to the Department. [BFA]
4. Re-submission of the first and third year budgets for feasibility based on the executed payment agreement for amounts owed the Department. [BFA]
5. 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]
6. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
 - 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.
7. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
 - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
 - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - e. Other factors as determined by the applicant to be pertinent. [RNR]
8. Submission and approval of a programmatically acceptable name for the nursing home. [LTC]
9. Submission of the executed revised Certificate of Amendment of the Articles of Organization of DOJ Operations Associates LLC, acceptable to the Department. [CSL]
10. Submission of the executed amended Operating Agreement of DOJ Operations Associates LLC, acceptable to the Department. [CSL]
11. Submission of an executed Certificate of Assumed name of DOJ Operations Associates LLC, acceptable to the Department. [CSL]
12. Submission of an executed certificate of dissolution or certificate of amendment of the certificate of incorporation of Daughters of Jacob Nursing Home Company, Inc., 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

December 4, 2014

Need Analysis

Project Description

DOJ Operations Associates, LLC, seeks approval to become the permanent operator of Daughters of Jacob Nursing Home, a 405-bed Article 28 residential health care facility located at 1160 Teller Avenue, Bronx, 10456, in Bronx County. Upon approval, Daughters of Jacob Nursing Home will be renamed Triboro Center for Rehabilitation and Specialty Healthcare.

Analysis

There is currently a need for 8,680 beds in the New York City Region as indicated in Table 1 below. However, the overall occupancy for the New York City Region is 94.8% for 2012 as indicated in Table 2.

Table 1: RHCF Need – New York City Region

2016 Projected Need	51,071
Current Beds	42,068
Beds Under Construction	323
Total Resources	42,391
Unmet Need	8,680

Daughters of Jacob Nursing Home's utilization rate was 96.5% in 2010, 94.4% in 2011, and 96.4% in 2012. The facility's utilization has been near the Department's optimum level of 97% and has been above the utilization rates for both the County and Region. The applicant is the current receiver of the facility.

Table 2: Daughters of Jacob Nursing Home/Bronx County/New York City Region Occupancy

Facility/County/Region	% Occupancy 2010	% Occupancy 2011	% Occupancy 2012
Daughters of Jacob NH	96.5%	94.4%	96.4%
Bronx County	95.8%	94.3%	95.9%
New York City Region	95.4%	94.8%	94.8%

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, 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.

Daughter of Jacob Nursing Home's Medicaid admissions of 63.9% in 2011 and 59.2% in 2012 exceeded the Bronx County 75% rates of 37.5% in 2011 and 35.8% in 2012.

Conclusion

Its high percentage of Medicaid admissions and recent near-optimum occupancy under the current applicant acting as receiver suggest that this facility is an important source of RHCF care for both the Medicaid clientele and the general population of Bronx County.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	<u>Existing</u>	<u>Proposed</u>
Facility Name	Daughters of Jacob Nursing Home Company Inc	Triboro Center for Rehabilitation and Specialty Healthcare
Address	1160 Teller Ave Bronx, New York 10456	
	PFI: 1249	Same
RHCF Capacity	405	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Not for Profit Corporation	Limited Liability Corporation
Class of Operator	Voluntary	Proprietary
Operator	Daughters of Jacob Nursing Home Company, Inc Effective 8/1/13 Receivership: DOJ Operations Associates LLC Kenneth Rozenberg 100%	DOJ Operations Associates LLC d/b/a Triboro Center for Rehabilitation and Specialty Healthcare Members: Kenneth Rozenberg 56.0% Deborah Lerner 10.0% Suzanne Lerner 10.0% Shelly Lerner 10.0% Debbie Mermelstein 10.0% David Gamzeh 2.0% Jeffrey Sicklick 2.0% 100.0%

Character and Competence - Background

Facilities Reviewed:

Nursing Homes

Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bronx Center for Rehabilitation and Health Care	10/2004 to present
Brooklyn Center for Rehabilitation and Residential HC	03/2007 to present
Bushwick Center for Rehabilitation and Health Care (formerly Wartburg Lutheran Home for the Aging)	06/2008 to present
Chittenango Center for Rehabilitation and Health Care (formerly Stonehedge Health & Rehabilitation Center - Chittenango)	07/2008 to present
Corning Center for Rehabilitation	07/2013 to present
Daughters of Jacob Nursing Home Company Inc.	08/2013 to present
Delaware Nursing & Rehabilitation Center	06/2014 to present
Dutchess Center for Rehabilitation and Healthcare	08/2004 to present
Essex Center for Rehabilitation and Health Care	03/2014 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare	11/2010 to present
Queens Center for Rehabilitation and Residential Health Care	10/2004 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Rome Center for Rehabilitation and Health Care (formerly Stonehedge Health & Rehabilitation Center - Rome)	07/2008 to present
Steuben Center for Rehab	07/2014 to present
University Nursing Home	10/2004 to present
Washington Center for Rehabilitation and Health Care	02/2014 to present
Waterfront Center for Rehabilitation and Health Center	08/2011 to present
Williamsbridge Manor Nursing Home	10/2004 to present

<u>Certified Home Health Agency</u> Alpine Home Health Care	07/2008 to present
<u>Licensed Home Care Services Agency</u> Amazing Home Care	05/2006 to present
<u>Ambulance Company</u> Senior Care Emergency Ambulance Services, Inc. (EMS)	06/2005 to present
<u>Managed Long Term Care Company</u> Center Plan for Health Living (MLTC)	01/2013 to present

Individual Background Review:

Kenneth Rozenberg is a New York licensed nursing home administrator, in good standing, and licensed paramedic, in good standing. He has been employed as CEO of Bronx Center for Rehabilitation & Health Care since January 1998. Mr. Rozenberg discloses the following health facility interests:

Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bronx Center for Rehabilitation and Health Care	10/1997 to present
Brooklyn Center for Rehabilitation and Residential Health Care	03/2007 to present
Bushwick Center for Rehabilitation and Health Care	05/2011 to present
Chittenango Center for Rehabilitation and Health Care	05/2011 to present
Corning Center for Rehab	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare	08/2004 to present
Essex Center for Rehab	03/2014 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehab	04/2013 to present
Queens Center for Rehabilitation and Residential Health Care	06/2004 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Rome Center for Rehabilitation and Health Care	05/2011 to present
Steuben Center for Rehab	07/2014 to present
University Nursing Home	08/2001 to present
Waterfront Center for Rehabilitation	12/2012 to present
Washington Center for Rehab	02/2014 to present
Williamsbridge Manor Nursing Home	11/1996 to present
Holliswood Center for Rehabilitation (RECeivership)	11/2010 to 04/2013
Stonehedge Health & Rehabilitation Center – Rome (REC)	07/2008 to 04/2011
Stonehedge Health & Rehab Center – Chittenango (REC)	07/2008 to 04/2011
Wartburg Lutheran Home for the Aging (REC)	06/2008 to 05/2011
Waterfront Center for Rehabilitation (REC)	08/2011 to 12/2012
Delaware Nursing & Rehab Center (REC)	06/2014 to present
Daughters of Jacob Nursing Home Company Inc. (REC)	08/2013 to present
Center Plan for Health Living (MLTC)	01/2013 to present
Alpine Home Health Care (CHHA)	07/2008 to present
Amazing Home Care (LHCSA)	05/2006 to present
Senior Care Emergency Ambulance Services, Inc. (EMS)	06/2005 to present

Jeffrey N. Sicklick is a nursing home administrator in good standing in the states of New York and New Jersey. Mr. Sicklick has been employed as Administrator at Bronx Center for Rehabilitation & Health Care since October, 1997. Mr. Sicklick discloses the following health facility interests:

Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bushwick Center for Rehabilitation and Health Care	05/2011 to present
Chittenango Center for Rehabilitation and Health Care	05/2011 to present
Corning Center for Rehabilitation	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare	08/2004 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare	05/2013 to present
Queens Center for Rehabilitation and Residential Health Care	06/2007 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Rome Center for Rehabilitation and Health Care	05/2011 to present
Waterfront Center for Rehabilitation	01/2013 to present

Shelly Lerner discloses no employment history. Ms. Lerner discloses the following health facility interests:

Holliswood Center for Rehabilitation and Healthcare	05/2013 to present
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Deborah Lerner discloses she is a college student, with no employment history. Ms. Lerner discloses no health facility interests.

Suzanne Lerner discloses she is a college student, with no employment history. Ms. Lerner discloses no health facility interests.

Debbie (Lerner) Mermelstein reveals employment as an administrative assistant at Astor Chocolate Corporation, in Lakewood NJ, in December, 2007. No other employment is revealed. Ms. Mermelstein discloses no health facility interests.

David Gamzeh is a licensed New York State nursing home administrator in good standing. Mr. Gamzeh is currently employed as administrator of record of Daughters of Jacob Nursing Home since July, 2013. Previously Mr. Gamzeh served as administrator at Holliswood Care Center from November, 2010 to November, 2012. Mr. Gamzeh discloses no health facility interests.

Character and Competence - Analysis

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

A review of operations of Bronx Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order issued October 23, 2007 for surveillance findings on April 27, 2007. Deficiencies were found under 10 NYCRR 415.12 Quality of Care and 415.12(i)(1), Quality of Care: Nutrition.
- The facility was fined \$4,000 pursuant to a Stipulation and Order issued August 25, 2011 for surveillance findings on April 16, 2010. Deficiencies were found under 10 NYCRR 415.12 (h)(2) Quality of Care: Accidents and Supervision and 415.26 Administration.

A review of the operations of Chittenango Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$20,000 pursuant to a Stipulation and Order issued February 17, 2012 for surveillance findings on January 20, 2011. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores and NYCRR 415.12(d)(1) and Quality of Care: Catheters.
- The facility was fined \$4,000 pursuant to a Stipulation and Order issued November 15, 2010 for surveillance findings on October 22, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1,2) Quality of Care: Accidents and Supervision and 415.26(b)(3)(4) Governing Body.

A review of the operations of Waterfront Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-13-014 issued April 24, 2013 for surveillance findings on September 27, 2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents and Supervision.

A review of Williamsbridge Manor Nursing Home for the period identified above reveals the following:

- The facility was fined \$1,000 pursuant to a Stipulation and Order issued July 8, 2008 for surveillance findings of December 19, 2007. A deficiency was found under 10 NYCRR 415.12 Quality of Care.

The review of operations for Bronx Center for Rehabilitation and Health Care, Chittenango Center for Rehabilitation and Health Care, Waterfront Center for Rehabilitation and Healthcare, and Williamsbridge Manor Nursing Home for the time periods indicated above results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

The review of operations of Boro Park Center for Rehabilitation and Healthcare, Brooklyn Center for Rehabilitation and Residential Health Care, Bushwick Center for Rehabilitation and Health Care, Dutchess Center for Rehabilitation and Healthcare, Fulton Center for Rehabilitation and Healthcare, Holliswood Center for Rehabilitation and Healthcare, Queens Center for Rehabilitation and Residential Health Care, Richmond Center for Rehabilitation and Specialty Healthcare, Rome Center for Rehabilitation and Health Care, and University Nursing Home for the time periods indicated above reveals that a substantially consistent high level of care has been provided since there were no enforcements.

A review of Alpine Home Health Care, LLC and Amazing Home Care reveals that a substantially consistent high level of care has been provided since there were no enforcements.

The review of Senior Care Emergency Ambulance Services, Inc. reveals that a substantially consistent high level of care has been provided since there were no enforcements.

Project Review

No changes in the program or physical environment are proposed in this application.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Asset Purchase Agreement

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

Date: June 26, 2013
Seller: Daughters of Jacob Nursing Home Company, Inc.
Buyer : DOJ Operations Associates, LLC
Purchased Assets: All assets used in operation of the facility. Facilities; equipment; supplies and inventory; prepaid expenses; documents and records; assignable leases, contracts, licenses and permits; telephone numbers, fax numbers and all logos; resident trust funds; deposits; accounts and notes receivable; cash, deposits and cash equivalents.
Excluded Assets: Any security, vendor, utility or other deposits with any Governmental Entity; any refunds, debtor claims, third-party retroactive adjustments and related documents prior to closing, and personal property of residents.
Purchase Price: \$25,500,000 for the operating interest whereas \$4,480,000 has been paid at closing and held in escrow in which \$2,250,000 can be given to receiver as a non-interest bearing loan solely for working capital purposes and \$2,230,000 can be given to receiver as a non-interest bearing loan solely to fund the pension plan.

The applicant has provided a letter of interest from Greystone stating available financing of \$19,125,000 at 5% over a twenty-five year amortization period.

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. As of October 31, 2014, the accounts receivable (AR) balance due the Department totals \$11,130,650.87. The applicant is pursuing discussions with the Office of Health Insurance Programs to establish a viable AR repayment schedule to be formalized through a legal Repayment Agreement with the Department to address the outstanding AR balance due.

Lease Agreement

The applicant will continue to occupy the premises under an executed lease agreement, the terms of which are summarized below:

Date: August 1, 2013
Premises: A 405-bed RHCF located at 1160 Teller Ave, Bronx, New York.
Lessor: DOJ Land Associates, LLC
Lessee: DOJ Operations Associates, LLC
Term: 10 years
Rental: \$1,500,000/year (\$125,000 per month)
Provisions: Triple Net

The applicant intends to renew the lease after the 10 year period.

Operating Budget

The applicant has submitted an operating budget, in 2014 dollars, for the first year subsequent to change in ownership:

	<u>Year One</u>
Revenues:	
Medicaid	\$32,691,877
Medicare	5,971,103
Private Pay/Other	<u>2,769,183</u>
Total Revenues	\$41,432,163
Expenses:	
Operating	\$37,475,822
Capital	<u>2,285,146</u>
Total Expenses	\$39,760,968
Net Income	<u>\$ 1,671,195</u>
Utilization (patient days)	141,912
Occupancy	96.0%

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

- Expenses include lease rental.
- Medicaid rates are based on 2014 Medicaid pricing rates with no trend.
- Overall utilization is projected at 96.0%, while utilization by payor source is expected as follows:

Medicaid	89.0%
Medicare	7.1%
Private Pay/Other	3.9%
- Breakeven occupancy is projected at 95.26%.

Capability and Feasibility

There are no project costs associated with this application.

The purchase price of \$25,500,000 for the operations will be financed by the proposed members' equity of \$6,375,000 and a bank loan of \$19,125,000 at 5% interest amortized over 25 years. BFA Attachment A is the net worth of the proposed members which shows sufficient equity. An affidavit from Kenneth Rozenberg has been submitted to the Department of Health which states that he is willing to contribute resources disproportionate to ownership percentages.

The proposed member, Kenneth Rozenberg, of DOJ Operations Associates, LLC has submitted an affidavit stating that he will fund the balloon payment should acceptable financing not be available at the time the loan comes due after the 10 year period. BFA Attachment E is the interest and amortization schedule for the ten year term.

Working capital requirements are estimated at \$6,626,828 based on two months of the first year expenses, of which \$3,313,414 will be satisfied from the proposed members' equity and \$3,313,414 will be financed by a bank loan at 5% over 5 years. BFA Attachment A is the net worth of the proposed members which shows sufficient equity. A bank letter of interest from Greystone has been submitted by the applicant.

The submitted budget indicates that a net income of \$1,671,195 would be maintained during the first year following the change in ownership. BFA Attachment F is the budget sensitivity analysis based on current utilization of the facility as of June 30, 2014, which shows the budgeted revenues would decrease by \$663,218 resulting in a net profit in year one of \$1,007,977. BFA Attachment C is the pro forma balance sheet of DOJ Operations Associates, LLC, which indicates positive members' equity of \$9,688,414 as of the first day of operations. The budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Effective June 1, 2014, eligible Medicaid beneficiaries in the following counties were required to join a managed care plan (phase 1, downstate): NYC, Nassau, Suffolk and Westchester. The rest of the State (phase 2, upstate) will transition beginning December 1, 2014. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with the NH providers. To mitigate untoward financial impact to NH providers during the transition to managed care, the 2014-15 Enacted State Budget amended Public Health Law adding §2808 2-c(e) to establish the NH Medicaid fee-for-service (FFS) rate as the benchmark rate (floor) for MCO payments to NH providers. Department Policy, noticed to Plans in March 2014, provided further guidance requiring MCOs to pay the benchmark FFS rate, or a negotiated rate acceptable to both plans and NHs, for 3 years after a county has been deemed mandatory (phased in) for NH population enrollment. As a result, the benchmark FFS rate remains a reliable basis for assessing NH Medicaid revenues through to May 31, 2017 (downstate), and November 30, 2017 (upstate), respectively.

As shown on BFA Attachment B, Daughters of Jacob experienced negative working capital, net asset position and an average net loss of \$4,741,444 from 2011-2012 and a \$622,438 net profit as of December 31, 2013, which was due to high operating costs that have been gradually reduced since the receivership took over the facility. Improvements are anticipated to continue going forward. The reduction in net operating losses is mainly due to the following:

- Elimination of prior interest and penalties paid (\$1,127,805);
- Renegotiation of purchase contracts, including pharmacy and insurance contracts (\$857,045);
- Reduction in staffing/renegotiation of benefits without disruption of patient care (\$619,800); and
- Reduction in professional fees, including legal fees (\$476,492).

BFA Attachments D, Financial Summary of the proposed members affiliated RHCs, shows the facilities have maintained positive income from operations for the periods shown with the exception of Chittenango Center for Rehabilitation which was due to a one-time audit recoupment.

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

<p>BFA Attachment A BFA Attachment B BFA Attachment C BFA Attachment D BFA Attachment E BFA Attachment F BNHLC Attachment A</p>	<p>Personal Net Worth Statement Financial Summary- Daughters of Jacob Pro Forma Balance Sheet Financial Summary- Affiliated Residential Health Care Facilities Interest and Amortization schedule Budget Sensitivity Quality Measures and Inspection Report</p>
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RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 4th day of December, 2014, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish DOJ Operations Associates LLC as the permanent operator of the Daughters of Jacob Nursing Home, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

132128 B

FACILITY/APPLICANT:

DOJ Operations Associates, LLC
d/b/a Triboro Center for Rehabilitation and
Specialty Healthcare

APPROVAL CONTINGENT UPON:

1. Submission of an executed loan commitment for working capital acceptable to the Department of Health. [BFA]
2. Submission of an executed loan commitment for the purchase price acceptable to the Department of Health. [BFA]
3. Submission of an executed payment agreement for amounts owed the Department, acceptable to the Department. [BFA]
4. Re-submission of the first and third year budgets for feasibility based on the executed payment agreement for amounts owed the Department. [BFA]
5. 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]
6. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
 - 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.
7. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
 - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
 - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - e. Other factors as determined by the applicant to be pertinent. [RNR]
8. Submission and approval of a programmatically acceptable name for the nursing home. [LTC]
9. Submission of the executed revised Certificate of Amendment of the Articles of Organization of DOJ Operations Associates LLC, acceptable to the Department. [CSL]

10. Submission of the executed amended Operating Agreement of DOJ Operations Associates LLC, acceptable to the Department. [CSL]
11. Submission of an executed Certificate of Assumed name of DOJ Operations Associates LLC, acceptable to the Department. [CSL]
12. Submission of an executed certificate of dissolution or certificate of amendment of the certificate of incorporation of Daughters of Jacob Nursing Home Company, Inc., 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]

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

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



Public Health and Health Planning Council

Project # 141213-E

Comprehensive at Williamsville, LLC d/b/a Comprehensive Rehabilitation and Nursing Center at Williamsville

Program: Residential Health Care Facility
Purpose: Establishment

County: Erie
Acknowledged: May 15, 2014

Executive Summary

Description

Comprehensive at Williamsville, LLC d/b/a Comprehensive Rehabilitation and Nursing Center at Williamsville (Comprehensive at Williamsville), a for-profit entity, proposes to be established as the new operator of St. Francis Home of Williamsville, a 142-bed voluntary not-for-profit residential health care facility (RHCF) located at 147 Reist Street Williamsville, (Erie County). A separate realty entity, Reist Street Realty, LLC will acquire the facility's real property.

The owners of Reist Street Realty, LLC and Comprehensive at Williamsville, LLC d/b/a Comprehensive Rehabilitation and Nursing Center at Williamsville are the same and have the exact same ownership interest in both entities.

Ownership of the operations and real property before and after the requested change is as follows:

The change in ownership will not result in any change in beds or services.

Current Operator & Real Property

St. Francis Home of Williamsville	
<u>Membership</u>	<u>Ownership</u>
Catholic Health System, Inc and Diocese of Buffalo	100%

OPCHSM Recommendation
 Contingent Approval

Proposed Operator

Comprehensive at Williamsville, LLC d/b/a Comprehensive Rehabilitation and Nursing Center at Williamsville	
<u>Membership</u>	<u>Ownership</u>
Ephram Lahasky	37%
Joshua Farkovits	37%
David Gast	16%
Sam Halper	10%

Need Summary

St. Francis Home of Williamsville's utilization was 91.4% in 2010, 90.5% in 2011, and 87.5% in 2012. Current utilization, as of October 8, 2014 is 97.2%. According to the applicant, the new owners plan to increase utilization through the development of new programmatic initiatives to meet the needs of the residents and the community.

The change in ownership will not result in any change in beds or services.

Proposed Realty Owner

Reist Street Realty, LLC	
<u>Membership</u>	<u>Ownership</u>
Ephram Lahasky	37%
Joshua Farkovits	37%
David Gast	16%
Sam Halper	10%

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

Comprehensive at Williamsville, LLC d/b/a Comprehensive Rehabilitation and Nursing Center at Williamsville will acquire the RHCF operating assets for \$1,800,000 which will be funded as follows: \$360,000 from members' equity and a 10-year term loan of \$1,440,000 with a 25-year amortization schedule at a 5.5% interest rate. Reist Street Realty, LLC, the applicant's landlord, is purchasing the real property for \$4,200,000. Its members will contribute \$840,000 in equity along with entering into a

\$3,360,000 loan with a 10-year terms amortized over 25 years at 5.5% interest rate. There are no project costs associated with this application

Budget:	Revenues:	\$13,984,000
	Expenses:	<u>\$13,513,000</u>
	Gain:	\$471,000

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 Primary Care and 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. [RNR]
3. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
 - Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
 - Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - Other factors as determined by the applicant to be pertinent.The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
4. Submission of an executed loan commitment for the facility's operations acceptable to the Department. [BFA]
5. Submission of an executed working capital loan commitment acceptable to the Department. [BFA]
6. Submission of an executed building lease acceptable to the Department. [BFA]
7. Submission of an executed loan commitment for the real property acceptable to the Department. [BFA]
8. Submission of an attestation from the co-applicant and active parent, Catholic Health System, Inc., that they are an agreeable party to the Asset Purchase Agreement. [BFA]
9. Submission of an attestation from the co-applicant and active parent, Catholic Health System, Inc., that they are an agreeable party to the Asset Purchase Agreement. [LTC]
10. Submission of a copy of an executed certificate of amendment of the certificate of incorporation of the seller and a copy of the present certificate of incorporation of the seller, acceptable to the Department. [CSL]
11. Submission of a copy of an executed asset purchase agreement between the current owner(s)/operator(s) and Comprehensive of Williamsville, LLC. [CSL]

12. Submission of a copy of Reist Street Realty LLC's Articles of Organization and Operating Agreement. [CSL]
13. Submission of a copy of an executed real property purchase agreement between the legally authorized seller and Reist Street Realty, LLC. [CSL]
14. Submission of a copy of an executed lease between Reist Street Realty LLC and Comprehensive of Williamsville, LLC, acceptable to the Department. [CSL]
15. Submission of a copy of a legally acceptable Bill of Sale and a legally acceptable Assignment and Assumption Agreement between the current owner(s)/operator(s) of the facility and applicant. [CSL]
16. Submission of a copy of the applicant's executed certificate of assumed name, acceptable to the Department. [CSL]
17. Submission of a copy of the applicant's executed Amended and Restated Articles of Organization, acceptable to the Department. [CSL]
18. Submission of the applicant's finalized and executed Operating Agreement, 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

December 4, 2014

Need Analysis

Project Description

Comprehensive at Williamsville, LLC seeks approval to become the established operator of St. Francis Home of Williamsville, a 142-bed residential health care facility, located at 147 Reist Street, Williamsville, 14221, in Erie County.

Analysis

There is currently a surplus of 457 beds in Erie County as indicated in Table 1 below. The overall occupancy for Erie County is 91.2% for 2012 as indicated in Table 2.

Table 1: RHCF Need – Erie County

2016 Projected Need	5,291
Current Beds	5,748
Beds Under Construction	0
Total Resources	5,748
Unmet Need	-457

Table 2: St. Francis Home of Williamsville/Erie County

<u>Facility/County</u>	<u>% Occupancy</u> <u>2010</u>	<u>% Occupancy</u> <u>2011</u>	<u>% Occupancy</u> <u>2012</u>
St. Francis Home of Williamsville	91.4%	90.5%	87.5%
Erie County	93.9%	92.1%	91.2%

St. Francis Home of Williamsville's utilization was 91.4% in 2010, 90.5% in 2011, and 87.5% in 2012. According to the applicant, the reason for the decline was due to several factors: the facility needed updating, and a decision was made to make modest facility improvements in 2011 and 2012, and significant upgrades in 2013; organization and staffing issues needed to be addressed which resulted in an occupancy decline; and a regional decline (approximately 20%) was noted in sub-acute discharges to nursing facilities, resulting in beds remaining vacant as the facility sought short-term rehabilitation residents.

According to the applicant, the new owners plan to increase utilization through the development of new programmatic initiatives to meet the needs of the residents and the community which include:

- Bariatric services;
- Wound care program;
- Enhanced cardio-rehab program; and
- Enhanced diabetic services

It is expected that these new initiatives will also attract more referrals from hospitals and medical practices, thereby increasing utilization at this facility. Also, the applicant noted that St. Francis provides care to a high acuity population in need of institutional care and has among the highest CMI in the county (1.16). The facility will continue to serve these higher acuity residents in a cost-efficient setting.

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.

Individual Background Review:

Samuel Harper holds a New York State nursing home administrator's license and is considered to be in good standing. Mr. Harper lists his employment as the Chief Executive Officer at Friendship Ridge Nursing Home located in Beaver, Pennsylvania since March 2014. Previously, he was the Administrator of Record of River Manor Care Center in Brooklyn, New York and Dutchess Center for Rehabilitation in Pawling, New York. Mr. Harper discloses the following ownership interest:

Friendship Ridge Nursing Home	03/2014 to present
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Ephram Lahasky is a New York State licensed emergency medical technician and is considered to be in good standing. Mr. Lahasky lists his employment as the President of Transportation Services Unlimited, an ambulance and mobility assisted vehicle company located in Paterson, New Jersey. He is also the chief executive officer of Richmond County Ambulance, Inc. located in Staten Island, New York and Emergency Ambulance Service, Inc. in Bohemia, New York. Mr. Lahasky also lists his employment as a consultant at Microcomputer Customized Services, a consulting firm located in Lawrence, New York. Mr. Lahasky discloses the following ownership interests:

Friendship Ridge Nursing Home	03/2014 to present
The Health Center at Galloway	01/2013 to present
Superior Medical Transportation LTD	10/2004 to present
Richmond County Ambulance Inc.	03/2012 to present
Transportation Services Unlimited a/k/a Guardian EMS	01/2008 to present

Joshua Farkovits lists his employment as the Vice President of Business Development of Richmond County Ambulance, Inc., an emergency medical transportation company located in Staten Island, New York. Mr. Farkovits discloses the following ownership interests:

Friendship Ridge Nursing Home	03/2014 to present
Richmond County Ambulance Inc.	09/2011 to present

David Gast lists his employment as the owner of AG Group Associates LLC, a real estate company located in Uniondale, New York. He is also the manager of Morris Towers, a real estate management company. Mr. Gast discloses the following ownership interest in health care facilities:

Friendship Ridge Nursing Home	03/2014 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 operations for Friendship Ridge Nursing Home located in Beaver, Pennsylvania for the time period indicated above results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of operations for The Health Center at Galloway located in Paterson, New Jersey for the time period indicated above results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of operations for Superior Medical Transportation LTD and Richmond County Ambulance Inc. for the period identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of operations for Transportation Services Unlimited a/k/a Guardian EMS in the state of New Jersey for the period identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

Project Review

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The facility is in compliance with CMS 2013 sprinkler mandates.

Conclusion

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

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Asset Purchase Agreement

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:	January 29, 2014
Seller:	St. Francis Home of Williamsville
Purchaser:	Comprehensive at Williamsville, LLC d/b/a Comprehensive Rehabilitation and Nursing Center at Williamsville
Purchased Assets:	Transfer, assign, and convey all title and interest in purchased assets free and clear of all liens, claims, assessments, security interests, mortgages, collateral assignments, leases, attachments, levies and other defects in title and other encumbrances.
Excluded Assets:	Cash and equivalents, marketable securities, retroactive rate increases, refunds, insurance policies, accounts receivable prior to closing, employment benefit plan, pension and savings plans, and computer applications.
Assumed Liabilities-Operations:	Obligations on assumed contracts arising after closing date.
Purchase Price:	\$1,800,000
Payment of Purchase Price:	\$ 126,000 escrow deposit at sign of agreement \$1,674,000 due at closing

The purchase price is proposed to be satisfied as follows:

Equity	\$ 360,000
Loan (5.5%, 10-year term (25 year amortization))	<u>1,440,000</u>
Total	\$1,800,000

A letter of interest has been provided by HHC Finance in regards to the above noted loan. BFA Attachment A is the proposed members' net worth summary, which reveals sufficient resources to meet the equity requirement. It is noted that liquid resources may not be available in proportion to the proposed ownership interest. Ephram Lahasky has provided an affidavit stating that he is willing to contribute resources disproportionate to his membership interest.

The members' have furnished affidavits making a commitment to personally fund the balloon payment on the proposed loan should terms acceptable to the Department of Health be unavailable at the time of refinancing.

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.

Real Estate Purchase Agreement

The applicant has submitted an executed agreement to purchase the RHCf real property, the terms of which are summarized below:

Date:	January 29, 2014
Seller Realty:	St. Francis Home of Williamsville
Purchaser Realty:	Reist Street Realty, LLC
Assets Transferred Realty:	All rights, title and interest in parcel of land, building/s, improvements, fixtures, easements and appurtenances, located at 147 and 149 Reist Street, Village of Williamsville, Town of Amherst and known as SBL#68.20-3-1.1 and SBL#68.04-1-15.21
Purchase Price:	\$4,200,000
Payment of Purchase:	\$ 294,000 escrow
Price:	\$3,906,000 due at closing

The purchase price is proposed to be satisfied as follows:

Equity – Reist Street Realty, LLC members	\$840,000
Loan – 5.5% interest, 10-year terms with 25 year amortization	<u>\$3,360,000</u>
Total	\$4,200,000

The letter of interest for the loan has been provided by HHC Finance. The members have provided affidavits to personally fund the balloon payment, should terms acceptable to the Department of Health be unavailable at the time of refinancing. Review of BFA Attachment A, the proposed members' net worth summary, 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. Ephram Lahasky has provided an affidavit stating that he is willing to contribute resources disproportionate to his membership interest.

Lease Agreement

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

Premises:	142 Bed RHCf located at 147-149 Reist Street, Williamsville, NY 14221
Owner/Landlord:	Reist Street Realty, LLC
Lessee:	Comprehensive at Williamsville, LLC d/b/a Comprehensive Rehabilitation and Nursing Center at Williamsville
Term:	Twenty-six (26) years – with one 10-year renewal option
Rent:	\$348,000 per year (includes landlords debt service)
Provisions:	Taxes, utilities, insurance, and maintenance

The lease is a non-arm's length agreement. Medicaid capital reimbursement for the proposed applicant will change from the existing not-for-profit Article 28A methodology to the proprietary reimbursement methodology of return on/of equity.

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	\$200.65	\$6,073,000
Medicare	453.40	5,497,000
Private Pay & Other	346.14	2,370,000
Other Operating Revenue*		<u>44,000</u>
Total Revenues:		\$13,984,000
Expenses:		
Operating		\$12,822,000
Capital		<u>691,000</u>
Total Expenses:		\$13,513,000
Net Income:		<u>\$471,000</u>

*Vending Machines, Hair Care, Discounts, & Transportation

RHCF Utilization (patient days)	49,238
RHCF Occupancy	95.00%

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 current rates;
- RHCF projected utilization is 95.00%. Average utilization for the period 2006 through 2009 was 88.6%, from 2010 through 2013, it increased to 90.0%, and according to the DOH website, as of April 30, 2014, occupancy increased to 92.3%. The applicant will work with the operator to expand outreach and enhance programs in order to increase occupancy.
- Breakeven utilization is projected at 92.0%.
- RHCF utilization by payor source is anticipated as follows:

Medicaid	61.47%
Medicare	24.62%
Private/Other	13.91%

Capability and Feasibility

Comprehensive at Williamsville, LLC d/b/a Comprehensive Rehabilitation and Nursing Center at Williamsville will acquire the RHCF operations for \$1,800,000, will be funded with \$360,000 in members' equity and a \$1,440,000 loan at the above stated terms. Concurrently, Reist Street Realty, LLC will purchase the real property for \$4,200,000, which will be funded with \$840,000 in members' equity and a \$3,360,000 loan at the above stated terms. A letter of interest for the operation loan and the real property loan has been provided by HHC Finance. BFA Attachment A is Comprehensive at Williamsville, LLC and Reist Street Realty, LLC members' net worth statements, which 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. Ephram Lahasky 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 \$2,252,167 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. It is also noted that liquid resources may not be available in proportion to ownership interest; therefore Ephram Lahasky and David Gast have provided an affidavits stating they are willing to contribute resources disproportionate to their membership interest.

BFA Attachments B is the pro-forma balance sheet for Comprehensive at Williamsville, LLC d/b/a Comprehensive Rehabilitation and Nursing Center at Williamsville, which shows that the entity will start off with \$2,617,000 in equity. Total assets include \$1,800,000 in goodwill, which is not a liquid resource, nor is it recognized for Medicaid reimbursement. If goodwill was eliminated from the equation, then the total net assets would become a positive \$817,000.

The submitted budget indicates that net income of \$471,000 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	\$13,984,000
Projected Expense	<u>13,513,000</u>
Projected Net Income	\$471,000
Annual 2012 Income	\$11,750,000
Annual 2011 Expense	<u>13,905,000</u>
Annual 2011 Net Income (Loss)	(\$2,155,000)
Incremental Net Income (Loss)	<u>\$2,626,000</u>

It is estimated incremental net revenue for all payers will increase approximately \$2,234,000, as the result of the following: Medicaid revenues are expected to increase by \$1,346,000 as the result of 2,320 added inpatient days, with the average daily rate going from \$169.14 to \$201.65; Medicare revenues are expected to increase by \$524,000 as the result of 929 added inpatient days, with the average daily rate going from \$444.22 to \$453.40; private pay and all other revenues are expected to increase by \$364,000 as the result of 525 added inpatient days, with the average daily rate going from \$317.30 to \$346.14.

Expenses are expected to decline by a net of \$392,000 primarily from a reduction in the following: decline in salaries and wages of \$778,000, decline in fringe benefits of \$505,000, going from 36.1% of wages to 33.0%. The \$1,283,000 reduction in expenses was offset by increase in other direct expenses of \$464,000 and increase in capital expenses of \$427,000 bringing the net reduction to \$392,000. The budget appears to be reasonable.

Staff notes that with the expected 2014 implementation of managed care for nursing home residents, Medicaid reimbursement is expected to change from a state-wide price with cost-based capital component payment methodology to a negotiated reimbursement methodology.

Facility payments will be the result of negotiations between the managed long term care plans and the facility. At this point in time, it cannot be determined what financial impact this change in reimbursement methodology will have on this project.

As shown on BFA Attachment C, Financial Summary for St. Francis Home of Williamsville for the years 2011 through 2013, the RHCF had an average negative net asset position and an average negative working capital position, and generated an average loss of \$839,808. The operating losses during 2011 and 2012 were due to staffing costs and occupancy levels. The facility is currently operating at a loss due to excess staffing costs. The proposed members will implement staffing reductions where overages exists and are in the process of renegotiating the labor contract; it is expected this will save approximately \$1,283,000.

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, Comprehensive at Williamsville, LLC d/b/a Comprehensive Rehabilitation and Nursing Center at Williamsville and Reist Street Realty, LLC
BFA Attachment B	Pro-forma Balance Sheet, Comprehensive at Williamsville, LLC d/b/a Comprehensive Rehabilitation and Nursing Center at Williamsville
BFA Attachment C	Financial Summary, St. Francis Home of Williamsville
BNHLC Attachment A	Quality Measures and Inspection Report

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 4th day of December, 2014, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Comprehensive at Williamsville, LLC as the new operator of the residential health care facility located at 147 Reist Street, Williamsville that is currently operated as St. Francis Home of Williamsville, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

141213 E

Comprehensive at Williamsville, LLC
d/b/a Comprehensive Rehabilitation and
Nursing Center at Williamsville

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. [RNR]
3. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
 - Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
 - Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - Other factors as determined by the applicant to be pertinent.

The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
4. Submission of an executed loan commitment for the facility's operations acceptable to the Department. [BFA]
5. Submission of an executed working capital loan commitment acceptable to the Department. [BFA]
6. Submission of an executed building lease acceptable to the Department. [BFA]
7. Submission of an executed loan commitment for the real property acceptable to the Department. [BFA]
8. Submission of an attestation from the co-applicant and active parent, Catholic Health System, Inc., that they are an agreeable party to the Asset Purchase Agreement. [BFA]

9. Submission of an attestation from the co-applicant and active parent, Catholic Health System, Inc., that they are an agreeable party to the Asset Purchase Agreement. [LTC]
10. Submission of a copy of an executed certificate of amendment of the certificate of incorporation of the seller and a copy of the present certificate of incorporation of the seller, acceptable to the Department. [CSL]
11. Submission of a copy of an executed asset purchase agreement between the current owner(s)/operator(s) and Comprehensive of Williamsville, LLC. [CSL]
12. Submission of a copy of Reist Street Realty LLC's Articles of Organization and Operating Agreement. [CSL]
13. Submission of a copy of an executed real property purchase agreement between the legally authorized seller and Reist Street Realty, LLC. [CSL]
14. Submission of a copy of an executed lease between Reist Street Realty LLC and Comprehensive of Williamsville, LLC, acceptable to the Department. [CSL]
15. Submission of a copy of a legally acceptable Bill of Sale and a legally acceptable Assignment and Assumption Agreement between the current owner(s)/operator(s) of the facility and applicant. [CSL]
16. Submission of a copy of the applicant's executed certificate of assumed name, acceptable to the Department. [CSL]
17. Submission of a copy of the applicant's executed Amended and Restated Articles of Organization, acceptable to the Department. [CSL]
18. Submission of the applicant's finalized and executed Operating Agreement, 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]

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

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

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Beech Development Corp.
d/b/a ComForcare Senior Services – Rochester East
Address: Rochester
County: Monroe
Structure: For-Profit Corporation
Application Number: 2226-L

Description of Project:

Beech Development Corp. d/b/a ComForcare Senior Services – Rochester East, a for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Beech Development Corp. has proposed to operate as a Franchisee of ComForcare Senior Services. The managing member of Beech Development Corp. will be Mark S. Judd.

The applicant has authorized 1,000,000 shares of stock, which are owned as follows: Mark S. Judd owns 960,000 shares and Lynn K. Judd owns 40,000 shares.

The Board of Directors of Beech Development Corp. d/b/a ComForcare Senior Services – Rochester East comprises the following individuals:

Mark S. Judd, President/Secretary
Beech Development Corp. d/b/a ComForcare Senior Services – Rochester East (Companion Care)

Lynn K. Judd, Vice President/Treasurer
Beech Development Corp. d/b/a ComForcare Senior Services – Rochester East (Companion 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 3380 Monroe Avenue, Suite 112, Rochester, New York 14618:

Monroe	Livingston	Ontario	Wayne
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The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: October 22, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: New York Congregational Licensed Home Care Services Agency, Inc.
Address: Brooklyn
County: Kings
Structure: Not-For-Profit Corporation
Application Number: 2241-L

Description of Project:

New York Congregational Licensed Home Care Services Agency, Inc., a not-for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

New York Congregational Community Services will be the sole member of New York Congregational Licensed Home Care Services Agency, Inc.

The Board of Directors of New York Congregational Licensed Home Care Services Agency, Inc. and New York Congregational Community Services are comprised of the following individuals:

Cecelia C. Zuckerman, RN, LNHA – President/CEO
President/CEO/Administrator, New York Congregational Nursing Center, Inc.

Affiliations: New York Congregational Nursing Center (1999 – 2012)

Florence Katz, LCSW, LNHA – Senior Vice President/COO
Senior Vice President/COO, New York Congregational Nursing Center, Inc.

Affiliations: New York Congregational Nursing Center (2004 – 2012)

Frank Cianciotto, LNHA – Senior Vice President, Finance/CFO
CFO, New York Congregational Nursing Center, Inc.

Affiliations: New York Congregational Nursing Center (2010 – 2012)

Thomas Bettridge – Secretary/Treasurer
Retired, Director of Risk Management, NYC Office of the Comptroller

Kendall Christiansen – Chairperson
Owner, Gaia Strategies, LLC

Affiliations: New York Congregational Nursing Center (1992 – 2012)

James Waechter – Vice Chairperson
Crew Member, Trader Joe's

Affiliations: New York Congregational Nursing Center (1989 - Present)

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 Cecelia Zuckerman NHA license #03699 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 her license.

The Bureau of Professional Credentialing has indicated that Florence Katz NHA license #05565 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 her license.

The Bureau of Professional Credentialing has indicated that Frank Cianciotto NHA license #04931 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 her license.

The applicant proposes to serve the residents of the following counties from an office located at 123 Linden Boulevard, Brooklyn, New York 11226:

Bronx	Kings	New York
Queens	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Medical Social Services	Nutrition
Homemaker	Housekeeper	

A seven year review of the operations of the agencies/facilities listed below was conducted as part of this review (unless otherwise noted):

- New York Congregational Nursing Center d/b/a New York Congregational Certified Home Health Agency (2/27/14 – Present)
- New York Congregational Nursing Center d/b/a New York Congregational Long-Term Home Health Care Program
- New York Congregational Nursing Center (RHCF)

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 Bureau of Quality Assurance for Nursing Homes has indicated that the residential health care facility reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: October 28, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Rebekah Rehab Licensed Home Care Services Agency, Inc.
Address: Bronx
County: Bronx
Structure: Not-For-Profit
Application Number: 2316-L

Description of Project:

Rebekah Rehab Licensed Home Care Services Agency, Inc., a not-for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

This LHCSA will be associated with Rebekah Rehab Assisted Living Program, Inc.

The Board of Directors of Rebekah Rehab Licensed Home Care Services Agency, Inc. is comprised by the following individuals:

Martin Elson, Esq. – President Retired	D. Joseph Bradley, Jr., First Vice President Retired
Carmine Manzolillo, Second Vice President and Treasurer Retired	Anita Stern – Secretary Retired
Jeffrey Young – Director Retired	Reed Elson – Director Retired
Anne D. Fisher – Director Retired	Kenneth T. Gelb, NHA – Director CEO, Rebekah Rehab & Extended Care Center

All members of Rebekah Rehab Licensed Home Care Services Agency, Inc. sit on the Board of Directors of Rebekah Rehab Assisted Living Program, Inc.

The Bureau of Professional Credentialing has indicated that Kenneth T. Gelb NHA license # 04273 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 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 Bronx County from an office located at 1118 Havemeyer Avenue, Bronx, New York 10462.

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Occupational Therapy
Respiratory Therapy	Physical Therapy	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper	Speech Language Pathology

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: October 1, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: The Gardens by Morningstar, LLC
Address: Oswego
County: Oswego
Structure: Limited Liability Company
Application Number: 2449-L

Description of Project:

The Gardens by Morningstar, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

This LHCSA will be associated the Assisted Living Program to be operated by The Gardens by Morningstar, LLC.

The membership of The Gardens by Morningstar, LLC comprises the following individuals:

Joseph Murabito, MHA, LNHA – 50%
President/Owner/Operator/Administrator, Morningstar Residential Care Center (RHCF)
Vice President of Operations, Wingate Healthcare

Affiliations:

Morningstar Residential Care Center (2010 – present)

Atom Avery – 50%
Owner, Avery Rental Properties

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 132 Ellen Street, Oswego, New York 13126

Oswego

Onondaga

Cayuga

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper
Medical Supplies and Equipment		

The Bureau of Professional Credentialing has indicated that Joseph Murabito, NHA license #04708, 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):

Morningstar Residential Care Center (2010 – present)
The Gardens by Morningstar

The information provided by the Bureau of Quality Assurance for Nursing Homes has indicated that the residential health care facility reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Adult Care Facility and Assisted Living Surveillance 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: October 24, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: UCSSL, LLC d/b/a Focus Home Care of Central New York
Address: Utica
County: Oneida
Structure: Limited Liability Company
Application Number: 2211-L

Description of Project:

UCSSL, LLC d/b/a Focus Home Care of Central New York, a limited liability company requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

This LHCSA is associated with Loretto-Utica Center Enriched Housing Program and their Assisted Living Program (ALP).

Loretto Properties Corporation d/b/a Loretto-Utica Home Care was previously approved as a home care services agency by the Public Health Council at its November 18, 1994 meeting and subsequently licensed as 9471L001.

The purpose of this proposal is to replace the current operator of the LHCSA. The LHCSA will continue to serve the patients of Loretto-Utica Center Enriched Housing Program which is currently undergoing an identical change of ownership and will be called Focus Senior Living at Utica.

Joseph Zupnik is the managing member of UCSSL, LLC, which was appointed the voluntary Receiver of the Loretto Utica Center Enriched Housing Program, pursuant to a Receivership Agreement dated September 20, 2011. As set forth in the agreement, UCSSL, LLC is applying to become the approved operator of Loretto-Utica Center Enriched Housing Program. The acquisition is a resultant and consistent with the Receivership Agreement and the Asset Purchase Agreement.

The members of the UCSSL, LLC d/b/a Focus Senior Living of Central New York comprise the following individuals:

Joseph Zupnik -99%
Owner/Managing Member, Sterling Management
Group, LLC

Elisa Zupnik – 1%
Unemployed

Affiliations:

- Managing Member, UCRN, LLC – which was appointed the receiver of Loretto Utica Residential Health Care Facility (NH)
- Owner/Managing Member, Stonehedge Nursing Homes (Rome and Chittenango) 1/2006 – 4/2011

Affiliations:

- Member, FHCS, LLC d/b/a Focus Home Care Services (PA Certified Home Health Agency) 5/2010 – Present

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):

- Loretto Properties Corporation d/b/a Loretto-Utica Home Care
- Loretto-Utica Center Enriched Housing Program
- FHCS, LLC d/b/a Focus Home Care Services (5/2010 – Present)
- Loretto Utica Residential Health Care Facility
- Stonehedge Nursing Homes (Rome and Chittenango) 1/2006 – 4/2011

Loretto Utica Center A/K/A Focus Senior Living Center at Utica was fined four thousand dollars (\$4,000.00) pursuant to a stipulation and order dated March 18, 2014 for surveillance findings of October 30, 2012, November 9, 2012, and February 1, 2013. Deficiencies were found under 18 NYCRR 488.7(g)(1) – Resident Services; 488.11(d)(1) – Environmental Standards; 488(e)(13) – Environmental Standards; 488.11(g)(3) – Environmental Standards; 488.7(d)(3) – Resident Services; 488.7(d)(6) – Resident Services; 488.7(d)(3) – Resident Services; 488.7(d)(6) – Resident Services.

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.

Stonehedge Health and Rehabilitation Center - Chittenango was fined four thousand dollars (\$4,000.00) pursuant to a stipulation and order dated November 15, 2010 for surveillance findings of October 22, 2009. Deficiencies were found under for violations 10 NYCRR Section 415.12(h)(1, 2) – Quality of Care: Accidents and Supervision and 415.12(b)(3)(4) – Governing Body.

Chittenango Center for Rehabilitation and Health Care (fka Stonehedge Health and Rehabilitation Center - Chittenango) was fined twenty thousand dollars (\$20,000.00) pursuant to a stipulation and order dated February 17, 2012 for surveillance findings of January 20, 2011. Deficiencies were found under for violations 10 NYCRR Section 415.12(c)(1)(2) – Quality of Care: Pressure Sores and 415.12(d)(1) – Quality of Care: Catheters.

The Information provided by the Bureau of Quality Assurance for Nursing Homes 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 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.

Pennsylvania Department of Health submitted compliance reports through 2013 that indicated that FHCS, LLC d/b/a Focus Home Care Services has exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients.

The applicant proposes to continue to serve the residents of the following counties from an office located at 1445 Kemble Street, Utica, New York 13501.

Herkimer	Lewis	Madison	Onondaga
Oswego	Oneida		

The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Homemaker
Housekeeper			

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: October 21, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Shire Senior Living LLC
Address: Rochester
County: Monroe
Structure: Limited Liability Company
Application Number: #2331-L

Description of Project:

Shire Senior Living, LLC d/b/a Shire Senior Living Home Care, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law. Shire Senior Living, LLC was previously approved as a home care services agency by the Public Health Council at its November 19, 1993 meeting and subsequently licensed as # 9451L001.

This LHCSA will be associated with an Assisted Living Program (ALP) at Shire at Culverton Adult Home.

The sole member of Shire Senior Living, LLC is:

Brian H. Rosenman - 100%
Asset Manager. GFI Capital Resources

Affiliations:
Operator, Suttton Gardens, LLC
Receiver, Kelly's Home for Adults

The Bureau of Professional Credentialing indicated that Brian H. Rosenman's Real Estate Broker's license in good standing and they have never taken disciplinary action against this individual or his license.

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 2515 Culver Road, Rochester, NY 14609.

Monroe	Chemung	Livingston
Ontario	Wayne	Genesee
Schuyler	Seneca	Steuben
Yates		

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Physical Therapy
Occupational Therapy	Respiratory Therapy	Speech-Language Pathology
Medical Social Services		

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

Sutton Gardens, LLC (2009 - present)
Kelly's Home for Adults (2011- present)

Sutton Gardens, LLC was fined two thousand dollars (\$2,000.00) pursuant to a stipulation and order dated November 21, 2012 for surveillance findings of June 9, 2011 and August 25, 2011. Deficiencies were found under 10 NYCRR 487.8(e)(1) Food Service.

Kelly's Home for Adults was fined thirty thousand dollars (\$30,000.00) pursuant to a stipulation and order dated February 6, 2014 for surveillance findings of September 8, 2011, September 20, 2012, January 27, 2013 and October 10, 2013. Deficiencies were found under 10 NYCRR 487.4(a) Admission Standards, 487.6(a)(1) Resident Funds and Valuables, 487.7(g)(1)(i) Resident Services, 487.7(h)(1) Resident Services, 487.11(f)(19) Smoke/Fire Protection, 487.11(i)(11-12) Environmental Standards, 487.11(j)(1-3) Environmental Standards and 487.11(k)(4) Environmental Standards, 487.11(k)(5) Environmental Standards, 487.11(f)(19) Smoke/Fire Protection and for 487.11(j)(1-3) Housekeeping. The fine was paid on March 11, 2014.

Kelly's Home for Adults was fined one thousand and five hundred dollars (\$1,500.00) pursuant to a stipulation and order dated October 22, 2014 for surveillance findings of October 10, 2013 and March 4, 2014. Deficiencies were found under 10 NYCRR 487.11(f)(10) Environmental Standards; 487.11(i)(11-12) Environmental Standards; and for 487.11(k)(5) Environmental Standards.

The information provided by the Division of Assisted Living 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: November 10, 2014

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 4th day of December, 2014, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

<u>NUMBER:</u>	<u>FACILITY:</u>
2162L	24/7 Homecare Agency of NY, Inc. (Bronx, Queens, Kings, Richmond, New York and Nassau Counties)
2172L	Able Body Homecare Agency of NY, Inc. (Bronx, Kings, New York, Richmond, Queens and Westchester Counties)
2191L	Agincare Homecare Services, Inc. (Bronx, New York, Kings, Richmond, Queens, and Nassau Counties)
2161L	Allied Partners Home Care, LLC (Nassau and Queens Counties)

2236L Anderson Care, LLC d/b/a Home Helpers/Direct Link
(Albany and Schenectady Counties)

2187L Angel Home Care Agency, Inc.
(Kings, Richmond, New York, Queens, and Bronx
Counties)

2174L Angel's Touch Home Care, LLC
(Kings, Richmond, Queens, Bronx, New York and
Westchester Counties)

2252L Axzons Health System Corporation
(Nassau, Westchester, Suffolk and Queens Counties)

2226L Beech Development Corp.
d/b/a ComForcare Senior Services – Rochester East
(Monroe, Livingston, Ontario and Wayne Counties)

2207L Blissful Healthcare, Inc.
(Bronx, New York, Kings, Richmond and Queens
Counties)

2060L Compassionate Home Health Care, LLC
(New York, Bronx, Kings, Richmond, Queens, and
Westchester Counties)

2257L Customize Care, LLC
(Bronx, Queens, Kings, Richmond, New York and
Westchester Counties)

2164L Eva Homecare Agency, Inc.
(Bronx, Queens, Kings, Richmond, New York and
Nassau Counties)

2230L First Baana Corp.
(New York, Bronx, Kings, Richmond, Queens and
Westchester Counties)

2232L Fun & Fit, LLC d/b/a Home Instead Senior Care
(Westchester, Putnam, Dutchess and Bronx Counties)

2189L Janette Homecare of NY, Inc.
(New York, Bronx, Kings, Richmond, Queens and
Nassau Counties)

- 2087L Long Beach Home Care Services, Inc.
(Bronx, Richmond, New York, Nassau, Kings, and
Queens Counties)
- 2241L New York Congregational Licensed Home Care
Services Agency, Inc.
(Bronx, Queens, Kings, Richmond, New York and
Nassau Counties)
- 2182L Safe and Prudent, LLC
(New York, Bronx, Kings, Richmond, Queens, and
Nassau Counties)
- 2201L SafeCare Home Care Agency, Inc.
(Nassau, Suffolk and Queens Counties)
- 2208L SHARE of New Square, Inc.
(Rockland, Sullivan, Putnam, Westchester, Dutchess,
Bronx, Orange and Ulster Counties)
- 2159L Skilled Home Care Services of New York, LLC
d/b/a Skilled Home Care Services of New York
(Bronx, Queens, Kings, Richmond, New York and
Westchester Counties)
- 1728L Supreme Generation, Inc.
(Bronx, Queens, Kings, New York and Richmond
Counties)
- 2183L The Heinlein Group, Inc.
d/b/a Synergy HomeCare of Westchester
(Westchester and Bronx Counties)
- 2197L Visiting Nurse Service Care at Home, Inc.
(Albany, Montgomery, Warren, Clinton, Rensselaer,
Washington, Essex, Saratoga, Franklin, Schenectady,
Fulton and Schoharie Counties)
- 2316L Rehekah Rehab Licensed Home Care Services Agency,
Inc.
(Bronx County)
- 2449L The Gardens by Morningstar, LLC
(Oswego, Onondaga and Cayuga Counties)

- 2055L Golden Eagle Homecare Agency, Inc.
(Bronx, Queens, Kings, Nassau, New York, and
Richmond Counties)
- 2391L JS Homecare Agency of NY, Inc.
(Bronx, Richmond, Kings, Nassau, New York and
Queens Counties)
- 2211L UCSL, LLC d/b/a focus Home Care of Central New
York
(Herkimer, Oswego, Lewis, Oneida, Madison, and
Onondaga Counties)
- 2127L Premier Home Health Care Services, Inc.
(Kings, New York, Queens, Richmond, and Bronx
Counties)
- 2256L Premier Home Health Care Services, Inc.
(Westchester, Putnam, Rockland, and Bronx Counties)
- 2331 L Shire Senior Living LLC
(Monroe, Ontario, Schuyler, Yates, Chemung, Wayne,
Seneca, Livingston, Genesee, and Steuben Counties)



Public Health and Health Planning Council

Project # 141290-B
SOW Westside, LLC d/b/a Surgicare of Westside

Program: Diagnostic & Treatment Center **County:** New York
Purpose: Establishment and Construction **Acknowledged:** July 3, 2014

Executive Summary

Description

SOW Westside, LLC, an existing general purpose limited liability company, requests approval for the establishment and construction of an Article 28 multi-specialty freestanding ambulatory surgery center to be located in leased space at 438 West 51st Street, New York, New York. The Center will consist of four operating rooms. After approval, the Center will be known as SurgiCare of Westside. Through its strategic partnership with its member North Shore LIJ Ventures Westside, LLC and its affiliate North Shore Long Island Jewish Health System, the applicant will benefit from the expertise of a leading health system in New York. The applicant will enter into an administrative services agreement with Surgem Management, LLC.

The current members of SOW Westside, LLC with ownership percentages are as follows:

John Hajjar, MD.	30.00%
Didier Demesin, MD.	1.00%
Cary Chapman, MD.	1.00%
Corey Hunter, MD.	1.00%
Amr Hosny, MD.	4.00%
Ednan Sheikh, MD.	2.00%
Andrew Feldman, MD.	3.00%
Salil Gupta, MD.	1.00%
Arash Emamil, MD.	2.00%
SOW Westside BM, LLC	5.00%
RYC Orthoventures, LLC	5.00%
Hudson Surgicare, LLC	2.00%
Paul Brisson, MD.	4.00%
North Shore LIJ Ventures Westside, LLC	10.00%
Yaser El-Gazzar, MD.	1.00%
Gregory Montalbano, MD.	3.00%
Craig Radney, MD.	1.00%
G.R.&G.T.F.O.O.M, LLC	3.00%
MWH ASC, LLC	2.00%
Michael Gerling, MD.	4.00%

Timothy Reish, MD.	1.00%
William Long, MD.	2.00%
Tribeca Orthoventures, LLC	5.00%
Kevin Wright, MD.	1.00%
Fabien Bitan, MD.	1.00%
Salvatore Lenzo, MD.	4.00%
Andrew Stein, MD.	1.00%

OPCHSM Recommendation

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

Need Summary

SOW Westside, LLC proposes to establish and construct an Article 28 diagnostic and treatment center to provide multi-specialty ambulatory surgery services. The number of projected procedures is 4,537 in year 1 with five (5) percent Medicaid and two (2) percent 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

Total project cost of \$10,676,986 will be met via equity from the current members of SOW Westside, LLC.

Budget:

Revenues	\$20,445,329
Expenses	<u>15,371,086</u>
Net Income	\$ 5,074,243

Subject to the noted contingencies, 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 Primary Care and Health Systems Management

Approval with an expiration of its operating certificate five (5) years from the date of its issuance, contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the DOH beginning in the second year of operation. Said reports should include:
 - Data showing actual utilization including procedures;
 - Data showing breakdown of visits by payor source;
 - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
 - Data showing number of emergency transfers to a hospital;
 - Data showing percentage of charity care provided, and
 - Number of nosocomial infections recorded during the year in question. [RNR]
3. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
4. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
7. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
8. Submission of an executed building lease, acceptable to the Department. [BFA]
9. Submission of an executed administrative services agreement, acceptable to the Department. [BFA]
10. Submission of State Hospital Code (SHC) Drawings, acceptable to the department, as described in BAEFP Drawing Submission Guidelines DSG-03 Outpatient Facilities. [AER]
11. Submission of a photocopy of the applicants finalized and executed Amended and Restated Certificate of Formation, acceptable to the Department. [CSL]
12. Submission of a photocopy of a finalized and executed amendment to the applicants Operating Agreement, which is acceptable to the Department. [CSL]
13. Submission of a photocopy of the applicants finalized and executed Application for Authority, acceptable to the Department. [CSL]
14. Submission of a photocopy of the applicants finalized and executed Lease, acceptable to the Department. [CSL]

15. Submission of a photocopy of Tribeca Orthoventures LLCs finalized and executed Operating Agreement, acceptable to the Department. [CSL]
16. Submission of a photocopy of SOW Westside LLCs finalized and executed Operating Agreement, acceptable to the Department. [CSL]
17. Submission of a photocopy of North Shore-LIJ Ventures West Side, LLCs Operating Agreement, acceptable to the Department. [CSL]
18. Submission of a photocopy of North Shore-LIJ Ventures West Side, LLCs Articles of Organization, acceptable to the Department. [CSL]
19. Submission of a photocopy of Hudson Surgicare, LLCs Articles of Organization, which is acceptable to the Department. [CSL]
20. Submission of a photocopy of MWH ASC, LLCs finalized and executed Operating Agreement, acceptable to the Department. [CSL]
21. Submission of a photocopy of MWH ASC, LLCs Articles of Organization, acceptable to the Department. [CSL]
22. Submission of a photocopy of G.R. & G.T.F.O.O.M. LLCs Articles of Organization, acceptable to the Department. [CSL]
23. Submission of a photocopy of the applicants executed services agreement, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The applicant shall start construction on or before July 1, 2015 and complete construction by March 1, 2016 upon the filing of Final Construction Documents in accordance with 10 NYCRR section 710.7. In accordance with 10 NYCRR Part 710.2(b)(5), if construction is not started on or before the start date, this shall constitute abandonment of the approval. In accordance with Part 710.10(a), this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]
7. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's request for, and Department's granting approval for the start of construction. [AER]

Council Action Date

December 4, 2014

Need Analysis

Background

SOW Westside, LLC d/b/a Surgicare of Westside is requesting approval to establish and construct an Article 28 Diagnostic and Treatment Center to provide multi-specialty ambulatory surgery services. The proposed location is 438 West 51st Street, New York, 10019, in New York County.

Analysis

The service area includes Bronx, New York, Kings, Queens, and Suffolk Counties. New York County currently has a total of 15 freestanding ambulatory surgery centers: seven (7) multi-specialty ASCs and eight (8) single specialty ASCs. Additionally, there are two freestanding multi-specialty ASCs in New York County that have been approved but are not yet operational.

PFI	Type of Facility	Facility	Total Patients 2013
9313	Single-Specialty	Carnegie Hill Endo, LLC	10,695
3976	Multi-Specialty	Center for Specialty Care	4,174
9115	Single-Specialty	East Side Endoscopy	7,345
4295	Multi-Specialty	Fifth Avenue Surgery Center	1,665
8577	Multi-Specialty	Gramercy Park Digestive Disease	8,666
6908	Multi-Specialty	Gramercy Surgery Center, Inc.	2,550
6624	Single-Specialty	Kips Bay Endoscopy Center LLC	9,241
9274	Single-Specialty	Manhattan Endoscopy Ctr, LLC	12,014
9490	Multi-Specialty	Manhattan Surgery Center (Opened 2013)	N/A
7874	Single-Specialty	Mid-Manhattan Surgi-Center	4,312
9139	Multi-Specialty	Midtown Surgery Center, LLC	3,114
8503	Single-Specialty	Retinal Ambulatory Surgery Ctr	1,862
9148	Multi-Specialty	Surgicare of Manhattan, LLC	3,648
		Total	69,286

(Source-SPARCS)

The number of projected procedures is 4,537 in year 1 and 7,378 in year 3 with five (5) percent Medicaid and two (2) percent charity care. These projections are based on the current case load of 29 participating physicians.

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

Conclusion

The proposed project will improve access to ambulatory surgery services specializing in General Surgery, Urology, Pain Management, Orthopedics, Plastic Surgery, OB/GYN, and Physical Medicine in New York County.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Project Proposal

SOW Westside, LLC seeks approval to establish and construct an Article 28 diagnostic and treatment center that will be certified as a multi-specialty ambulatory surgery center. Following approval, SOW will be known as SurgiCare of Westside.

Proposed Operator	SOW Westside, LLC
Doing Business As	SurgiCare of Westside
Site Address	438 West 51 st Street, New York, NY
Surgical Specialties	Multi-Specialty, including: General Surgery Gynecology Orthopedics Pain Management
Operating Rooms	4 (Class C)
Procedure Rooms	0
Hours of Operation	Monday through Friday from 8:00 am to 6:00 pm (Extended as necessary to accommodate patient needs).
Staffing (1st Year / 3rd Year)	27.20 FTEs / 32.0 FTEs
Medical Director(s)	Paul-Marie Jerome Brisson, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Is expected to be provided by Lenox Hill Hospital 2.8 Miles / 11 Minutes
On-call service	Patients will be provided with surgeon contact information as well as the facility's on-call service during hours when the facility is closed.

Character and Competence

The membership of SOW Westside, LLC consists of twenty-nine (29) practicing board-certified or board eligible physicians (some vis-à-vis member New York limited liability companies) and North Shore LIJ Ventures Westside, LLC.

Character and Competence Reviews were conducted on the members listed below with the exception of North Shore LIJ Ventures Westside, LLC. According to the applicant, North Shore LIJ Ventures Westside, LLC. is wholly-owned by Lennox Hill Hospital and the Lennox Hill Hospital board is identical to the North-Shore Long Island Jewish Health System (NS-LIJ) Board. A full Character and Competence Review was conducted on all voting members of the NS-LIJ Board and disclosures were made as part of project (CON #141004), which was approved by the PHHPC in June 2014.

Name	Membership Percentage
**North Shore LIJ Ventures Westside, LLC Dennis Dowling (Manager) Laurence Kraemer (Manager)	10.00%
Physicians/Physician-Owned LLCs	90.00%
John H. Hajjar	30.00%
Didier A. Demesin, MD	1.00%
Cary B. Chapman, MD	1.00%
Corey Hunter, MD	1.00%
Amr Hosny, MD	4.00%
Ednan Sheikh, MD	2.00%
Andrew Feldman, MD	3.00%

Salil Gupta, MD	1.00%
Arash Emami, MD	2.00%
Paul Marie Brisson, MD (Medical Director)	4.00%
Yaser El-Gazzar, MD	1.00%
Gregory Montalbano, MD	3.00%
Craig S. Radney, MD	1.00%
Michael Gerling, MD	4.00%
Timothy Reish, MD	1.00%
William John Long, MD	2.00%
Kevin Wright, MD	1.00%
Fabien Bitan, MD	1.00%
Salvatore Lenzo, MD	4.00%
Andrew Stein, MD	1.00%
SOW Westside BM, LLC Bryan Massoud, MD	5.00%
RYC Orthoventures, LLC Donald Rose, MD Thomas Youm, MD	5.00%
Hudson Surgicare, LLC Jonathann Kuo, MD Kevin Pak, MD Alexander Rances, MD	2.00%
G.R. & G.T.F.O.O.M, LLC Charles H. Starke, II, MD	3.00%
MWH ASC, LLC Ebrahim S. Shahim, MD	2.00%
Tribeca Orthoventures, LLC Mark Mohrmann, MD	5.00%
<i>** C&C previously conducted under CON #141004 which was approved by PHHPC in June 2014</i>	
TOTAL	100.00%

The Managers of SOW Westside will be:

John Hajjar, MD
Thomas Youm, MD
Dennis Dowling
Laurence Kraemer
Charles Starke, II, MD

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

Drs. Hosny and Lenzo each disclosed one (1) pending malpractice case. Dr. Montalbano disclosed three (3) pending and one (1) settled malpractice case. Dr. Stein disclosed one (1) pending malpractice and three (3) settled malpractice cases. Dr. Radnay disclosed five (5) pending malpractice cases. Dr. Bitan disclosed seven (7) pending malpractice cases.

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

On October 16, 2006, the Department issued a Stipulation and Order and imposed a \$14,000 fine on Southside Hospital based on the finding of a complaint investigation where a patient was admitted with a large dermoid cyst on her left ovary. Although a consent was signed for left-sided surgery, the physician performed a right ovarian cystectomy. It was noted that much of the accompanying documentation referred to a right sided cyst.

On December 8, 2006, the Department issued a Stipulation and Order and imposed a \$12,000 fine on Forest Hills Hospital based on the findings of an investigation regarding a patient who entered the hospital for left side hernias repair. The surgery was performed on the patient's right side.

On July 23, 2007, the Department issued a Stipulation and Order and imposed a \$12,000 fine on Staten Island University Hospital based on the investigation of a complaint that an overdose of a controlled substance by the hospital had caused the patient's death. Findings included that nursing administered a drug at a higher rate than was ordered and continued the administration even after it was discontinued by the surgical resident.

On December 11, 2008, the Department issued a Stipulation and Order and imposed an \$18,000 fine on North Shore University Hospital – Manhasset based on a complaint investigation related to the post-operative care rendered to an elderly patient. Following surgery for an aneurysm, the patient developed multiple decubiti, fell out of bed resulting in a dislocated femur and developed renal failure. Follow-up care was delayed or inadequately administered.

On July 8, 2010, the Department issued a Stipulation and Order and imposed a \$42,000 fine on Syosset Hospital based on the findings of a complaint investigation into the care of a child having an adenotonsillectomy. It was determined that the patient was improperly cleared for surgery and that despite multiple comorbidities was not kept for observation post-operatively. The patient expired after discharge.

In September 2010, North Shore-Long Island Jewish Health System settled claims without a finding or admission of fraud, liability or other wrongdoing relative to a qui tam lawsuit filed under the civil False Claims Act by a private whistleblower and investigated by the U.S. Attorney's Office. The \$2.95M settlement covered a 10-year period and primarily related to isolated errors in various cost reports rather than the allegations.

Integration with Community Resources

The Center plans to serve patients who are referred by their community based physician, however, should patients require primary care services, the Center will expand its Transfer and Affiliation Agreement with Lenox Hill Hospital to include primary and other specialty services, as needed. Further, the Center will integrate with the community by participating in community health events and local religious institutions in an effort to educate increase awareness about the services offered at the Center. No patient will be excluded based on ability to pay. A sliding fee scale will be developed for patients without health insurance and charity care will be provided at no charge or reduced charge for those patients who are unable to pay full charges or not eligible for covered benefits or private insurance.

The applicant intends on utilizing an Electronic Medical Record (EMR) System and is currently reviewing options. While not committing to joining an Accountable Care Organization or Medical Home, the applicant does intend on developing a mutual network relationship with Lenox Hill Hospital. Additionally, the applicant has expressed a desire to integrate into the Regional Health Information Organization (RHIO) and/or Health Information Exchange (HIE) and has made inquiries to Lenox Hill hospital in an effort to establish a mutual network relationship.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Lease Rental Agreement

The applicant has submitted a draft lease rental agreement for the site, as summarized below:

Premises: 12,600 square feet located at 438 West 51th Street, New York.
Lessor: Westside Manhattan Real Estate, LLC
Lessee: SOW Westside, LLC
Term: Fifteen years
Rental: \$756,000 annually (\$60.00 per sq.ft.) with a 3% increase each year thereafter.
Provisions: The lessee shall be responsible for maintenance, real estate taxes and insurance.

The applicant has submitted an affidavit indicating that there is a relationship in that John Hajjar is a member of the landlord entity.

Administrative Services Agreement

The applicant has submitted a draft administrative services agreement, which they will enter into as summarized below:

Administrator: Surgem Management, LLC
Center: SOW Westside, LLC
Services Provided: Facility maintenance; employee training and evaluation; back office and administrative support; community outreach; accounting and financial services; development of policies and procedures; reimbursement and service contract guidance; regulatory assistance; quality and utilization controls, insurance, reporting, emergency support, dispute processing, electronic medical records development and implementation and information system acquisition and support.
Term: 10 years
Compensation: \$1,500,000 in the first year with increasing 5% per year thereafter.

The Center retains ultimate independent authority and responsibility over the following:

- Controlling and maintaining the books and records of the Center;
- Appointment or dismissal of Center management level of employees and medical staff;
- Approval of Center operating and capital budgets;
- Adoption, approval, and enforcement of Center's operating policies and procedures affecting the Center's delivery of health care services;
- Approval of Certificate of Need Applications filed by or on behalf of Center;
- Approval of Center debt necessary to finance the cost of compliance with operational or physical plant standards required by law;
- Approval of Center contracts for management or for clinical services;
- Approval of settlements of administrative proceedings or litigation to which the Center is party; and
- Disposing of assets and incurring of liabilities on behalf of the Center.

The applicant has submitted an affidavit indicating that there is a relationship between the applicant and Surgem Management, LLC in that John Hajjar is a member of Surgem Management, LLC.

Total Project Cost and Financing

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$10,676,986, further broken down as follows:

Renovation and Demolition	\$5,045,783
Design Contingency	504,578
Construction Contingency	504,578
Architect/Engineering Fees	403,663
Other Fees (Consultant)	400,000
Moveable Equipment	3,757,993
CON Fee	2,000
Additional Processing Fee	<u>58,391</u>
Total Project Cost	\$10,676,986

Project costs are based on a July 1, 2015 construction start date and an eight month construction period.

The applicant will provide equity from the proposed members personal resources and North Shore-Long Island Jewish Health System.

Operating Budget

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

	<u>Year One</u>	<u>Year Three</u>
Revenues:	\$12,391,108	\$20,445,329
Expenses:		
Operating	\$9,570,569	\$13,548,310
Capital	<u>1,639,800</u>	<u>1,822,776</u>
Total Expenses:	\$11,210,369	\$15,371,086
Net Income:	\$1,180,739	\$5,074,243
Utilization: (Procedures)	4,537	7,378
Cost Per Procedure:	\$2,470.88	\$2,083.37

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

	<u>Year One</u>	<u>Year Three</u>
Medicaid Managed Care	5.00%	5.00%
Medicare Managed Care	13.00%	13.00%
Commercial Fee-For-Service	30.98%	30.99%
Commercial Managed Care	19.00%	19.00%
Private Pay	3.00%	3.00%
Other*	27.02%	27.01%
Charity Care	2.00%	2.00%

*Other consists of No Fault and Workers Compensation.

Utilization projections are based upon the surgical volume letters as provided by the proposed surgeons who will perform surgeries at the proposed center. Expenses are based upon historical data from previous cost reports of similar ambulatory surgery centers, and experience of the applicant who participates in other ambulatory surgery centers.

Capability and Feasibility

Project costs of \$10,676,986 will be met via equity from the proposed members.

Working capital requirements are estimated at \$2,561,847, which appears reasonable based on two months of third year expenses. The applicant will finance \$1,280,923 at an interest rate of 6% for a three year term. The remainder, \$1,280,924, will be provided in the form of equity via the proposed members of SOW Westside, LLC. BFA Attachments A and B are the personal net worth statements of the proposed members of SOW Westside, LLC and the 2012 and 2013 certified financial statements of North Shore - Long Island Jewish Health System, Inc., which indicates the availability of sufficient funds to meet the total project cost and the working capital requirements. The applicant has submitted an affidavit indicating that each member is willing to contribute resources disproportionate to ownership percentages. BFA Attachment C is the pro-forma balance sheet of SOW Westside, LLC as of the first day of operation, which indicates a positive net asset position of \$11,957,910.

The submitted budget indicates a net income of \$1,180,739 and \$5,074,243 during the first and third year, respectively. Revenues are based on current reimbursement methodologies for ambulatory surgery services. The submitted budget appears reasonable.

As shown on BFA Attachment B, North Shore- Long Island Jewish Health System, Inc. has maintained an average positive working capital position and an average positive net asset position from 2012 through 2013. Also, the entity achieved average operating gains of \$90,912,000 from 2102 through 2013.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Supplemental Information

Hospital Responses

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas. There follows a summary of the applicant's response to DOH's request for information on the proposed facility's volume of surgical cases, the sources of those cases, and on how staff will be recruited and retained by the ASC.

Facility: Bellevue Hospital Center -- **No Response**
First Avenue at 27th Street
New York, NY 10016

Facility: Mount Sinai Roosevelt Hospital -- **No Response**
1000 Tenth Avenue
New York, NY 10019

Facility: New York Presbyterian Hospital -- **No Response**
New York Weill Cornell Center
525 East 68th Street
New York, NY 10021

Facility: NYU Hospitals Center
 NYU Hospital for Joint Diseases
 301 East 17th Street
 New York, NY 10003

Current OR Use (% of capacity)	Surgery Cases		Amb. Surg. Cases by Applicant Physicians	Reserved OR Time for Applicant Physicians
	Ambulatory	Inpatient		
67%	10,429	4,833	2,745	Yes

The Hospital for Joint Diseases (HJD) opposes the application, stating that the thirteen Surgicare physicians credentialed at NYU Hospitals Center perform over 2,700 ambulatory surgery procedures at HJD per year, accounting for over \$21 million in revenue annually, which HJD projects would be lost to the proposed ASC. The hospital furnished no information on community-oriented services or other activities that would be adversely affected by this projected loss of revenue.

In 2012, NYU Hospitals Center had operating expenses of \$1,797,646,000 on operating revenue of \$1,980,519,000 for a gain of \$182,873,000. In 2013, operating expenses totaled \$1,981,021,000 and operating revenue was \$2,081,361,000, for a gain of \$100,340,000. NYU Hospitals Center's current assets in 2012 were \$1,109,609,000, and current liabilities were \$469,767,000, for a working capital ratio of 2.4 to 1.0. In 2013, current assets were \$682,923,000, and current liabilities were \$355,470,000, for a working capital ratio of 1.9 to 1.0. In its fiscal year 2013, NYU Hospitals Center incurred bad debt costs of \$19,583,000 and provided charity care in the amount of \$15,838,000. In fiscal year 2014, the Center incurred \$11,611,000 in bad debt costs and provided \$24,274,000 in charity care.

Supplemental Information from Applicant

Need and Sources of Cases: The applicant states that the projected volume of the proposed ASC is based on the actual experience of the proposed operator(s) and/or participating surgeons who have indicated an interest in performing procedures at the proposed facility. The applicant also expects that ongoing and projected growth in ambulatory surgery in general will be a source of cases for the proposed facility, as will convenience in scheduling and the location of the ASC in an out-of-hospital setting, in close proximity to transportation resources and the proposed operators' own private medical practices.

Staff Recruitment and Retention: The applicant plans to recruit necessary staff through a hiring program. To the extent that additional staff may be needed, the proposed operators are committed not to seek to attract staff from local hospitals. The applicant will retain staff through competitive salary benefits and continuing education opportunities, elective work schedules within regular work hours and occasional long weekends or additional days off as rewards for hard work and efficiency.

Office-Based Cases: The applicant states that the projected cases for the ASC will come from "a variety of sources." The applicant estimates that approximately 42 percent of the cases are currently being performed in private practice settings and refers to an unspecified number as coming from other ambulatory surgery centers. The applicant does not state whether any cases will be drawn from hospital-based programs.

DOH Comment

Although NYU Hospitals Center projects a loss of \$21 million annually to the proposed ASC, this assumes that all 2,745 cases currently performed by NYU-credentialed physicians associated with the Surgicare application would migrate to the proposed ASC. This seems unlikely, given that in any particular instance the patient or the physician may choose to undergo or perform a procedure in a hospital-based facility. Moreover, even if a substantial number of cases were to be transferred to the ASC, the scale of NYU Hospital Center's revenues and its robust financial condition make it doubtful that the associated loss of surgical revenue would have a major adverse effect on the Center and its member facilities. The Department also notes that in commenting on this project, NYU Hospitals Center did not describe any effects that a loss of revenue to the ASC might have on its community-oriented programs or other activities subsidized by surgical revenues.

The Department concludes that the comments of NYU Hospital Center do not provide a sufficient basis for reversal or modification of the recommendation for limited life approval of the proposed ASC, based on public need, financial feasibility and operator character and competence.

<h2>Attachments</h2>

BFA Attachment A	Personal Net Worth Statement
BFA Attachment B	Financial Summary- 2012 and 2013 certified financial statements of North Shore- Long Island Jewish Health System
BFA Attachment C	Pro-forma Balance Sheet

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 4th day of December, 2014, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a new freestanding multi-specialty ambulatory surgery center to be located at 438 West 51st Street, New York, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

141290 B

FACILITY/APPLICANT:

SOW Westside, LLC
d/b/a Surgicare of Westside

APPROVAL CONTINGENT UPON:

Approval with an expiration of its operating certificate five (5) years from the date of its issuance, contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the DOH beginning in the second year of operation. Said reports should include:
 - Data showing actual utilization including procedures;
 - Data showing breakdown of visits by payor source;
 - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
 - Data showing number of emergency transfers to a hospital;
 - Data showing percentage of charity care provided, and
 - Number of nosocomial infections recorded during the year in question. [RNR]
3. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
4. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
7. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
8. Submission of an executed building lease, acceptable to the Department. [BFA]
9. Submission of an executed administrative services agreement, acceptable to the Department. [BFA]
10. Submission of State Hospital Code (SHC) Drawings, acceptable to the department, as described in BAEFP Drawing Submission Guidelines DSG-03 Outpatient Facilities. [AER]
11. Submission of a photocopy of the applicants finalized and executed Amended and Restated Certificate of Formation, acceptable to the Department. [CSL]

12. Submission of a photocopy of a finalized and executed amendment to the applicants Operating Agreement, which is acceptable to the Department. [CSL]
13. Submission of a photocopy of the applicants finalized and executed Application for Authority, acceptable to the Department. [CSL]
14. Submission of a photocopy of the applicants finalized and executed Lease, acceptable to the Department. [CSL]
15. Submission of a photocopy of Tribeca Orthoventures LLCs finalized and executed Operating Agreement, acceptable to the Department. [CSL]
16. Submission of a photocopy of SOW Westside LLCs finalized and executed Operating Agreement, acceptable to the Department. [CSL]
17. Submission of a photocopy of North Shore-LIJ Ventures West Side, LLCs Operating Agreement, acceptable to the Department. [CSL]
18. Submission of a photocopy of North Shore-LIJ Ventures West Side, LLCs Articles of Organization, acceptable to the Department. [CSL]
19. Submission of a photocopy of Hudson Surgicare, LLCs Articles of Organization, which is acceptable to the Department. [CSL]
20. Submission of a photocopy of MWH ASC, LLCs finalized and executed Operating Agreement, acceptable to the Department. [CSL]
21. Submission of a photocopy of MWH ASC, LLCs Articles of Organization, acceptable to the Department. [CSL]
22. Submission of a photocopy of G.R. & G.T.F.O.O.M. LLCs Articles of Organization, acceptable to the Department. [CSL]
23. Submission of a photocopy of the applicants executed services agreement, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The applicant shall start construction on or before July 1, 2015 and complete construction by March 1, 2016 upon the filing of Final Construction Documents in accordance with 10 NYCRR section 710.7. In accordance with 10 NYCRR Part 710.2(b)(5), if construction is not started on or before the start date, this shall constitute abandonment of the approval. In accordance with Part 710.10(a), this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]
7. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's request for, and Department's granting approval for the start of construction. [AER]

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

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



Public Health and Health Planning Council

Project # 142061-E
East Side Endoscopy

Program: Diagnostic and Treatment Center **County:** New York
Purpose: Establishment **Acknowledged:** August 18, 2014

Executive Summary

Description

East Side Endoscopy, LLC (East Side) is an existing New York State proprietary Article 28 Diagnostic and Treatment Center (D&TC) located at 380 Second Avenue, Concourse A, New York, New York. The D&TC is certified as a single-specialty freestanding ambulatory surgical center specializing in gastroenterological procedures. Their initial application for establishment and construction under CON 082085 was approved by the Public Health Council on March 13, 2009, with a five-year limited life. Per this establishment CON, charity care utilization was anticipated to be 2% of total procedures in the first and third years of operation. The five-year limited life operating certification is scheduled to expire on January 25, 2015. As the facility has been experiencing difficulty meeting the 2% charity care level to date, the applicant will accept a one-year extension of its limited life to provide additional time to demonstrate its commitment to charity care in anticipation of ultimate indefinite life status.

East Side's operations consists of 4 procedure rooms and 14 recovery bays housed in leased space. There have been no changes to the original lease agreement submitted under CON 082085. The lease is set to expire on November 24, 2023.

East Side submitted an application in 2011, CON 111194, comprised of both a 22.5% transfer in membership interest to seven new members and renovation of the center. The renovations entailed providing 2 additional procedure rooms and 4 additional recovery bays. The CON was contingently approved by the PHHPC on June 6, 2011. The Department of Health is awaiting notification of the start of construction for this project as of this date.

OPCHSM Recommendation

Contingent Approval for a one-year extension of the operating certificate from the date of the Public Health and Health Planning Council recommendation letter.

Need Summary

Based on the reports submitted by the applicant, in year 3 (2012), the applicant provided 9,164 actual visits vs. 9,102 projected; charity care provided was 0.1 percent actual vs. 2 percent projected and Medicaid utilization was 9.9 percent actual vs. 3 percent projected. More recently, in 2013, East Side provided 1 percent charity care and 15.5 percent Medicaid; from January-June 2014, the charity care was 2.7 percent. There are no anticipated changes in services or utilization; the projections for charity care and Medicaid will continue to be at two (2) percent and three (3) percent respectively. Data submission by the applicant, as a contingency of CON 082085, is only partially completed.

Program Summary

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

Financial Summary

There are no project costs associated with this application.

Budget	Revenues	\$12,677,318
	Expenses	<u>\$5,401,935</u>
	Net Income/(Loss)	\$7,275,383

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 Primary Care and Health Systems Management

Approval for a one year extension of the operating certificate from the date of the Public Health and Health Planning Council recommendation letter, contingent upon:

1. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide quarterly reports to the DOH beginning from the date of the recommendation letter. Said reports should include:
 - Data showing actual utilization including procedures;
 - Data showing breakdown of visits by payor source;
 - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
 - Data showing number of emergency transfers to a hospital;
 - Data showing percentage of charity care provided, and
 - Number of nosocomial infections recorded during the year in question. [RNR]
2. Submission of an affidavit, acceptable to the Department, attesting that there have been no changes to the legal documentation as originally approved by the Department. [CSL]

Approval conditional upon:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Resubmission of 2013 SPARCS data, within three months from the date of the recommendation letter, to meet the 100% data submission requirement.

Council Action Date

December 4, 2014

Need Analysis

Project Description

East Side Endoscopy, LLC (ESE), an existing ambulatory surgery center specializing in gastroenterology procedures, is requesting permission to convert to permanent life following a five (5) year limited life from January 25, 2010 to January 25, 2015 (CON 082085). The facility is located at 380 Second Avenue, New York, 10010, New York County. The facility has four procedure rooms.

Analysis

The primary service area is New York County, more specifically zip code 10010, where the proposed site is located.

The table below provides information on projections based on CON 082085. Based on the annual reports provided by the applicant, the table also includes actual utilization.

CON 082085	Year 3	Year 3	Year 3	Year 3
Projections and Actual Visits	Proj.	Proj. %	Actual	Actual %
Medicare	1,820	20.0%	2,318	25.3%
Medicaid	274	3.0%	905	9.9%
Commercial	6,553	72.0%	5,847	63.8%
Private Pay/Other	273	3.0%	88	1.0%
Charity Care	182	2.0%	6	0.1%
Total	9,102	100.0%	9,164	100.0%

In 2013, the number of procedures was 9,540 with charity care at one (1) percent and Medicaid at 15.5 percent. From January-June 2014, the charity care was 2.7 percent, as reported by the applicant.

Utilization in 2013	2013	2013	2013	2013
Actual	Procedures	Procedures %	Visits	Visits %
Medicare	1,731	18.1%	1,687	18.4%
Medicaid	1,476	15.5%	1,449	15.8%
Commercial	6,129	64.2%	5,830	63.6%
Private Pay/Other	110	1.2%	109	1.2%
Charity Care	94	1.0%	94	1.0%
Total	9,540	100.0%	9,169	100.0%

Upon approval of the proposed project, ESE does not anticipate any changes in services or utilization; projections for charity care and Medicaid are two (2) percent and three (3) percent, respectively. The applicant has implemented a Charitable Care Program that provides charity care to uninsured individuals. ESE is committed to serving individuals needing care regardless of the source of payment or the ability to pay.

Conclusion

The applicant reports charity care at a level of 2.7 percent for the first six months of 2014. However, additional time is needed to determine whether the applicant can sustain a significant charity care caseload over a more extended period.

Recommendation

From a need perspective, contingent approval is recommended for a one year extension of the operating certificate.

Program Analysis

Program Proposal

East Side Endoscopy, LLC (the Center), an existing Article 28 diagnostic and treatment center certified as a single-specialty ambulatory surgery center specializing in gastroenterology procedures, is requesting permission to convert to indefinite life following a five (5) year limited life extension. The Center's initial CON Application was approved under Project No. 082085-B by the Public Health Council with a conditional, limited life of five (5) years and the current Operating Certificate will expire on January 25, 2015. There are no anticipated changes in services and staffing is expected to remain at 23.57 FTEs.

Compliance with Applicable Codes, Rules and Regulations

The medical staff will continue to ensure that procedures performed at the facility conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The facility's admissions policy will include anti-discrimination regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures will be performed in accordance with all applicable federal and state codes, rules and regulations, including standards for credentialing, anesthesiology services, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements.

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Operating Budget

The applicant has submitted operating budgets, in 2014 dollars, for the current year of operations and for Years 1 and 3 subsequent to approval of this project as shown below:

	<u>Current year projected (2013)</u>	<u>Current year actual (2013)</u>	<u>Years 1 and 3</u>
Revenues			
Operating	\$13,766,816	\$10,918,206	\$10,756,522
Other Operating Revenue		\$1,908,467	\$1,908,467
Non-Operating		<u>\$12,329</u>	<u>\$12,329</u>
Total Revenues	\$13,766,816	\$12,839,002	\$12,677,318
Expenses			
Operating	\$4,131,586	\$4,167,049	\$4,167,049
Capital	<u>\$1,545,308</u>	<u>\$1,234,886</u>	<u>\$1,234,886</u>
Total Expenses	\$5,676,894	\$5,401,935	\$5,401,935
Net Income/(Loss)	<u>\$8,089,922</u>	<u>\$7,437,067</u>	<u>\$7,275,383</u>
Utilization (procedures)	12,756	9,540	9,540
Cost per procedure	\$445.04	\$566.24	\$566.24

The reason for the significant difference between the projected and actual 2013 procedures, revenues and expenses is due to the additional 2 procedure rooms and 4 recovery bays that were budgeted for, but have yet to be constructed. The applicant indicates that they intend to add the 2 procedure rooms and 4 recovery rooms in the near future, though a clear date to start construction has yet to be determined.

Utilization by payor source related to the submitted operating budget is as follows:

Payor Source:	Current year projected utilization (2013)	Current year actual utilization (2013)	Projected Years 1 and 3 Utilization
Medicare	4,546	1,731	1,731
Medicaid	924	1,476	1,476
Commercial	6,081	6,129	6,033
Private Pay/Other	1,072	110	110
Charity Care	133	94	190
Total	12,756	9,540	9,540

Payor Source:	Current year projected utilization % (2013)	Current year actual utilization % (2013)	Projected Years 1 and 3 Utilization
Medicare	35.64%	18.14%	18.14%
Medicaid	7.24%	15.47%	15.47%
Commercial	47.68%	64.25%	63.24%
Private Pay/Other	8.40%	1.15%	1.15%
Charity Care	1.04%	.99%	1.99%
Total	100.00%	100.00%	100.00%

East Side is projecting that they will achieve the 2% charity care requirement by year 1 and will maintain a minimum 2% for charity care going forward through year 3. The Department has reviewed East Side's certified AHCF cost reports filings for 2011 and 2012 and verified that they were unable to achieve a 1% charity care average over the course of the first two years of operations. The 2013 report, due December 5, 2014, will be reviewed to assess ongoing efforts.

East Side explained that their reason for not achieving the 2% charity care was due to the physician applicant members trying to generate charity care cases on their own, while also making the center operational and running the daily operations of the facility. From opening day in 2010 until early 2012, the physician applicant members sought charity care cases through informal channels that proved ineffective. To rectify the situation, they hired a new facility administrator in February 2012, who enacted a formal charity care/uncompensated care program with community outreach and educational components. In 2013 they collaborated on a new initiative called the NYC Community Cares Project that links uninsured patients from community health centers to endoscopy centers to provide free colonoscopy screening. In April 2014 they hired a full-time patient navigator to serve as liaison with the 7 community-based health centers that serve as the cornerstone of patient referrals to East Side's charity care program. With this formal charity care program in place, the applicant is confident that at least 2% of their cases will be charity care/uncompensated care going forward.

The Department has determined that granting a one year extension to the operating certificate is warranted at this time to allow East Side the opportunity to achieve the 2% charity care requirement.

Capability and Feasibility

There are no project costs associated with this application.

The submitted budget indicates an excess of revenues over expenses of \$7,275,383 during both years 1 and 3. Revenues are based on current reimbursement methodologies for FASC services. The budgets are reasonable.

BFA Attachment A is East Side's certified financial summary for 2012 and 2013 which shows an average negative working capital of \$637,270, an average negative equity position of \$1,235,946 and an average positive net income of \$7,470,783 for the period. The negative working capital position and equity position are due to a \$4.3 million membership redemption. The redemption happened in March 2012 when 2 of the members of East Side (Dr. Hon-Ming Eng and Dr. Rene Eng) redeemed all of their membership interest in the center. Each member owned 5.72368% interest in the center for a total of 11.44736% membership interest redeemed. East Side purchased the redeeming members' interest for a total of \$4.3 million. Each redeeming member received \$2.15 million. To cover the redemption, East Side incurred the following liabilities:

- \$1.3 million loan from a financial lender scheduled to terminate in May 2016,
- \$3.2 million payment plan to the 2 members which includes a 4% interest rate. This plan is paid quarterly with the last payment due on April 18, 2015.

BFA Attachment B is East Side's internal financial summary for the 6 month period ending June 30, 2014, which shows a positive working capital position of \$412,393, a positive equity position of \$1,076,111 and a positive net income of \$3,870,824 for the period.

The applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendation

From a financial perspective, and approval of a one year extension to the operating certificate is recommended.

Attachments

BFA Attachment A	East Side Endoscopy, LLC 2012-2013 certified financial statements
BFA Attachment B	East Side Endoscopy, LLC 1/1/2014-6/30/2014 internal financial statements

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 4th day of December, 2014, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to request for limited life extension for Project #082085, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

142061 E

East Side Endoscopy

APPROVAL CONTINGENT UPON:

Approval for a one year extension of the operating certificate from the date of the Public Health and Health Planning Council recommendation letter, contingent upon:

1. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide quarterly reports to the DOH beginning from the date of the recommendation letter. Said reports should include:
 - Data showing actual utilization including procedures;
 - Data showing breakdown of visits by payor source;
 - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
 - Data showing number of emergency transfers to a hospital;
 - Data showing percentage of charity care provided, and
 - Number of nosocomial infections recorded during the year in question. [RNR]
2. Submission of an affidavit, acceptable to the Department, attesting that there have been no changes to the legal documentation as originally approved by the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Resubmission of 2013 SPARCS data, within three months from the date of the recommendation letter, to meet the 100% data submission requirement.

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

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



Public Health and Health Planning Council

Project # 142058-E
Massena Center, LLC d/ba/ Massena Dialysis Center

Program: Diagnostic and Treatment Center **County:** St. Lawrence
Purpose: Establishment **Acknowledged:** August 18, 2014

Executive Summary

Description

Massena Center, LLC d/b/a Massena Dialysis Center, an existing limited liability company, requests approval to acquire the 8-station Massena Memorial Hospital Dialysis Center, an extension site of Massena Memorial Hospital located at 290 Main Street, Massena in St. Lawrence County, via an Asset Purchase Agreement. The applicant plans to provide the same services currently provided.

The members of Massena Center, LLC are as follows:

	<u>Ownership %</u>
American Renal Associates LLC	60%
Craig G. Hurwitz, MD	20%
Laura G. Carbone, MD	20%

OPCHSM Recommendation
Contingent Approval.

Need Summary

This change in ownership will not change the number of dialysis stations in St Lawrence County. The facility in question is currently well-utilized, having an established patient base.

Program Summary

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

Financial Summary

There are no project costs associated with this application. The purchase price of \$600,000 will be provided by \$202,552 in equity from the proposed members and \$397,448 from an intercompany term loan at 5% over five years from American Renal Associates.

Budget:	Revenues:	\$2,647,497
	Expenses:	<u>2,430,615</u>
	Gain:	\$ 216,882

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 Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
2. Submission of an executed Administrative Services Agreement (ASA), acceptable to the Department. [HSP]
3. Submission of an executed Medical Director Agreement, acceptable to the Department. [HSP]
4. Submission of an executed building lease acceptable to the Department of Health. [BFA]
5. Submission of an executed employee lease acceptable to the Department of Health. [BFA]
6. Submission of an executed equipment lease acceptable to the Department of Health. [BFA]
7. Submission of the finalized and executed lease agreement between the applicant and Massena Memorial Hospital, acceptable to the Department. [CSL]
8. Submission of an executed amendment to the Operating Agreement of Massena Center, 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. 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

December 4, 2014

Need Analysis

Background

Massena Center, LLC d/b/a Massena Dialysis Center is seeking approval for the acquisition of Massena Memorial Hospital Dialysis Center, an 8-station chronic renal dialysis center located at 290 Main Street, Massena, NY 13662. The Center is currently operating as an extension clinic of Massena Memorial Hospital, a 50-bed public hospital located at 1 Hospital Drive, Massena, NY 13662. Both the hospital and the clinic are located in St. Lawrence County.

Massena Memorial Hospital has stated that, due to operating losses, they may have to close Massena Memorial Hospital Dialysis Center if they are unable to sell it.

Demographic Information

The population of St. Lawrence County in 2013 was 111,963. The population was 7.6% non-white and 15.0% over the age of 65. Those two demographics are the most at-risk for developing end stage renal disease.

	<u>St Lawrence County</u>	<u>New York State</u>
Ages 65 and over:	15.0%	14.4%
Non-white:	7.6%	42.4%

Source: U.S. Census 2013

Capacity

The Department's methodology to estimate capacity for chronic dialysis stations is specified in Part 709.4 of Title 10 and is as follows:

- One free-standing station represents 702 treatments per year. This is based on the expectation that a 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 may treat fewer patients per year than do free-standing stations. Statewide, the majority of stations are free-standing, as are the majority of applications for new stations. As such, when calculating the need for additional stations, the Department bases the projected need on establishing additional free-standing stations.
- There are currently 32 free-standing chronic dialysis stations operating in St. Lawrence County and 0 in pipeline for a total of 32.
- Based upon DOH methodology, the 32 existing free standing stations in St. Lawrence County could treat a total of 144 patients annually. Including the additional 0 pipeline stations, the county could treat a total of 144 patients annually.

Need Projections

	2012	2013	2017	
	Total Patients Treated	Total Residents Treated	Projected Total Patients Treated ¹	Projected Residents Treated ²
		118	116	137
Free-standing Stations Needed	27	26	31	30
Existing Stations	32	32	32	32
Pipeline Stations	0	0	0	0
Total stations with Pipeline	32	32	32	32
With Approval of this CON	32	32	32	32
Unmet Need with Approval	-5	-6	-1	-2

¹Patient data is from 2012 and is projected out 5 years, assuming a 3% annual rate of increase.

²Resident data is from 2013 and is projected out 4 years, assuming a 3% annual rate of 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 2013 of information.

Conclusion

St Lawrence County is currently over-served by renal dialysis, and demand is not expected to overtake supply through 2017. However, if this facility were to close the County would be underserved. In light of the fact that this project would not add stations, and that the loss of existing resources would leave gaps in this critical service, approval is recommended.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

Massena Center, LLC d/b/a Massena Dialysis Center, an existing limited liability company, requests approval to acquire the 8-station Massena Memorial Hospital Dialysis Center, an extension site of Massena Memorial Hospital. The existing center is located at 290 Main Street, Massena, NY (St. Lawrence County). There are no significant programmatic changes anticipated as a result of this proposal. The applicant plans to provide the same services which currently appear on the Massena Memorial Hospital Dialysis Center Operating Certificate.

Proposed Operator	Massena Center, LLC
Doing Business As	Massena Dialysis Center
Site Address	290 Main Street Massena, NY (St Lawrence County)
Approved Services	Chronic Renal Dialysis (8 stations) Home Peritoneal Dialysis Training & Support
Shifts/Hours/Schedule	Three shifts per day, 6 days per week Open Monday through Saturday, 5:30am – 9pm
Staffing (1 st Year / 3 rd Year)	Number and mix of staff based on current operations (13.3 FTEs)
Medical Director(s)	Khurram Mumtaz, MD

Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Massena Memorial Hospital (limited acute care) 1.59 miles / 3 minutes <i>and</i> Champlain Valley Physicians' Hospital 83.14 miles / 1 hour, 39 minutes
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Character and Competence

The members of the LLC are:

<u>Name</u>	<u>Percent</u>
American Renal Associates, LLC (ARA)	60%
American Renal Holdings, Inc. (100%)	
Manager- Joseph A. Carlucci (Pres./CEO)	
Manager - John J. McDonough (COO)	
Individual Physician Owners	40%
Craig G. Hurwitz, MD	20%
Laura G. Carbone, MD	20%

American Renal Holdings, Inc. (ARH) is a national provider of kidney dialysis services which owns and operates over 150 dialysis clinics in 21 states and the District of Columbia. The Company's operating model is based on shared ownership of its facilities with nephrologists practicing in the area served by the clinic. Each clinic is maintained as a separate joint venture in which the ARH owns a controlling interest.

Currently, American Renal is affiliated with three (3) dialysis centers in New York State: Elizabethtown Center, LLC; Mohawk Valley Dialysis Center, LLC; and Plattsburgh Associates, LLC.

Drs. Hurwitz and Carbone are local physicians, board-certified in Internal Medicine and Nephrology.

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

Drs. Carbone and Hurwitz each disclosed one (1) pending 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.

Summary of Dialysis Facility Compare Statistics

The table below provides the Summary Statistic (which is the percent of scores at, or better than, the New York State average) of the dialysis facility to be acquired and the three (3) dialysis facilities in New York State that the proposed management corporation (ARA) currently operates

The Summary Statistic is intended to be a rough indicator of performance. *(Higher is better.)*

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Operator	Sites	Reportable Statistics per Site	Total Statistics Possible	Statistics Not Available or Do Not Apply	Denominator	Statistics Not Reported	Statistics worse than NYS Average	Numerator	Summary Statistic [at or better than NYS Average]
			(1) x (2)		(3)-(4)			(6)+(7)	1.00-((8)/(5))
Massena	1	10	10	1	9	0	2	2	78%
ARA's NY facilities	3	10	30	15	15	0	7	7	53%

Data taken from <http://www.medicare.gov/DialysisFacilityCompare/search.html> as it appeared on September 24, 2014.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

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

Date:	August 7, 2014
Seller:	Massena Memorial Hospital
Purchaser :	Massena Center, LLC
Purchased Assets:	All assets used in the 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; 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.
Excluded Liabilities:	Pre-closing debt, obligations or liabilities of seller.
Purchase Price:	\$600,000.
Payment of Purchase Price:	Cash to be paid at closing.

The proposed members will commit to capital contributions of \$202,552 based on their membership interest, with the remaining \$397,448 to be financed. BFA Attachment D is the schedule of capital contributions.

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.

Administrative Services Agreement

Massena Center, LLC will enter into an Administrative Services Agreement with American Renal Management, LLC. The consultant would provide certain professional business and administrative services to the renal dialysis center relating to the operation of the facility.

The applicant has submitted an executed agreement, which is summarized below:

Date:	August 7, 2014
Facility:	Massena Center, LLC d/b/a Massena Dialysis Center
Contractor:	American Renal Management, LLC
Administrative Term:	3 years, with option to renew for three additional terms of 3 year periods.
Compensation:	\$200,000 per annum (\$16,666.67/month) for administrative services, billing and collection.
Duties of the Contractor:	Financial Management Services, Strategic Planning and Development, Policies and Procedures, Contracting Services, Personnel, Supplies, Maintenance and repair of equipment, Operating Licenses and Banking, Billing and Collection Services.

While American Renal Management, LLC will be providing all of the above services, the Facility retains ultimate control in all of the final decisions associated with the services through their managing committee which is comprised of the CEO and COO of American Renal Associates, Dr. Craig Hurwitz and Dr. Laura Carbone.

Lease Agreement

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

Premises:	6,120 square feet located at 290 Main Street, Massena, New York
Landlord:	Massena Memorial Hospital
Tenant:	Massena Center, LLC
Term:	10 Years with two additional 5 year renewals.
Rental:	\$119,340 per annum (\$19.50 per sq. ft.) or \$9,945 per month
Provisions:	The lessee shall be responsible for utilities.

The proposed lease agreement is an arm's length transaction since neither party is related. Letters of opinion from license commercial real estate brokers have been submitted indicating rent reasonableness.

Leased Employee Agreement

The applicant has submitted a draft lease employee agreement whereas Massena Memorial Hospital will lease qualified and licensed employees to Massena Center, LLC for a period of five years with five successive 5 year renewals at a fee of \$1,111,472 and \$ 1,176,669 for the first and third years, respectively, based on job description and title of current hospital employees. These fees represent salaries, wages and benefits passed through to the applicant by the Hospital.

Equipment Lease Agreement

The applicant has submitted a draft lease rental agreement whereas Massena Memorial Hospital will lease certain equipment to Massena Center, LLC for a period of 12 months at a fee of \$1,000 per month.

Operating Budget

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

	<u>Year One</u>	<u>Year Three</u>
Total Revenues	\$2,500,808	\$2,647,497
Expenses:		
Operating	\$2,108,448	\$2,212,530
Capital	<u>223,477</u>	<u>218,085</u>
Total Expenses	\$2,331,925	\$2,430,615
Net Income(Loss)	<u>\$168,883</u>	<u>\$216,882</u>
Utilization: (treatments)	6,947	7,354
Cost Per Treatment	\$335.67	\$330.52

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

Medicare Fee-For-Service	78.83%
Medicaid Managed Care	6.84%
Commercial Fee-For-Service	9.87%
Other	4.46%

Expense and utilization assumptions are based on historical data from Massena Memorial Hospital and comparable clinics from the geographical area.

Capability and Feasibility

There are no project costs associated with this application. The purchase price of \$600,000 will be provided by \$202,552 in equity from the proposed members and \$397,448 from an intercompany term loan at 5% over five years from American Renal Associates.

Working capital requirements, estimated at \$388,654, appear reasonable based on two months of first year expenses and will be provided through \$194,327 equity of the proposed members and the remaining \$194,327 through an intercompany term loan from American Renal Associates at 5% over five years. A letter of interest has been submitted by American Renal Associates. Presented as BFA Attachment B is the financial statement of American Renal Associates, LLC showing sufficient equity. Presented as BFA Attachment C is the pro forma balance sheet of Massena Dialysis Center as of the first day of operation, which indicates positive equity of \$202,552.

The submitted budget projects a net profit of \$168,883 and \$216,882 during the first and third years, respectively. Medicare and Medicaid reflect prevailing reimbursement methodologies. All other revenues assume current reimbursement methodologies. The budget appears reasonable.

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 Statement of Proposed Physicians
BFA Attachment B	Financial Summary of American Renal Associates, LLC
BFA Attachment C	Pro Forma Balance Sheet
BFA Attachment D	Schedule of Capital Contributions
HSP Attachment A	Massena Center, LLC - "Dialysis Facility Compare"

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 4th day of December, 2014, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Messena Center, LLC d/b/a Massena Dialysis Center as the new operator of an 8 station dialysis center located at 290 Main Street, Massena, currently operated as an extension clinic of Massena Hospital, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

142058 E

FACILITY/APPLICANT:

Massena Center, LLC
d/b/a Massena Dialysis Center

APPROVAL CONTINGENT UPON:

1. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
2. Submission of an executed Administrative Services Agreement (ASA), acceptable to the Department. [HSP]
3. Submission of an executed Medical Director Agreement, acceptable to the Department. [HSP]
4. Submission of an executed building lease acceptable to the Department of Health. [BFA]
5. Submission of an executed employee lease acceptable to the Department of Health. [BFA]
6. Submission of an executed equipment lease acceptable to the Department of Health. [BFA]
7. Submission of the finalized and executed lease agreement between the applicant and Massena Memorial Hospital, acceptable to the Department. [CSL]
8. Submission of an executed amendment to the Operating Agreement of Massena Center, 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. 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]

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

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