

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

COMMITTEE DAY

AGENDA

January 29, 2015
10:30 a.m.

- *90 Church Street 4th Floor, Room 4A & 4B, New York City*
- *Sturman Conference Room, Wadsworth Center, Department of Health, Empire State Plaza, Albany*

I. JOINT MEETING OF THE COMMITTEE ON PUBLIC HEALTH AND THE AD HOC COMMITTEE TO LEAD THE PREVENTION AGENDA

Jo Ivey Boufford, M.D., Chair

II. COMMITTEE ON ESTABLISHMENT AND PROJECT REVIEW

The Establishment and Project Review Committee will convene immediately following the Joint Meeting of the Public Health Committee and the Ad Hoc Committee to Lead the Prevention Agenda

Members of the public who will attending the Establishment and Project Review Committee, please note that this meeting will not convene prior to NOON, we ask that you please plan accordingly

Jeffrey Kraut, Chair

A. Applications for Construction of Health Care Facilities

Acute Care Services - Construction

Exhibit # 1

	<u>Number</u>	<u>Applicant/Facility</u>
1.	142081 C	Huntington Hospital (Suffolk County)
2.	142083 C	Southside Hospital (Suffolk county)
3.	142168 C	Westchester Medical Center (Westchester County)
4.	142181 C	Orange Regional Medical Center (Orange County)

- 5. 142185 C New York Presbyterian Hospital –
New York Weill Cornell Center
(New York County)
- 6. 142228 C Strong Memorial Hospital
(Monroe County)

Ambulatory Care Services - Construction

Exhibit # 2

Number **Applicant/Facility**

- 1. 142134 C Mohawk Valley Eye Surgery Center
(Montgomery County)

Residential Health Care Facilities – Construction

Exhibit # 3

Number **Applicant/Facility**

- 1. 132305 C Jewish Home of Rochester
(Monroe County)

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

Dialysis Services- Establish/Construct

Exhibit # 4

Number **Applicant/Facility**

- 1. 132178 E Big Apple Dialysis Management, LLC
(Kings County)
- 2. 142115 E Pure Life Renal of Buffalo, Inc.
(Erie County)

Acute Care Services – Establish/Construct

Exhibit # 5

Number **Applicant/Facility**

- 1. 142218 E NYU Lutheran Medical Center
(Kings County)

Ambulatory Surgery Centers - Establish/Construct

Exhibit # 6

Number **Applicant/Facility**

- 1. 141253 E South Brooklyn Endoscopy Center
(Kings County)

Diagnostic and Treatment Centers - Establish/Construct

Exhibit # 7

<u>Number</u>	<u>Applicant/Facility</u>
1. 142152 E	Odyssey Community Services, Inc. (New York County)

Residential Health Care Facilities - Establish/Construct

Exhibit # 8

<u>Number</u>	<u>Applicant/Facility</u>
1. 142195 B	Delhi Rehabilitation & Nursing Center (Delaware County)

Certified Home Health Agencies – Establish/Construct

Exhibit # 9

<u>Number</u>	<u>Applicant/Facility</u>
1. 142193 E	Kindred Healthcare (Saratoga County)

C. Home Health Agency Licensures

Home Health Agency Licensures

Exhibit # 10

<u>Number</u>	<u>Applicant/Facility</u>
2276 L	1 st Class Care Services, Inc. (Bronx, Queens, Kings, Richmond, New York and Nassau Counties)
2178 L	All Heart Homecare Agency, Inc. (New York, Richmond, Kings, Bronx, Queens, and Westchester Counties)
2292 L	Angels of Mercy Counseling Center, Inc. (Nassau Suffolk Queens and Westchester Counties)
2272 L	A Plus Homecare Agency, Inc. (Queens, Bronx, New York, Kings, Richmond, and Nassau Counties)
2037 L	Bright Home Care, Inc. (New York, Bronx, Kings, Richmond, Queens and Westchester Counties)
2266 L	Central Westchester Home Health Services, LLC (Westchester County)

- 2268 L Chinatown Home Health Care, Inc.
(New York, Bronx, Kings, Queens, Richmond and Nassau Counties)
- 2395 L Ciambella Home Care, Inc.
d/b/a FirstLight Home Care of East Buffalo
(Erie and Niagara Counties)
- 2218 L Comprehensive Elder Care, LLC
(Bronx, Richmond, Kings, New York, Queens, and Nassau Counties)
- 2285 L Elite Home and Community Care Service, Inc.
(Rockland, Putnam, Westchester, Orange and Bronx Counties)
- 2254 L Ellison Home Care Companion Agency, Inc.
(Nassau, Westchester, Rockland, Queens, and Suffolk Counties)
- 2247 L Grupp KK, Inc.
(Bronx, Richmond, New York, Queens, Kings, Westchester Counties)
- 2152 L Guiding Angels Home Care, LLC
(Bronx, Kings, New York, Richmond, Queens and Nassau Counties)
- 2138 L Home at Last Home Care Services, LLC
(Kings, Bronx, Queens, Richmond, and New York Counties)
- 2175 L Human First Community Health Care, LLC
(Nassau, Suffolk and Queens Counties)
- 2215 L La'Dorch Homecare, Inc.
(Bronx, Richmond, Kings, New York, Queens, and Westchester Counties)
- 2261 L Marabi Homecare Agency, Inc.
(New York, Richmond, Kings, Bronx, Queens, and Nassau Counties)
- 2274 L Masih Home Care Incorporated
(Queens, Kings, Richmond, New York, Bronx, and Nassau Counties)

- 2202 L MY Care Health Services, Inc.
(Queens, New York, Bronx, Richmond, Kings, and Nassau Counties)
- 2244 L New Hope Services, Inc.
(Bronx, Richmond, New York, Queens, Kings and Westchester Counties)
- 2259 L NMC Homecare Agency of NY, Inc.
(New York, Richmond, Kings, Bronx, Queens, and Westchester Counties)
- 2176 L Augusta Osinowo
d/b/a Nightingale Care Services
(Bronx, Queens, New York, Richmond, Kings, and Nassau Counties)
- 2157 L Passion for Seniors of NY, Inc.
(Bronx, Queens, Kings, Richmond, New York and Nassau Counties)
- 2299 L Premium Home Services, LLC
(Queens, Kings, Bronx, New York, Richmond, and Nassau Counties)
- 2279 L Scope Healthcare Services, Inc.
(Suffolk, Nassau and Queens Counties)
- 2163 L VIPrivate, LLC
(Bronx, Queens, Kings, Richmond, New York and Nassau Counties)
- 2461 L Alice Hyde Medical Center
(Franklin County)
- 2295 L Hyde Park Assisted Living Facility, Inc.
d/b/a Hyde Park Licensed Home Care Agency
(Dutchess County)
- 2319 L Acare HHC, Inc.
d/b/a Four Seasons Home Care
(Bronx, Queens, Kings, Richmond, Nassau and New York Counties)
- 2281 L Anchor Home Care LLC
(Allegany, Erie, Orleans, Cattaraugus, Genesee, Wyoming, Chautauqua and Niagara Counties)

- 2389 L Crown of Life Care NY, LLC
(Bronx, Queens, Kings, Richmond, Nassau and New York
Counties)
- 2342 L Elite HHC, LLC
(Bronx, Richmond, Kings, Westchester, New York and
Queens Counties)
- 2401 L Prestige LHCSA Management, Inc.
(Bronx, Richmond, Kings, Westchester, New York and
Queens Counties)
- 2556 L Quality Care – USA, Inc.
d/b/a Gentiva Health Services
(See exhibit for counties served)

III. COMMITTEE ON CODES, REGULATIONS AND LEGISLATION

Angel Gutiérrez, M.D., Chair

Exhibit # 11

For Emergency Adoption

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

For Adoption

Sections 415.3 of Title 10 NYCRR (Nursing Home Transfers and Discharge
Rights)



Public Health and Health Planning Council

Project # 142081-C Huntington Hospital

Program: Hospital
Purpose: Construction

County: Suffolk
Acknowledged: August 27, 2014

Executive Summary

Description

Huntington Hospital (HH), a 408-bed not-for-profit acute care facility located at 270 Park Avenue, Huntington in Suffolk County, requests approval to construct a replacement Emergency Department.

HH is a member of the North Shore-Long Island Jewish Health System, Inc. (NS-LIJ), a comprehensive integrated delivery system. Also, the Hospital is a member of the NS-LIJ Obligated Group, formed to provide its members an enhanced credit position and expanded access to capital markets.

DOH Recommendation

Contingent Approval

Need Summary

Huntington Hospital (HH) proposes to construct a replacement emergency department (ED) to address its currently undersized ED (29 bays) by installing an additional 18 ED treatment bays, for a total of 47. During the construction of the replacement ED, the current ED will remain open and functioning without disruption of care. Huntington anticipates 56,747 visits by the 3rd year of operation. The addition of these stations will help reduce patient wait time and allow for future growth.

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 \$45,150,953 will be met with \$4,515,095 in accumulated funds and Tax Exempt DASNY Bonds of \$40,635,858 @ 6.5% over 30 years.

Incremental Budget:	Revenues:	\$16,357,600
	Expenses:	<u>\$17,722,600</u>
	Gain(Loss):	\$(1,365,000)

A letter from the CFO of the NSLIJ Health System has been submitted stating that NSLIJ is able and willing to absorb the operational incremental budgeted losses. Subject to the noted condition, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-02. [AER]
3. Submission of written acknowledgment that the design contingency and the construction contingency will not be spent without written approval from the Construction Cost Control Unit. [CCC]

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. This project is approved to be initially funded with North Shore-Long Island Jewish Hospital (NS-LIJ) obligated group equity with the prospect that the project will be 90% financed as part of a future NS-LIJ obligated group tax exempt bond financing through the Dormitory Authority. The bond issue is expected to include a 6.5% interest rate and a 30 year term. Financing is conditioned upon the Department having the opportunity to review the final financing proposal in advance to ensure that it meets approval standards. [BFA]
3. The applicant shall start construction on or before March 1, 2015 and complete construction by January 31, 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]

Council Action Date

February 12, 2015

Need Analysis

Project Description

Huntington Hospital (HH), a 408-bed community hospital located at 270 Park Avenue in Huntington (Suffolk County), is seeking approval for the construction, expansion, and replacement of their emergency department (ED). The purpose of this project is to improve operational efficiency and patient flow. Huntington Hospital is a member of North Shore LIJ Health Care Inc. Additionally, North Shore LIJ Health Care Inc. is the co-operator of HH.

Huntington Hospital is a Level II area trauma center. Its existing Emergency Department is over 30 years old and has become spatially, functionally, technologically and operationally obsolete. Current patient volume is roughly 50,000 visits/year and growing.

Background/Analysis

Huntington Hospital has the following inpatient certified beds:

Bed Type	Certified Capacity
Coronary Care	14
Intensive Care	12
Maternity	30
Medical-Surgical	301
Neonatal Intermediate Care	10
Pediatric	20
Psychiatric	21
Total	408

The hospital has the following New York State designation(s):

- Stroke Center
- Level 2 Perinatal Center
- Area Trauma Center

The primary service area for the emergency department is Northwest Suffolk County. The hospital serves approximately 301,000 residents. PQI rates for this area are 6.1% higher than the expected rate.

The new ED will create a new fast track to decrease wait times and reduce overcrowding. The existing ED will remain open until construction is finished and state approval is granted. Upon opening the replacement ED, the existing ED will close.

The existing ED is 31 years old, severely undersized, and no longer able to efficiently handle the increasing annual patient volume. Huntington Hospital (HH) proposes to construct a replacement emergency department (ED) to address the currently undersized ED (29 bays) by installing an additional 18 ED treatment bays for a total of 47. During the construction of the replacement ED, the current ED will remain open and functioning without disruption of care. Huntington anticipates 56,747 visits by the 3rd year of operation. The addition of these stations will help reduce patient wait time and allow for future growth.

Current ED Data Utilization (Total ED Visits)

2012	2013
51,211	49,204

Current ED volume shows that the hospital is treating approximately 50,000 ED patients yearly in an outdated and undersized ED space. The renovation and expansion will greatly enhance throughput and quality of patient care.

Projected Total Visits (Total ED Visits)

Year 1	Year 3
54,543	56,747

Projected visits are anticipated to be 54,543 in the first year and increase to 56,747 by the 3rd year. The anticipated visits to the new space will equate to approximately 1,207 visits per ED bay.

Conclusion

The replacement and expansion of the ED will reduce wait time, improve quality of ED care, and allow for growth of ED service.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

Huntington Hospital (HH) is requesting approval for the construction of a replacement emergency department (ED) at 270 Park Avenue in Huntington (Suffolk County). The purpose of this project is to improve operational efficiency and patient flow by replacing the ED. Huntington Hospital is a member of North Shore LIJ Health Care Inc. Additionally, North Shore LIJ Health Care Inc. is the co-operator of HH.

Huntington Hospital, a 408-bed community hospital, is a level II area trauma center. Its existing Emergency Department is over 30 years old and has become spatially, functionally, technologically and operationally obsolete. Current patient volume is roughly 50,000 visits/year and growing. Combined with an inflexible, land-locked location in the hospital, there are no good options for expansion in its current location. A replacement ED, created from decanted non-clinical areas, will provide an appropriate number of treatment spaces and accompanying support space.

The replacement ED is designed to achieve faster throughput by implementing a dual-track ED, where patients are quickly assessed by a registered nurse at the reception desk, processed through an intake/triage area by dedicated staff, then directed to one of two treatment areas based on their acuity. Further efficiencies will be achieved by integrating value-added waiting into the patient experience.

Additionally, the replacement ED will include its own imaging service, with a dedicated CT Scan room, and radiography facilities (currently patients have to leave the ED to have a CT or MRI performed), as well as a new, larger, state-of-the-art trauma and resuscitation rooms.

Upon completion of this project, the total emergency department capacity will increase from 29 patient positions to 47 positions. The existing ED will remain open until construction is finished and state approval to occupy is granted. Upon opening the replacement ED, the existing ED will be decanted.

It is anticipated that the project will result in an additional 78.3 FTEs in the first year of operation and remain at that level through the third year.

Compliance with Applicable Codes, Rules and Regulations

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total project cost for new construction, renovations and movable equipment, is estimated at \$45,150,953, broken down as follows:

New Construction	\$ 12,019,605
Renovation & Demolition	13,990,889
Asbestos Abatement or Removal	150,000
Design Contingency	2,601,049
Construction Contingency	2,601,049
Planning Consultant Fees	456,681
Architect/Engineering Fees	2,080,840
Construction manager Fees	200,000
Consultant Fees	825,600
Movable Equipment	5,120,000
Telecommunications	2,700,000
Financing Costs	2,156,279
Application Fees	2,000
Additional Processing Fees	<u>246,961</u>
Total Project Cost	\$45,150,953

The applicant's financing plan is as follows:

Cash	\$ 4,515,095
Tax Exempt Bonds, Dormitory Authority of the State of New York, 6.5%, 30 years	<u>\$40,635,858</u>
Total	\$45,150,953

Operating Budget

The applicant has submitted incremental operating budgets, in 2014 dollars, for the first and third years, which are summarized below:

<u>Inpatient</u>	<u>First Year</u>	<u>Third Year</u>
Revenue	\$8,614,300	\$13,377,400
Operating Expense	<u>\$4,520,640</u>	<u>\$5,731,200</u>
Excess Revenue(Loss)	\$4,093,660	\$7,646,200
<u>Outpatient</u>	<u>First Year</u>	<u>Third Year</u>
Revenue	\$2,080,400	\$2,980,200
Expense:		
Operating	\$6,384,400	\$6,640,600
Interest	2,366,000	2,754,400
Depreciation	<u>2,596,400</u>	<u>2,596,400</u>
Total Expense	\$11,346,800	\$11,991,400
Excess Revenue(Loss)	\$(9,266,400)	\$(9,011,200)
Net Excess Revenue(Loss)	\$(5,172,740)	\$(1,365,000)
Inpatient Discharges	948	1,467
Visits	3,893	4,611

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

<u>Inpatient</u>	<u>Years One and Three</u>
Commercial Managed Care	23.6%
Medicare-Fee-For-Service	56.9%
Medicare Managed Care	7.1%
Medicaid Managed Care	9.0%
Private Pay	3.4%
<u>Outpatient</u>	<u>Years One and Three</u>
Commercial Managed Care	40.1%
Medicare-Fee-For-Service	16.5%
Medicare Managed Care	2.5%
Medicaid Managed Care	23.6%
Private Pay	17.3%

Expenses and utilization assumptions are based on the historical operations of HH, as well as market trends.

Capability and Feasibility

HH will finance \$40,635,858 through the Dormitory Authority at stated terms with the remaining \$4,515,095 as equity from the hospital. A letter of interest from Citigroup has been submitted by HH. BFA Attachment B and C are the financial summaries of HH, which is part of the NSLIJ Health System, Inc., and indicate the availability of sufficient resources for this project.

The submitted incremental budget projects net losses for the first and third years of \$5,172,740 and \$1,365,000, respectively. A letter from the CFO of the NSLIJ Health System has been submitted stating that NSLIJ is able and willing to absorb the operational incremental budgeted losses. Revenues are based on prevailing payment methodologies and current payment rates. The budget appears reasonable.

As shown on BFA Attachment B, as of December 31, 2013, and BFA Attachment C, as of June 30, 2014, HH has maintained positive working capital, positive net asset position and a net operating profit of \$2,623,000 and \$203,000, respectively.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

- | | |
|------------------|---|
| BFA Attachment A | Organizational Chart of the NS-LIJ Health System, Inc. |
| BFA Attachment B | Financial Summary for 2013, NS-LIJ Health System, Inc. and Huntington Hospital |
| BFA Attachment C | Financial Summary as of June 30, 2014, NS-LIJ Health System, Inc. and Huntington Hospital |



Public Health and Health Planning Council

Project # 142083-C Southside Hospital

Program: Hospital
Purpose: Construction

County: Suffolk
Acknowledged: August 26, 2014

Executive Summary

Description

Southside Hospital (SH), a 341-bed not-for-profit acute care facility located at 301 East Main St., Bay Shore in Suffolk County, requests approval to renovate and expand their Emergency Department.

SH is a member of the North Shore-Long Island Jewish Health System, Inc. (NSLIJ). Also, the Hospital is a member of the NSLIJ Obligated Group, formed to provide its members an enhanced credit position and expanded access to capital markets.

DOH Recommendation

Contingent Approval

Need Summary

Southside Hospital (SSH) propose to construct a replacement emergency department (ED) to address the currently undersized ED by adding an additional 14 ED treatment bays, for a total of 49, and expanding the square footage. Southside anticipates 82,783 visits by the 3rd year of operation, which equates to 1,689 visits per ED bay. The additional stations and space will help reduce patient wait time and improve throughput.

Program Summary

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

Financial Summary

Project costs of \$38,088,576 are initially provided to be met with \$3,808,858 in accumulated funds and Tax Exempt DASNY Bonds of \$34,279,718 @6.5% over 30 years. The applicant intends to apply for grant funding under the DSRIP Capital Restructuring Financing Program (CRFP). In the event that CRFP funding is granted as a source of capital to finance any portion of this project, then the amount of CRFP funding will be used as an alternative source for that portion of the project budget. In the event that CRFP funds are not available, then the original project financing sources will remain in place.

Incremental Budget:	Revenues:	\$6,573,000
	Expenses:	<u>\$10,094,300</u>
	Gain(Loss):	(\$ 3,521,300)

NSLIJ Health System has provided documentation stating that NSLIJ is able and willing to absorb the operational incremental budgeted losses as management focuses on various initiatives to improve efficiencies and revenues at SH.

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-02. [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. This project is approved to be initially funded with North Shore-Long Island Jewish Hospital (NS-LIJ) obligated group equity, with the prospect that the project will be 90% financed as part of a future NS-LIJ obligated group tax exempt bond financing through the Dormitory Authority. The bond issue is expected to include a 6.5% interest rate and a 30 year term. The applicant intends to apply for DSRIP Capital Restructuring Financing Program (CRFP) grant funding for this project. In the event that CRFP funding is granted as a source of capital to finance any portion of this project, then the amount of CRFP funding will be used as an alternative source for that portion of the project budget. In the event that CRFP funds are not available, then the original project financing sources will remain in place. Financing is conditioned upon the Department having the opportunity to review the final financing proposal in advance to ensure that it meets approval standards. [BFA]
3. The submission of 100% Final Construction Documents for record, 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]
4. The applicant shall start construction on or before March 1, 2015 and complete construction by March 30, 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. The approved project does not qualify for, and the facility will not request Medicaid rated rebasing. [AER]
5. The approved project does not qualify for, and the facility will not request Medicaid rated reimbursement. [AER]

Council Action Date

February 12, 2015

Need Analysis

Background

Southside Hospital (SSH), a 341 bed voluntary not for profit hospital located at 301 East Main Street, Bay Shore, Suffolk County, is requesting approval for the renovation of its existing Emergency Department (ED) and its expansion from 35 to 49 bays. Southside Hospital is a member of North Shore LIJ Health Care Inc. Additionally, North Shore LIJ Health Care Inc. is the co-operator of SSH.

Southside Hospital's existing ED was built in the late 1970s and has become spatially, functionally, technologically and operationally obsolete. The undersized space has resulted in operational inefficiency, inadequate storage and support space, long wait times and patient dissatisfaction. To meet current and projected patient volume, the ED is in need of comprehensive renovation and expansion.

Analysis

Southside Hospital has the following inpatient certified beds:

<u>Bed Type</u>	<u>Certified Capacity</u>
Coma Recovery	5
Coronary Care	14
Intensive Care	16
Maternity	29
Medical-Surgical	194
Neonatal Intermediate Care	6
Neonatal Continuing Care	5
Pediatric	16
Physical Medicine and Rehabilitation	24
Psychiatric	20
Traumatic Brain Injury	16
Total	341

The hospital has the following New York State designation(s):

- Stroke Center
- Level 2 Perinatal Center
- Area Trauma Center
- The primary service area for the emergency department is a large portion of Suffolk County extending beyond the Southside, serving approximately 601,272 residents.
- In addition, the ED will be expanding from 35 ED bays to a total of 49 and adding its own CT and Radiology room.
- The existing ED is over 30 years old, severely undersized, and finding it increasingly difficult to efficiently handle the expanding patient volume.
- The majority of patients in the service area receive emergency department services at a hospital. Southside is currently an area trauma center and will be a certified regional trauma center. Currently, Southside services approximately 70,000 emergency department visits with a space built for far fewer. The proposed expansion will help reduce extended wait times and improve quality of care.

Current ED Data Utilization (Total ED Visits)

<u>2012</u>	<u>2013</u>
69,300	67,849

Current ED volume shows SSH has been treating approximately 70,000 ED patients yearly in an outdated and undersized ED space. The renovation and expansion will greatly enhance throughput and patient care quality. Southside Hospital (SSH) propose to construct a replacement emergency department (ED) to address the currently undersized ED by adding an additional 14 ED treatment bays, for a total of 49, and expanding the square footage. Southside anticipates 82,783 visits by the 3rd year of operation, which equates to 1,689 visits per ED bay. The additional stations and space will help reduce patient wait time and throughput.

Projected Total Visits (Total ED Visits)

<u>Current</u>	<u>Year 1</u>	<u>Year 3</u>
69,446	81,093	82,783

Conclusion

The expansion of this high volume ED will allow residents to continued access to ED services but in an enhanced, more efficient environment.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

Southside Hospital (SSH) is requesting approval for the renovation and expansion of their existing Emergency Department (ED) at 301 East Main Street, in Bay Shore (Suffolk County). Southside Hospital is a member of North Shore LIJ Health Care Inc. Additionally, North Shore LIJ Health Care Inc. is the co-operator of SSH.

Southside Hospital's existing ED was built in the late 1970s and has become spatially, functionally, technologically and operationally obsolete. The undersized space has resulted in operational inefficiency, inadequate storage and support space, long wait times and patient dissatisfaction. To meet current and projected patient volume, the ED is in need of comprehensive renovation and expansion.

This will be achieved through renovation of the First Floor of the Brackett Building (an existing building adjacent to the existing ED to the west), construction of a one-story infill addition to the hospital which will connect the Brackett Building to the existing ED, and through renovation of the existing ED.

The upgrade and renovation will include the implementation of a dual-track ED where patient volume is split between acute treatment space and the Super Track ED to achieve faster throughput. Additionally, the new ED will also include its own CT and radiography rooms and sub-waiting areas to support improved patient flow throughout the department. New staff, patient and clinical support spaces throughout the ED will be created to appropriately support the expanded clinical footprint.

Upon completion of this project, the total ED capacity will increase from 35 to 49 patient treatment positions. SSH expects that the existing ED will remain open until construction is completed in the first phase of the expansion project. Once the expansion space is occupied, the existing Emergency Department will be renovated in phases, culminating in the completion of the fully modernized and expanded Emergency Department.

It is anticipated the project will result in an additional 37.5 FTEs in the first year of operation and remain at that level through the third year.

Compliance with Applicable Codes, Rules and Regulations

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total project cost for new construction, renovations and movable equipment, is estimated at \$38,088,576, broken down as follows:

New Construction	\$ 8,170,000
Renovation & Demolition	13,330,000
Construction Contingency	2,580,000
Planning Consultant Fees	430,000
Architect/Engineering Fees	1,720,000
Construction manager Fees	1,075,000
Consultant Fees	645,000
Movable Equipment	4,642,245
Telecommunications	3,467,000
Financing Costs	1,819,001
Application Fees	2,000
Additional Processing Fees	<u>208,330</u>
Total Project Cost	\$38,088,576

The applicant’s financing plan appears as follows:

Cash	\$ 3,808,858
Tax Exempt Bonds, Dormitory Authority of the State of New York, 6.5%, 30 years	<u>\$34,279,718</u>
Total *	\$38,088,576

* The applicant intends to apply for CRFP grant funding for this project. In the event that DSRIP CRFP funding is granted as a source of capital to finance any portion of this project, then that amount of funding will be used as an alternative source of funds for that portion of the project budget.

Operating Budget

The applicant has submitted incremental operating budgets, in 2014 dollars, for the first and third years, which are summarized below:

<u>Inpatient</u>	<u>First Year</u>	<u>Third Year</u>
Revenue	\$4,142,500	\$1,074,600
Operating Expense	<u>\$783,800</u>	<u>\$202,700</u>
Excess Revenue(Loss)	\$3,358,700	\$871,900
<u>Outpatient</u>	<u>First Year</u>	<u>Third Year</u>
Revenue	\$4,801,700	\$5,498,400
Expense:		
Operating	\$5,091,400	\$5,221,900
Interest	2,385,000	2,323,600
Depreciation	<u>2,346,100</u>	<u>2,346,100</u>
Total Expense	\$9,822,500	\$9,891,600
Excess Revenue(Loss)	(\$5,020,800)	(\$4,393,200)
Net Excess Revenue(Loss)	(\$1,662,100)	(\$3,521,300)
Utilization(Discharges)	451	117
Visits	11,647	13,337

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

<u>Inpatient</u>	<u>Years One and Three</u>
Commercial Managed Care	19.5%
Medicare-Fee-For-Service	37.7%
Medicare Managed Care	12.2%
Medicaid Managed Care	23.1%
Private Pay	7.5%
<u>Outpatient</u>	<u>Years One and Three</u>
Commercial Managed Care	26.7%
Medicare-Fee-For-Service	11.5%
Medicare Managed Care	3.4%
Medicaid Managed Care	35.0%
Private Pay	23.4%

Expense and utilization assumptions are based on the historical operations of SH, as well as market trends.

Capability and Feasibility

The applicant intends to apply for DSRIP CRFP grant funding. Should any grant monies be awarded as a source of capital funding for this project, then the original funding will be reduced in direct proportion. In the event that CRFP funds are not available, then the original project financing sources will remain in place as follows.

SH will finance \$34,279,718 through the Dormitory Authority at stated terms with the remaining \$3,808,858 as equity from the hospital. A letter of interest from Citigroup has been submitted by SH. BFA Attachment B is the financial summary of SH, which is part of the NSLIJ Health System, Inc., documenting resources to provide the equity necessary for this project. BFA Attachments B and C, NSLIJ Health System, Inc. cash and cash equivalents indicates the availability of sufficient resources for this project.

The submitted incremental budget projects net losses for the first and third years of \$1,662,100 and \$3,521,300, respectively. A letter from the CFO of the NSLIJ Health System has been submitted stating that NSLIJ is able and willing to absorb the operational incremental budgeted losses. NSLIJ has stated that they recognize the third year losses are expected to increase due to continued declines in inpatient admissions and expects current trends to continue during the budgeted years with outpatient treat and release and observation volume increasing and inpatient admissions decreasing. 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, SH has experienced negative working capital, negative net asset position, and maintained net operating income of \$5,221,000 and a net operating loss of \$1,741,000, respectively. SH's negative working capital 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. Management is continually working to improve net assets by managing operating expenses and investing in the facility's programs to enhance capacity. The June 30, 2014, net loss is due to lower than expected volume and employee overtime issues which are being corrected through the following strategic planning initiatives:

- 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, and approval is recommended.

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Organizational Chart of the NS-LIJ Health System, Inc.
BFA Attachment B	Financial Summary for 2013, NS-LIJ Health System, Inc. and Southside Hospital
BFA Attachment C	Financial Summary as of June 30, 2014, NS-LIJ Health System, Inc. and Southside Hospital



Public Health and Health Planning Council

Project # 142168-C Westchester Medical Center

Program: Hospital
Purpose: Construction

County: Westchester
Acknowledged: October 23, 2014

Executive Summary

Description

Westchester County Health Care Corporation (WCHCC), a public benefit corporation which operates Westchester Medical Center (WMC), a 652-bed public acute care hospital located at 100 Woods Road in Valhalla, seeks approval for the construction of a new Ambulatory Care Pavilion (ACP) on the main campus of the Medical Center. The project will also include a new addition adjacent to the main building that will be used for future inpatient rooms but will be fitted out as shell space at this time. The construction of the inpatient rooms will be the subject of a separate CON application. The new seven story addition will include Article 28 and non-Article 28 functional space. WMC is a Regional Trauma Center and also operates a separate division in Dutchess County known as MidHudson Regional Hospital, a 243-bed acute care facility.

The healthcare marketplace is requiring that all providers become more integrated, patient-centered and cost-effective. This applicant intends the project to support the ongoing healthcare transformation efforts put forth by both the State and Federal governments, including the Medicaid Redesign Team of New York State and the federal Patient Protection and Affordable Care Act. This project will help support the realignment of healthcare services in the region by supporting WMC in its efforts as the lead agency for a Performing Provider System (PPS), the Hudson Valley Coalition for Care Transformation, under the Delivery System Reform Incentive Payment (DSRIP) program of the New York State Department of Health. The DSRIP program promotes community level collaborations and focuses on system reform, with a specific goal of achieving a 25% reduction in avoidable hospital use over a period of five (5) years. Through this project, WMC seeks to invest in its capabilities and

facilities in order to be successful in achieving this goal and to adapt to the changing marketplace.

DOH Recommendation

Contingent Approval

Need Summary

The addition of this new ambulatory care pavilion will allow Westchester Medical Center (WMC) to focus their outpatient care into one pavilion. The expansion and consolidation of services will create a more efficient environment, streamlining patient care. The result of this will be convenient and timely care. WMC will be able to continue to provide quality care more efficiently.

The new facility will add two net new MRI machines, a new X-ray machine, a new CT-scanner, ultrasound, a procedure room, an operating room, an intervention room, and a new cardiac catheterization lab.

Program Summary

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

Financial Summary

Total Project Cost is \$205,899,357. However, as a result of identified non-Article 28 space and shell space, the Total Reimbursable Cost is limited to \$119,198,762.

Project costs of \$205,899,357 will be met with \$20,651,444 in accumulated funds, \$36,012,913 in capital leases, and \$149,235,000 in tax exempt and taxable Westchester County Health Corporation Bonds at 6.0% interest over 30 years.

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

Incremental Budget:

Revenues:	\$27,442,465
Expenses:	<u>\$27,402,742</u>
Gain (Loss):	\$39,723

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 commitment for a permanent mortgage for the project to be provided from a recognized lending institution at a prevailing rate of interest, acceptable by the Department. 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 lease acceptable to the Department of Health. [BFA]
4. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-02 SHC Hospitals (as required) and DSG-03 Outpatient Facilities (as required). The drawings must address the following:
 - a. The occupant load of each smoke/fire compartment and the occupant load of each type of exit being claimed, that proves compliance with NFPA 7.2.4.1.2. Presently the plan shows a ratio of 7 horizontal exits to 3 exit stairs. The label system described does not indicate actual occupant loads.
 - b. An explanation why the three stairs are not required to be 48 inches wide to meet NFPA 7.5.4.4 and 7.2.12.2.3 accessibility requirements. Areas of refuge must be demonstrated if they are being claimed.
 - c. Demonstrate a compliant egress from elevator lobby AB-121 to a compliant exit discharge.
 - d. FGI Guidelines 3.7-7.2.2.1: a six foot wide ambulance transfer exit, or path to the attached hospital, from the surgical suites and the PACU units (each floor containing these uses) shall be clearly marked on the drawings. [AER]

Approval conditional upon:

1. The project must be completed within five years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. 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 15, 2015 and complete construction by January 15, 2017 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]

Council Action Date

February 12, 2015

Need Analysis

Project Description

Westchester Medical Center (WMC) is an existing 652-bed hospital located at 100 Woods Rd, Valhalla New York 10595. The facility is seeking approval to construct a new Ambulatory Care Pavilion on its main campus and an addition to the main building. The new Ambulatory pavilion will include two net new MRI machines, a new X-ray machine, a new CT-scanner, ultrasound, a procedure room, an operating room, an intervention room, and a new cardiac catheterization lab.

Background

Westchester Medical Center has the following certified beds and services:

Table 1: Westchester Medical Center. Source: HFIS, 2014	
Bed Category	Certified Capacity
AIDS	21
Bone Marrow Transplant	4
Burns Care	10
Coronary Care	8
Intensive Care	58
Maternity	15
Medical / Surgical	267
Neonatal Intensive Care	35
Neonatal Intermediate Care	14
Pediatric	69
Pediatric ICU	18
Physical Medicine and Rehabilitation	18
Prisoner	14
Psychiatric	101
Total	652

Table 2: Westchester Medical Center: Certified Services. Source: HFIS, 2014	
AIDS	Magnetic Resonance Imaging
AIDS Center	Maternity
Ambulatory Surgery - Multi Specialty	Medical Services - Primary Care
Audiology O/P	Medical Social Services
Burn Center	Medical/Surgical
Burns Care	Neonatal Intensive Care
CT Scanner	Neonatal Intermediate Care
Cardiac Catheterization - Adult Diagnostic	Nuclear Medicine - Diagnostic
Cardiac Catheterization - Electrophysiology (EP)	Nuclear Medicine - Therapeutic
Cardiac Catheterization - Pediatric Diagnostic	Pediatric
Cardiac Catheterization - Percutaneous Coronary Intervention (PCI)	Pediatric Intensive Care
Cardiac Surgery - Adult	Pharmaceutical Service
Cardiac Surgery - Pediatric	Physical Medical Rehabilitation
Certified Mental Health Services O/P	Physical Medicine and Rehabilitation O/P
Chemical Dependence - Rehabilitation O/P	Psychiatric
Chemical Dependence - Withdrawal O/P	Radiology - Diagnostic
Clinic Part Time Services	Radiology-Therapeutic
Clinical Laboratory Service	Renal Dialysis - Acute
Coronary Care	Respiratory Care
Dental O/P	Therapy - Occupational O/P

Emergency Department	Therapy - Physical O/P
Family Planning O/P	Therapy - Speech Language Pathology
Intensive Care	Transplant - Bone Marrow
Linear Accelerator	Transplant - Heart - Adult
Lithotripsy	Transplant - Kidney
	Transplant - Liver

State designations:

- AIDS Center;
- Regional Perinatal Center;
- Regional Trauma Center;
- Burn Center; and
- Stroke Center

Analysis

The new pavilion will house eight operating rooms and the Westchester Medical Center will decertify seven of its 25 operating rooms in its main building, resulting in the addition of one net new OR, for a total of 26 operating rooms. The case mix index at Westchester Medical Center is above two, which is higher than the average for most hospital centers. This indicates the hospital sees more difficult/specialized surgical procedures, leading to a slightly lower rate of surgical procedures per operating room than normally expected. Some examples of surgery include organ transplant, open heart surgery, trauma, bariatric, neurology and orthopedics, oncologic surgery, and specialty pediatric.

As seen in the table below, Westchester Medical Center completed 19,157 total surgeries in 2013. Based on the total surgeries and the total operating rooms, it is expected the hospital will see 737 surgeries per OR. Given the high acuity of patients and the specialty surgeries needed, this is an acceptable utilization level.

Year	All Surgeries
2011	18,301
2012	18,926
2013	19,157

The new Ambulatory Care Pavilion will also include two new MRI units, a new digital X-Ray, a new CT Scanner, three new Ultrasounds, a new procedure room, a new vascular/interventional radiology room, and a cardiac catheterization lab.

Services	2014
Surgical Procedures	9,001
MRI Scans	8,310
X Ray	43,800
CT Scans	25,201
Ultrasound Procedures	12,733

The proposal includes the addition of one net new Cardiac Catheterization Laboratory. Two labs will be certified in the new pavilion and one will be decertified on the main campus for a total of seven labs. Due to the way the labs are utilized by Westchester Medical Center - one space/lab is an EP lab and another is a Cath/EP lab - the facility considers that it is only running 4.5 labs.

	2013	2014
Emergency PCI	142	144
Adult PCI	456	420

Westchester Medical Center has seen an increase in more advanced procedures such as electrophysiology studies, device implementation, and peripheral procedures, leading to an increase in lab time needed. An additional factor affecting longer lab times is an increase in heart catheterizations and biopsies, leading to the use of one to two rooms every Monday and Wednesday for these procedures alone. Pediatric procedures, which take significantly longer than a standard procedure, also contribute to longer lab times, limiting the number of procedures that each lab can perform. Westchester Medical Center is the only provider of pediatric cardiac services in the Hudson Valley Region. These several factors help justify the addition of the new PCI lab, even though the number of procedures is on an overall decline.

- Section 405.29 (2)(iv): Minimum workload standards. There shall be sufficient utilization of a center to ensure both quality and economy of services, as determined by the Commissioner. For hospitals that are part of an Article 28 network and multi-site facilities with more than one approved PCI Capable Cardiac Catheterization Laboratory Center, and for PCI Capable Cardiac Catheterization Laboratory Centers operating under a co-operator agreement pursuant to section 709.14(d)(1)(ii)(c)(3)(viii), minimum volume standards are site specific and may not be combined for purposes of achieving minimum workload standards. Any hospital seeking to maintain approval shall present evidence that the annual minimum workload standards have been achieved by the second full year following initiation of the service and maintained thereafter. Each PCI Capable Cardiac Catheterization Laboratory Center must maintain a minimum volume of 150 percutaneous coronary intervention cases per year including at least 36 emergency percutaneous coronary intervention cases per year.

HUDSON VALLEY HSA							
Facility	PFI	Cath Labs	Diag Cath W/O PCI	Diag Caths W/PCI	PCI Volume	Cardiac Surgery Vol.	Total Diag Caths
Good Samaritan Hosp.-Suffern	779	2	893	561	637	126	1,454
Orange Regional M.C.	699	3	1,272	509	517	0	1,781
St. Francis Hosp.-Poughkeepsie	180	1	10	0	0	0	10
St. Lukes Cornwall-Newburgh	694	2	455	257	267	0	712
The Kingston Hospital	990	1	362	0	0	0	362
Vassar Brothers M.C.	181	3	862	572	648	332	1,434
Westchester M.C.	1,139	4	1,164	420	456	493	1,584
White Plains Hosp. Center	1,045	1	551	308	347	0	859
Total:		17	5,569	2,627	2,872	951	8,196

Conclusion

This new pavilion will permit consolidation of equipment and services and will help streamline patient care. The dedicated outpatient care unit will help address the future direction of health care, where care is focused more on patient-centered treatment in an outpatient setting.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

Westchester Medical Center (WMC), an existing 895-bed hospital with two campuses, seeks approval for the construction of a new Ambulatory Care Pavilion (ACP) on the main (652 bed) campus of the Medical Center located at 100 Woods Road in Valhalla (Westchester County). The new, seven story building addition is to be constructed adjacent to the main building of the Medical Center and will include shell space to be used for future inpatient rooms (the fit-out of that shelled space will be the subject of a separate CON).

The Medical Center is experiencing growing volumes and currently lacks an appropriate dedicated outpatient venue on its campus. The proposed Ambulatory Care Pavilion will provide for a dedicated outpatient setting and will enable state-of-the-art ambulatory care services to be provided in a new, patient-friendly and operationally efficient building. It is the hope of WMC that the integrated outpatient services provided at the proposed Ambulatory Care Pavilion will lead to improved health outcomes, particularly those related to cardiac services and cancer.

It is anticipated that staffing will increase by 29.0 FTEs by the first year and by 50.0 FTE by the end of the third year in operation.

Compliance with Applicable Codes, Rules and Regulations

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Cost

Total project cost for new construction and equipment is estimated at \$205,899,357, broken down as follows:

New Construction	\$117,757,601
Site Development	4,865,267
Design Contingency	11,678,365
Construction Contingency	5,839,182
Fixed Equipment	2,168,951
Architect/Engineering Fees	7,496,800
Construction Manager Fees	309,500
Other Fees (Consultant)	3,822,176
Movable Equipment	31,730,064
Telecommunications	4,282,849
Financing Costs	2,238,525
Interim Interest Expense	13,056,081
Con Application Fee	2,000
Additional CON Processing Fee	<u>651,996</u>
Total Project Cost	<u>\$205,899,357</u>
Total Reimbursable Cost	\$119,198,762

Total costs are based on a twenty two month construction period with a start date of May 1, 2015, and a completion date of March 1, 2017. Total project costs are divided into three sub projects as follows:

Project	Description	Total Project Cost
Sub Project One	Ambulatory Care Pavilion	\$119,198,762
Sub Project Two	Shell-Inpatient Bed Tower	\$11,857,760
Sub Project Three	Physician Private Offices	\$74,842,835
Total		\$205,899,357

The Bureau of Architectural and Engineering Review has determined that this project includes non-Article 28 space costs for physician medical offices of \$74,842,835, and shell space for an inpatient bed tower of \$11,857,760 which will be submitted under a future CON. The to-be-built inpatient bed tower in the near future will be utilized to accommodate single patient rooms and will not result in a net increase of new beds. As a result, the total approved project cost for reimbursement purposes shall be limited to \$119,198,762.

The applicant's financing plan is as follows:

Accumulated Funds-WCHCC	\$20,651,444
Capital Leases:	
Movable Equipment	31,730,064
Telecommunications	4,282,849
Mortgage (30 years at 6% tax exempt and taxable bonds)	<u>149,235,000</u>
Total	<u>\$205,899,357</u>

WMC will utilize only tax-exempt bonds for Article 28 space. The taxable bonds will be used only for non-Article 28 space. WMC's current bond rating is an A3 rating with Moody's and a BBB rating with Standard & Poor's.

Operating Budget

The applicant has submitted an incremental operating budget, in 2015 dollars, for the first and third years, summarized below:

<u>Inpatient</u>	<u>First Year</u>	<u>Third Year</u>
Revenue	\$9,936,985	\$10,749,281
Expense:		
Operating	3,770,541	6,296,869
Interest	7,445,922	6,739,586
Depreciation	<u>7,544,429</u>	<u>9,305,531</u>
Total Expense	<u>\$18,760,892</u>	<u>\$22,341,986</u>
Inpatient Excess Revenue(Loss)	\$(8,823,907)	\$(11,592,705)
<u>Outpatient</u>	<u>First Year</u>	<u>Third Year</u>
Revenue	\$13,312,821	\$16,693,184
Expense:		
Operating	\$857,431	\$1,431,924
Interest	1,693,223	1,532,599
Depreciation	<u>3,857,335</u>	<u>2,096,233</u>
Total Expense	\$6,407,989	\$5,060,756
Outpatient Excess Revenue(Loss)	\$6,904,832	\$11,632,428
Total Net Excess Revenue(Loss)	\$(1,919,075)	\$39,723
Inpatient Discharges	1,500	1,875
Visits	4,500	6,000

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

Medicaid Fee-For-Service	6.5%
Medicaid Managed Care	23.3%
Medicare Fee-For Service	19.8%
Medicare Managed Care	3.7%
Commercial Fee for Service	11.3%
Commercial Manage Care	32.1%
Private	1.3%
Charity Care	2.0%

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

Medicaid Fee-For-Service	6.4%
Medicaid Managed Care	23.3%
Medicare Fee-For Service	19.8%
Medicare Managed Care	3.7%
Commercial Fee for Service	11.3%
Commercial Manage Care	32.1%
Private	1.4%
Charity Care	2.0%

Expenses and utilization are based upon WMC's current experience in providing ambulatory care services, as well as the growth in diagnostic imaging, non-invasive cardiology, surgical, interventional radiology and cardiac catheterization programs at WMC. WMC serves a large number of individuals applying for emergency Medicaid coverage who are covered under Medicaid Fee-For-Service, and not Medicaid Managed Care, which leads to higher than expected utilization for Medicaid Fee-For-Service.

Capability and Feasibility

Total project costs will be met with WMC accumulated funds of \$20,651,444, capital equipment leases of \$36,012,913 and \$149,235,000 from tax exempt and taxable bonds issued through WCHCC. A letter of interest has been submitted by WMC for both the capital equipment leasing from Insight Financial Services and the mortgage from Wells Fargo Securities. BFA Attachments A and B are Westchester County Health Care Corporation's 2013 and WMC's current 2014 certified financial summaries, respectively, which indicates sufficient resources to fund this project.

The submitted incremental budget indicates a loss of revenues over expenses of \$1,919,075 and a net gain of \$39,723 during the first and third years, respectively. WMC will absorb the first year incremental losses through operations. Revenues reflect current outpatient reimbursement methodologies for ambulatory care services. The budget appears reasonable.

As shown on BFA Attachments A and B, the WCHCC and the hospital maintained positive working capital and experienced negative net asset positions, and incurred an excess of revenues over expenses of \$26,134,421 and \$718,000 for 2013 and September 30, 2014, respectively. WMC has historically experienced negative net assets in the past and has decreased negative net assets by approximately \$138,104,000 as of September 30, 2014 from \$200,000,000 in 2005 with positive results.

The applicant has demonstrated the capability to proceed in a financially feasible manner

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

- BFA Attachment A Financial Summary of Westchester County Health Care Corporation, 2013
- BFA Attachment B Financial Summary of Westchester Medical Center, 2013 - September 30, 2014
unaudited



Public Health and Health Planning Council

Project # 142181-C Orange Regional Medical Center

Program: Hospital
Purpose: Construction

County: Orange
Acknowledged: October 31, 2014

Executive Summary

Description

Orange Regional Medical Center (ORMC or Orange Regional), a not-for-profit 383-bed acute care hospital, requests approval to construct a new medical office building and a cancer center on its main campus located at 707 East Main Street, Middletown. Upon completion ORMC will relocate many of the outpatient services currently being provided in its Orange Regional Medical Pavilion, located about one mile away at 75 Crystal Run Road, Middletown. Orange Regional will also relocate services currently being provided at its outpatient Patient Services Center located at 70 Hatfield Lane, Goshen. The hospital is not proposing to develop any new clinical services as a result of this project. Rather, this project seeks only to relocate existing services from remote locations onto ORMC's main campus.

The medical office building will consist of five floors, of which floors 3 through 5 will be entirely non-Article 28 space. Floors 3 through 5 will house the Greater Hudson Valley Health System Medical Group (GHVMG). GHVMG is a New York Professional Service Corporation engaged in the private practice of medicine.

Orange Regional's decision to pursue this project is based on a number of factors that include: improving the quality of its outpatient care services, the opportunity to develop a dedicated cancer center, creating a flagship location for the ORMC Medical Group, progression towards integrated delivery system development, achieving significant cost reductions, achieving various operational efficiencies to benefit both staff and patients, and giving ORMC the ability to directly impact at least three of the ten

Delivery System Reform Incentive Payment (DSRIP) projects being pursued by its Performing Provider System (PPS). The applicant has indicated that Montefiore Medical Center is the lead applicant for ORMC's PPS for the DSRIP program.

DOH Recommendation

Contingent Approval

Need Summary

This project would relocate many services from the two extension clinics to the site of the proposed expansion of Orange Regional Medical Center. The proposed expanded Cancer Center would relocate the Radiology and LINAC services from the two clinics to a centralized, modern cancer treatment facility in Orange County. Because such a move would keep the services in Orange County, there is little risk of a decline in utilization rates or a disruption in services.

Program Summary

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

Financial Summary

Total Project Cost is \$99,872,535. **Total Reimbursable Cost is \$77,155,692 due to Non-Article 28 and shell space on floors 3 through 5.**

Project costs of \$99,872,535 will be met as follows: Equity via operations of \$16,828,342, Fundraising of \$2,000,000, Outstanding 2008 Bond Proceeds from construction of ORMC's new replacement hospital of \$5,084,193, DASNY bond financing of \$68,460,000 at an interest rate of 5.078% for a thirty year term, and an equipment lease of \$7,500,000 at an interest rate of 3.80% for a five year term.

Enterprise Budget:	
Revenues	\$191,530,242
Expenses	<u>189,667,594</u>
Excess Revenues over Expenses	\$1,862,648

Incremental Budget:	
Revenues	\$4,371,421
Expenses	<u>4,474,332</u>
Excess Revenues over Expenses	(\$102,911)

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 commitment for a permanent mortgage for the project to be provided from a recognized lending institution at a prevailing rate of interest, 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 lease, acceptable to the Department of Health. [BFA]
4. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-02 SHC Hospitals (as required) and DSG-03 Outpatient Facilities (as required) [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 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 April 1, 2015 and complete construction by October 1, 2016 upon the filing of Final Construction Documents in accordance with 10 NYCRR section 710.7. In accordance with 10 NYCRR Part 71 0.2(b)(5), if construction is not started on or before the start date, this shall constitute abandonment of the approval. In accordance with Part 710.1 O(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]
8. Reimbursable project costs shall be limited to \$77,155,692 due to the undeveloped 5th floor and Non-Article 28 Private Physician floors 3 & 4 of the MOB. These areas represent a total of \$22,716,843 in project costs. Reimbursement of these costs will be withheld until these areas are approved for article 28 services by the department (via approval of future CON submission or modification of this CON project).

Council Action Date

February 12, 2015

Need Analysis

Project Description

Orange Regional Medical Center is a 383-bed acute care hospital located at 707 East Main Street, Middletown, 10940, in Orange County. It is requesting approval to renovate and expand the Cancer Center on its main campus, and to construct a 5-story medical office building there. The first two floors of the medical office building would be Article 28 certified and would contain relocated services from two extension clinics run by the Center. Floors three and four of the proposed medical office building will contain physician offices, examination rooms and procedure rooms. The fifth floor would be vacant.

A summary of the services the two extension clinics currently provide is as follows:

Orange Regional Radiation Oncology Extension Clinic

Linear Accelerator
 Magnetic Resonance Imaging
 Medical Services – Primary Care
 Radiology – Diagnostic O/P
 Radiology – Therapeutic O/P

Horton Medical Pavilion

Ambulatory Surgery – Multi Specialty
 CT Scanner
 Linear Accelerator
 Medical Services – Primary Care
 Radiology – Diagnostic O/P
 Radiology – Therapeutic O/P

On completion of this project, the current location of the Orange Regional Oncology Extension Clinic would be left vacant, all services having been moved to the main site of Orange Regional Medical Center. Horton Medical Pavilion would continue to provide a Sleep Center and Wound Care services.

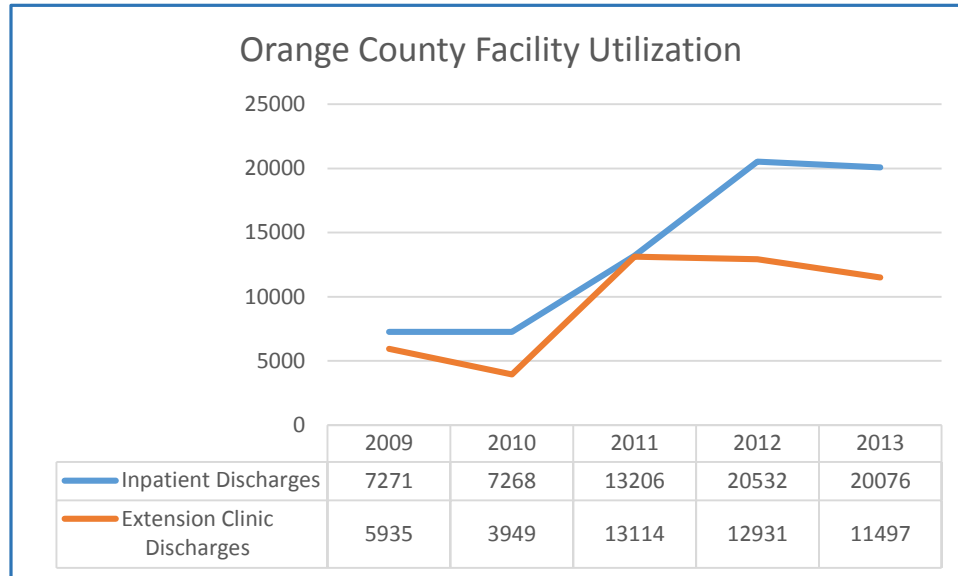
Table 1: Orange Regional Medical Center Bed Chart

Bed Category	Certified Beds	Requested Action	Certified Capacity Upon Completion
Coronary Care	6	0	6
Intensive Care	34	0	34
Maternity	23	0	23
Medical / Surgical	244	0	244
Neonatal Intensive Care	10	0	10
Pediatric	12	0	12
Physical Medicine and Rehabilitation	24	0	24
Psychiatric	30	0	30
Total	383	0	383

Source: HFIS

Analysis

Utilization numbers for Orange Regional Medical Center and the two extension clinics involved in this project are shown below. With no change to services being proposed, these utilization numbers should not be affected by this project.



Source: SPARCS

Prevention Quality Indicators for Orange and Sullivan Counties are listed below. The PQIs for the primary service area of Orange Regional Medical Center and its extension clinics are well above the state average. This indicates a continuing need for primary care and ambulatory surgery. The medical office building with its primary care clinic would help to reduce these indicators.

Table 2: PQI Indicators for Orange and Sullivan Counties

Year	2009		2010		2011		2012	
	Observed Rate Per 100,000	% Expected	Observed Rate Per 100,000	% Expected	Observed Rate Per 100,000	% Expected	Observed Rate Per 100,000	% Expected
Overall Composite	3,286	245.6%	2,975	242.9%	3,054	248.3%	2,567	224.2%
Acute Composite	1,410	274.6%	1,201	258.1%	905	193.9%	1,303	304.9%
Chronic Composite	1,876	227.5%	1,774	233.6%	2,148	281.5%	1,263	176.1%
All Circulatory Composite	851	237.8%	907	280.4%	1,135	364.3%	718	248.5%
All Diabetes Composite	333	191.1%	347	202.1%	243	135.1%	160	93.3%
All Respiratory Composite	692	236.5%	520	196.6%	770	283.5%	386	149.9%

Source: health.data.ny.gov

Conclusion

This proposal is expected to improve the patient experience and access to vital health services in Orange and Sullivan Counties. The applicant believes that the project will increase the ability of the Center to respond to a patients' needs by shortening supply chains and improving communication. By moving a primary care clinic onto the same campus as the Emergency Department, the triaging process can be improved and ED visits reduced. The high PQIs for the primary service area indicate that need still exists for additional primary care. The proposed medical office building, with an additional procedure room, will start to address this need. No change to services is being proposed. This project will increase the efficiency and accessibility of existing resources in Orange and Sullivan Counties.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

Orange Regional Medical Center (ORMC) requests approval to construct a new medical office building (MOB) and a dedicated cancer center on its main campus located at 707 East Main Street in the Town of Walkill (Orange County). ORMC is not proposing to develop any new clinical services as a result of this project, rather, this project seeks only to relocate existing services from remote locations onto the main campus. Once construction is complete many of the outpatient services currently being provided at the Orange Regional Medical Pavilion (located in Middletown) and services currently being provided the Patient Services Center (located in Goshen) will be relocated to the new medical office building. Additionally, the proposed cancer center, which will combine new construction with renovated space, will give ORMC the opportunity to consolidate all of its existing outpatient cancer services into a single site.

ORMC is one of two hospitals in the Greater Hudson Valley Health System (GHVHS), the other being Catskill Regional Medical Center. GHVHS serves as the active parent to both.

This project will consolidate most of ORMC's services onto a single campus for added convenience and create technologic and operational efficiencies that will, in turn, result in a more seamless health care environment.

Compliance with Applicable Codes, Rules and Regulations

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total project cost, which is for new construction and the acquisition of moveable equipment, is estimated at \$99,872,535, further broken down as follows:

New Construction	\$51,975,224
Renovation and Demolition	2,699,028
Site Development	8,071,476
Temporary Utilities	55,000
Design Contingency	6,280,073
Construction Contingency	3,274,988
Architect/Engineering Fees	3,592,000
Construction Manager Fees	1,808,895
Other Fees (Consultant)	1,558,482
Moveable Equipment	12,773,012
Telecommunications	1,212,062
Financing Costs	960,000
Interim Interest Expense	5,188,271
CON Fee	2,000
Additional Processing Fee	<u>422,024</u>
Total Project Cost	\$99,872,535
Total Reimbursable Cost	\$77,155,692

Project costs are based on an April 1, 2015 construction start date and an eighteen month construction period. The Bureau of Architectural and Engineering Review has determined that this project includes Non-Article 28 space costs totaling \$22,716,843. As a result, the total approved project cost for reimbursement purposes shall be limited to \$77,155,692.

Total project costs are divided into three subprojects as follows:

Project	Description	Total Project Cost
Subproject 1	Medical Office Building	\$78,308,918
Less: Non-Article 28	Private Physician Practice	(\$22,716,843)
Sub Project 1 Total:	Article 28 Allowable	\$55,592,075
Sub Project 2:	Cancer Center - New Construction	\$16,659,044
Sub Project 3:	Cancer Center - Renovation	\$4,480,548
CON Fees:	Application Fees	\$424,024
Total Reimbursable		\$77,155,691

The applicant's financing plan appears as follows:

Equity	\$16,828,342
Fundraising	2,000,000
Outstanding 2008 Bond Proceeds	5,084,193
DASNY Bond Loan (5.078% interest, thirty year term)	68,460,000
Equipment Lease (3.80% interest rate, five year term)	<u>7,500,000</u>
Total	\$99,872,535

Staff has contacted the Dormitory Authority of the State of New York (DASNY) and verified that the funds from the Outstanding 2008 Bond Proceeds are available for use on this project. DASNY also indicated that they have been in contact with ORMC regarding the proposed bond financing and advised the applicant that they will consider issuing bonds in conjunction with the proposed plan of finance for the entire project as described in this CON. J.P. Morgan has provided a letter of interest in serving as underwriter for the Bond Issue.

Operating Budget

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

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$3,491,568	\$4,371,421
Expenses:		
Operating	\$0	\$0
Capital	<u>5,761,145</u>	<u>4,474,332</u>
Total Expenses	\$5,761,145	\$4,474,332
Excess of Revenues over Expenses	(\$2,269,577)	(\$102,911)
Utilization: (Visits)	3,109	3,235

Utilization assumptions are based on modest increases based on growth in the area. Utilization is projected to increase by 2% from historical. Expense assumptions are based on incremental interest and depreciation expense and the reduction in lease rental payments as it vacates the old locations and/or sunsets existing leases on the old locations. The applicant has indicated that certain expenses are constant despite expected modest volume increases because they feel the volume increases can be absorbed with the current staffing levels and associated operating expenses. The applicant anticipates becoming more efficient in the new building space based on LEAN studies forcing the planning process and improved patient flow and co-location of related services and operational functions, thereby allowing it to treat more patients with the same number of staff.

Incremental utilization broken down by payor source during the first and third years (3,109 and 3,235 visits respectively) as follows:

	<u>Year One</u>	<u>Year Three</u>
Medicaid Managed Care	6.27%	6.27%
Medicaid Fee For Service	2.09%	2.10%
Medicare Managed Care	4.50%	4.51%
Medicare Fee For Service	37.09%	37.06%
Commercial Managed Care	.35%	.34%
Commercial Fee For Service	46.35%	46.34%
Private Pay	2.19%	2.19%
Other	<u>1.16%</u>	<u>1.19%</u>
Total	100.00%	100.00%

Capability and Feasibility

Total project cost of \$99,872,535 will be met as follows: Equity via operations of \$16,828,342; Fundraising of \$2,000,000; outstanding 2008 bond proceeds from construction of ORMC's new replacement hospital of \$5,084,193; Equipment Lease of \$7,500,000 at an interest rate of 3.80% for a five year term; and DASNY bond financing of \$68,460,000 at an interest rate of 5.078% for a thirty year term. If there are fundraising shortfalls, the hospital has indicated that they will provide equity to offset the shortfalls. BFA Attachment B is the 2012 and 2013 certified financial statements of Orange Regional Medical Center, which indicates the availability of sufficient funds for the equity contribution and the fundraising portion if fundraising proceeds are not met.

The submitted incremental budget indicates an operating loss of \$2,269,577 and \$102,911 during the first and third years, respectively. The first and third year losses will be offset via operations. The budget for the whole facility for the third year after project completion is projecting excess revenues over expenses of \$1,862,648. Revenues are based on current reimbursement rates.

As shown on BFA Attachment B the hospital had an average positive working capital position and an average positive net asset position from 2012 through 2013. Also, the hospital incurred average operations losses of \$7,882,000 from 2012 through 2013. The applicant has indicated that the reasons for the losses are the result of the following:

- In August 2011, ORMC closed its two existing community hospitals and consolidated its operations into its new hospital, which led to increased expenses due to debt service on the new building.
- Rising unemployment rates in the area led to a loss of medical coverage for patients and subsequently, a delay in seeking medical care, which reduced patient volume and revenue.
- Medicare imposed Sequestration implemented in 2013 reduced Medicare rates by 2% which negatively impacted revenue.
- Inpatient discharges decreased as a result of patients who had historically been considered inpatients being re-classified as outpatient observation. Reimbursement for observation status patients is significantly less than for inpatient status, up to 60% less in some cases, contributing to operating losses.

The applicant implemented the following steps to improve operations: implemented a reduction in work force to bring down the FTEs to address the operating losses, worked to improve inpatient and outpatient volumes which increased by 7.5% and 2% respectively in the first half of 2014, and improved ORMC's debt service coverage ratio which improved to 1.95 from 1.36 the prior year.

BFA Attachment A is the June 30, 2014 internal financial statement of Orange Regional Medical Center. As shown, the hospital had a positive working capital position and a positive net asset position through June 30, 2014. Also, the hospital achieved an operating income of \$1,965,559 through June 30, 2014.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

- | | |
|--------------------|---|
| BFA Attachment A - | Financial Summary- Orange Regional Medical Center's June 30, 2014 internal financial statements |
| BFA Attachment B - | Financial Summary- 2012 and 2013 certified financial statements of Orange Regional Medical Center |



Public Health and Health Planning Council

Project # 142185-C

New York Presbyterian Hospital - New York Weill Cornell Center

Program: Hospital
Purpose: Construction

County: New York
Acknowledged: November 4, 2014

Executive Summary

Description

New York Presbyterian Hospital (NYP Hospital) is part of a 2,478-bed not-for-profit hospital system consisting of the following campuses: Columbia University Medical Center (977 beds); Weill Cornell Medical Center (850 beds); Westchester Division (270 beds); Allen Hospital (201 beds); and Lower Manhattan Hospital (180 beds). NYP Hospital requests approval to certify an existing radiation oncology private practice as a new hospital extension clinic. The site, formerly known as the Farber Center, is located at 100 Church Street, New York, New York, with the facility's entrance located at 21 West Broadway. The Center was acquired through an asset purchase agreement between Leonard A. Farber, M.D., PLLC and NYP Hospital. NYP Hospital proposes to certify the Farber Center as an extension clinic specializing in outpatient therapeutic radiation oncology services.

The Center will include one (1) linear accelerator, one (1) High Dose Rate (HDR) remote afterloader, one (1) CT simulator, exam/consultation space for initial outpatient consults, and associated support spaces. Certifying this existing radiation oncology practice will enable NYP Hospital to accomplish the following:

- Expand their existing capacity with state-of-the-art radiation oncology technology;
- Create a more patient-centered and accessible setting for radiation therapy;
- Provide high-quality care by internationally recognized skilled professional staff; and
- Provide continuity of care for patients already treated at the Center through increased access to NYP Hospital services.

DOH Recommendation

Contingent Approval

Need Summary

New York Presbyterian proposes to certify a private practice as an extension clinic specializing in outpatient radiation oncology services. The center will include one (1) linear accelerator, one (1) High Dose Rate (HDR) remote afterloader, and one (1) CT simulator. Certifying this project will expand the existing capacity of certified linear accelerators for radiation oncology services and provide continuity of care for patients in the New York City area.

Program Summary

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

Financial Summary

Project costs of \$5,121,630 will be met via cash equity of \$5,121,630.

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

Budget:

Revenues	\$6,051,668
Expenses	<u>\$5,380,669</u>
Net Income/(Loss)	\$670,999

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. The applicant is required to submit design development drawings, complying with requirements of 10NCYRR Part 710.4, for review and approval by DASNY. [DAS]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. All devices producing ionizing radiation must be licensed by the New York State Department of Health -- Bureau of Environmental Radiation Protection. [HSP]
7. The applicant is required to submit final construction documents, complying with requirements of 10NCYRR Part 710.7, to NYS DOH Bureau of Architecture and Engineering Facility Planning (BAEFP) prior to start of construction. [DAS]

Council Action Date

February 12, 2015

Need Analysis

Project Description

The New York Presbyterian Hospital is seeking approval to certify an existing radiation oncology private practice, known as The Faber Center, as an extension clinic. The extension clinic, to be called NY-Presbyterian Radiation Oncology Outpatient Center, will be located at 21 West Broadway, New York, 10007 in New York County. This project will also include the certification of one linear accelerator.

Background and Analysis

New York Presbyterian Hospital provides services to New York City, although the primary service area will consist of lower Manhattan including the zip codes of 10002-10007, 10009, 10011-10014, 10019, 10038 and 10280.

Cancer patients in lower Manhattan have limited access to radiation therapy treatments in their community. This limited access tends to increase the waiting time patients experience for treatments. Traveling to daily treatment appointments to other locations in Manhattan and New York City either by car or public transportation can result in patients spending more than an hour in travel time to and from treatments. The proposed extension clinic will be located within Manhattan's busiest business district, which will help address the needs of patients who are able to work while undergoing radiation treatments. Many patients who work in lower Manhattan would benefit from having access to the NY Presbyterian Hospital expertise in radiation therapy close to where they work.

The need methodology set forth in 10 NYCRR Section 709.16 calculates the need for therapeutic radiology devices by health planning region. The five-county New York City health planning region has a total of 29 facilities - 22 hospitals and 7 hospital extension clinics - providing linear accelerator services as follows:

Current Resources	# Facilities With Linac. Services			# Linac. Machines		
	Hospitals	Hospital Clinics	Total	in Hospitals	in Hospital Clinics	Total
Five County New York City Region						
Bronx	5	1	6	23	2	25
Kings	6	1	7	11	1	12
New York	7	5	12	14	8	22
Queens	3	0	3	10	0	10
Richmond	1	0	1	5	0	5
Total New York City Region	22	7	29	63	11	74

The table below shows a need for 12 MEV devices (linear accelerators) in the five-county New York City health planning region:

Linac Need in New York City	Total
# of Cancer Cases/Year	37,840
60% will be Candidates for Radiation Therapy	22,704
50% of (2) will be Curative Patients	11,352
50% of (2) will be Palliative Patients	11,352
Course of Treatment for Curative Patients is 35 Treatments	397,322
Course of Treatment for Palliative patients is 15 Treatments	170,281
The Total Number of Treatments [(5)+(6)]	567,603
Need for MEV Machines	
(Each MEV Machine has Capacity for 6,500 Treatments)	87
Existing/Approved Resources (Upon Approval of 142185)	75
Remaining Need for MEV Machines	12

The table below shows the need methodology calculation for MEV devices (linear accelerators) in the New York County area.

Linac Need in New York County	Total
# of Cancer Cases/Year	8,180
60% will be Candidates for Radiation Therapy	4,908
50% of (2) will be Curative Patients	2,454
50% of (2) will be Palliative Patients	2,454
Course of Treatment for Curative Patients is 35 Treatments	85,894
Course of Treatment for Palliative patients is 15 Treatments	36,812
The Total Number of Treatments [(5)+(6)]	122,706
Need for MEV Machines	
(Each MEV Machine has Capacity for 6,500 Treatments)	19
Existing/Approved Resources (Upon Approval of 142185)	23
Remaining Need for MEV Machines	-4

The table below shows a need for 1 MEV devices (linear accelerators) in the primary service area of lower Manhattan.

Linac Need in Primary Service Area ¹	Total
# of Cancer Cases	2,523
60% will be Candidates for Radiation Therapy	1,514
50% of (2) will be Curative Patients	757
50% of (2) will be Palliative Patients	757
Course of Treatment for Curative Patients is 35 Treatments	26,495
Course of Treatment for Palliative patients is 15 Treatments	11,355
The Total Number of Treatments [(5)+(6)]	37,850
Need for MEV Machines	
(Each MEV Machine has Capacity for 6,500 Treatments)	6
Existing/Approved Resources (Upon Approval of 142185)	5
Remaining Need for MEV Machines	1

¹ Primary Service Area includes following zip codes: 10002-10007, 10009, 10011-10014, 10019, 10038 and 10280

Conclusion

Certification of this project will help create a more patient-centered and accessible setting for radiation therapy, provide high quality care, and continuity of care for cancer patients in the lower Manhattan area and the greater New York City region.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

New York Presbyterian Hospital (NYP Hospital) requests approval to certify an existing radiation oncology private practice (formerly known as The Farber Center) as an extension clinic that will become known as the New York-Presbyterian Radiation Oncology Outpatient Center.

The Center will include one (1) linear accelerator, one (1) High Dose Rate (HDR) remote afterloader, one (1) CT simulator, exam/consultation space and associated support spaces. Certifying this existing radiation oncology center will enable NYP Hospital to expand the existing capacity, create a more patient centered and accessible setting for radiation therapy, and provide continuity and high quality care by skilled professional staff for patients already treated at the Center through increased access to NYP Hospital services.

Site	Approved Services
New York-Presbyterian Radiation Oncology Outpatient Center 21 West Broadway New York, NY 10007	Radiology – Therapeutic

Compliance with Applicable Codes, Rules and Regulations

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

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

Date:	October 15, 2014
Seller:	Leonard A. Farber, M.D., PLLC, d/b/a The Farber Center for Radiation Oncology
Purchaser:	The New York and Presbyterian Hospital
Acquired Assets:	Cash; accounts receivable; all rights, title and interest in and to the assets and properties of every kind, character and description (other than property and rights specifically excluded in the agreement), owned or leased by seller and used in the operation and management of the practice, or otherwise for the benefit of the practice, whether tangible, intangible, real, personal or mixed, movable or fixed, and wherever located. Only the excluded assets listed below will not be transferred via this agreement.

Excluded Assets:	Income tax receivables; deferred tax assets; employee advances; prepaid professional liability insurance; contracts and leases that are not designated contracts; the purchase price and all rights of the seller under this agreement; any patient records in which the patients have objected to a transfer of the records; any claims, rights or interest of any seller in or to any refund, rebate, abatement or other recovery for taxes; all Medicare and Medicaid Provider agreements of the seller, and all other governmental licenses and permits not capable of being sold to the buyer; any claims or causes of action of the seller against its officers; all artwork located at the leased real property, to the extent that the artwork is not property of the seller as of the closing date; the proceeds of an insurance claim held by seller in a debtor-in-possession bank account at JP Morgan Chase bank.
Assumed Liabilities:	Designated contracts with a Cure Cost Cap in the amount of \$2,512,341
Excluded Liabilities:	N/A
Purchase Price:	\$5,076,626
Payment:	Due at closing, apportioned as follows: <ul style="list-style-type: none"> • \$400,000 for forgiveness of indebtedness, • \$2,512,341 cure cost, • \$1,477,500 settlement payment to Community National Bank, • \$550,000 settlement payment to Ocean Pacific Interiors, Inc. and Pristine Maintenance, Inc. • \$136,785 payment for unsecured claims.

Lease Rental Agreement

The applicant has submitted an executed lease rental agreement for the site they will occupy, which is summarized below:

Premises:	100 Church Street, New York, New York (entrance at 21 West Broadway)
Lessor:	100 Church Fee Owner, LLC
Lessee:	The New York and Presbyterian Hospital
Term:	16 years 1 month with 1 10-year extension period
Space:	22,626 sq. ft.
Rental:	First 3 months \$299,283.21 or (\$99,761.07 monthly), Year 1 at \$1,233,046.80 annually or (\$102,753.90 monthly). Annual rent increases of 3% each year based on the previous year's rent.
Provisions:	The lessee shall be responsible for maintenance, utilities and real estate taxes.

The applicant has indicated that the lease arrangement will be an arm's length lease arrangement. The applicant has submitted 2 letters from realtors attesting to the reasonableness of the per square foot rental.

Total Project Cost and Financing

Total project costs, which include fees associated with the Asset Purchase Agreement, are estimated at \$5,121,630 broken down as follows:

Other Fees*	\$5,091,626
Application Fees	\$2,000
Additional Processing Fees	<u>\$28,004</u>
Total Project Cost	\$5,121,630

*Other Fees are broken down as follows:

Asset Purchase Agreement:	
Forgiveness of indebtedness	\$400,000
Cure cost	\$2,512,341
Settlement payment	\$1,477,500
Settlement payment	\$550,000
Payment of unsecured claims	\$136,785
DASNY Drawing Review:	\$15,000
Total	\$5,091,626

The applicant's financing will come from cash equity in the amount of \$5,121,630.

Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, for years 1 and 3 of operations, summarized below:

	<u>Year 1</u>	<u>Year 3</u>
Operating Revenue	\$5,504,927	\$6,051,668
Expenses:		
Operating	\$3,608,667	\$3,883,537
Capital	<u>1,497,132</u>	<u>1,497,132</u>
Total Expenses	\$5,105,799	\$5,380,669
Net Income/(Loss)	\$399,128	\$670,999
Utilization:		
Treatments	5,000	5,202
Cost per treatment	\$1,021.16	\$1,034.35

Utilization broken down by payor source during year 1 and 3 is as follows:

	<u>Year 1</u>		<u>Year 3</u>	
	<u>Treatments</u>	<u>% Utilization</u>	<u>Treatments</u>	<u>% Utilization</u>
Medicaid Fee-For-Service	1,725	34.50%	1,794	34.49%
Medicare Fee For Service	1,410	28.20%	1,467	28.20%
Commercial Managed Care	1,553	31.06%	1,616	31.06%
Private Pay	<u>312</u>	<u>6.24%</u>	<u>325</u>	<u>6.25%</u>
Total	5,000	100.0%	5,202	100.0%

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

Capability and Feasibility

Total project costs of \$5,121,630 will be met through cash equity from the overall operations of NYP Hospital.

Working capital requirements are estimated at \$896,778, which is equivalent to two months of Year 3 expenses. The full amount of the working capital requirement will be provided as equity from the overall operations of NYP Hospital.

BFA Attachment A is NYP Hospital's 2012 through 2013 certified financial statements and their internal financial summary for the period 1/1/14 through 8/31/14. The hospital generated both positive working capital and net asset positions, and had an average net income of \$352,524,000 for the period 2012 through 2013. The hospital generated both positive working capital and net asset positions, and had a net income of \$239,609,000 for the period 1/1/2014-8/30/14. BFA Attachment A shows that NYP Hospital has sufficient funds available to cover both the working capital and equity requirements for this project.

The submitted budget indicates a net income of \$399,128 and \$670,999 during Year 1 and Year 3, respectively. Revenues are based on the current reimbursement methodologies for therapeutic radiology services. The submitted budget appears reasonable.

The applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	1/1/14 through 8/31/14 internal financial summary and 2012 through 2013 certified financial statements of NYP Hospital
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Public Health and Health Planning Council

Project # 142228-C Strong Memorial Hospital

Program: Hospital
Purpose: Construction

County: Monroe
Acknowledged: December 2, 2014

Executive Summary

Description

Strong Memorial Hospital (SMH), an 830-bed not-for-profit hospital located at 601 Elmwood Avenue, Rochester, New York (Monroe County), requests approval to renovate the existing Neonatal Intensive Care Unit (NICU) and add eight Level IV neonatal intensive care beds to its operating certificate. Upon completion of the project, 10 newly renovated neonatal intensive care single family rooms will be added to the 44 recently constructed single family rooms previously approved under CON 072135-C, and the hospital's total licensed beds will increase to 838 beds. It is noted that SMH is a designated Regional Perinatal Center and serves the nine counties of the Finger Lakes Region. The facility is currently licensed for 60 neonatal beds as follows: 26 Level IV neonatal intensive care beds, 20 Level III neonatal intermediate care beds, and 14 Level II neonatal continuing care beds.

Statewide Planning and Research Cooperative System (SPARCS) data indicates that SMH's 26-bed Level IV NICU has been operating above capacity. From 2011 through September 30, 2014, average occupancy grew from 119% to 130% of capacity. The applicant indicated that NICU overflow is currently managed by boarding higher acuity patients in the Pediatric Intensive Care Unit (PICU) and lower acuity patients in the normal newborn nursery staffed and managed by NICU physicians and nurses. The eight new Level IV beds will help the unit meet increasing demand in a more efficient manner.

DOH Recommendation

Contingent Approval

Need Summary

The proposed project includes the renovation and expansion of the existing NICU and the addition of eight (8) net new Level IV neonatal intensive care beds. The

Strong Memorial Hospital NICU is the designated Regional Perinatal Center for the Finger Lakes Region and thereby is the only hospital that provides Level IV neonatal intensive care for a nine county area. The average length of stay for high-risk neonates at the facility is long with an average of 22.9 days for the 2009-2013 period, and is explained by an increase in the survival rate for infants born preterm. Current occupancy of the 26 bed Level IV NICU is 130%, and has increased by 9% since 2011. During periods of NICU overcapacity, high acuity neonatal patients are boarded in the Pediatric Intensive Care Unit, and low acuity neonatal patients are boarded in the normal newborn nursery. The dispersion of NICU patients and staff over three different units of the hospital contributes to operational inefficiency. The addition of eight new Level IV NICU beds for a total of 34 beds will help the facility more efficiently meet the increasing demand for high-risk neonatal subspecialty care in the region.

Program Summary

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

Financial Summary

The total project costs of \$2,261,373 will be provided from Strong Memorial Hospital's accumulated funds.

Incremental Budget:	Revenues	\$461,154
	Expenses	<u>410,310</u>
	Gain/Loss	\$50,844

The applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendations

Health Systems Agency

The Finger Lakes Health Systems Agency recommends approval.

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. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-02 SHC Hospitals (as required). The drawings must address the following:
 - a. Stair widths must be properly dimensioned to demonstrate compliance with accessible egress where required. Actual drawing shall scale the same as listed dimensions.
 - b. None of the submitted drawings provide a north arrow for orientation. A full drawing capable of showing the referenced elevators on the "east" side shall be provided.
 - c. The Functional Program spaces indicated "south" of corridor 33450 i.e. Nurse/Supervisor, Social worker, and staff lounge, shall be labeled and room numbers shown.
 - d. On-call rooms 33469 and 33467 shall be shown on drawing. [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 start construction on or before September 1, 2015 and complete construction by August 30, 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]
3. The approved project does not qualify for, and the facility will not request Medicaid rated rebasing. [AER]

Council Action Date

February 12, 2015

Need Analysis

Background

Strong Memorial Hospital, an 830-bed, voluntary, not-for-profit hospital located at 601 Elmwood Ave., Rochester, NY 14642 in Monroe County, requests approval to renovate existing space and add eight (8) Neonatal Intensive Care Unit (NICU) beds for a total of 34 NICU beds. The purpose of this project is to improve operational efficiency during census overflows.

Strong Memorial Hospital is a Regional Perinatal Center. The applicant attributes swings in census overflow to the increase in the number of preterm patients and their increased survival rates associated with longer NICU lengths of stay and out of region admissions needing subspecialty care.

As the designated Level IV Regional Perinatal Center, the Strong Memorial Hospital NICU provides services to the nine counties of the Finger Lakes Region: Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Wayne and Yates. In 2012 and 2013, over 92% of Strong Memorial Hospital's High Risk births originated in the aforementioned counties.

Strong Memorial Hospital has the following New York State designations:

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

The combined number of Neonatal Continuing, Intensive and Intermediate Care beds is currently 60. There are 24 Neonatal Intensive Care beds which have been operating over census for the past three years. Census increase is due to an increase in the number of preterm patients as a result of assisted fertility, increasing maternal age and multiple births. NICU overflow is managed by boarding higher acuity patients in the Pediatric Intensive Care Unit and lower acuity patients in the newborn nursery under the care of NICU physicians and nurses. The addition of eight (8) beds would bring the total number of neonatal intensive care beds to 34.

Strong Memorial Hospital: Certified Beds			
Bed Category	Certified Capacity	Requested Action	Certified Capacity Upon Completion
Burns Care	7		7
Coronary Care	8		8
Intensive Care	67		67
Maternity	45		45
Medical/Surgical	458		458
Neonatal Continuing Care	14		14
Neonatal Intensive Care	26	8	34
Neonatal Intermediate Care	20		20
Pediatric	60		60
Pediatric ICU	12		12
Physical Medicine & Rehabilitation	20		20
Psychiatric	93		93
Total	830	8	838

Source: HFIS, December 2014

Through July 1, 2014, the applicant reports 801 NICU discharges with a total of 20,265 patient days. They anticipate reaching capacity of 813 discharges and 20,565 patient days by the end of the first year following project completion.

The number of high risk births at Strong Memorial Hospital increased from 539 in both 2011 and 2012 to 620 in 2013 while the number of normal births decreased from 2,300 in 2011 to 2,154 in 2013. The chart below presents data on utilization at Strong Memorial Hospital by service type. Over the last five years, the number of high-risk neonate discharges increased with a range of 817 in 2010 to 1,020 in 2013, an increase of 25%. The average length of stay for high-risk neonates is high with an average of 22.9 days for the period under review. A long average length of stay for high-risk neonates is explained by an increase in the survival rate for infants born preterm.

Strong Memorial Hospital: Inpatient Utilization by Service Category					
Service	2009	2010	2011	2012	2013
Discharges					
High-Risk Neonates	898	817	882	899	1020
Healthy Newborns	2405	2449	2430	2257	2242
Obstetric	3538	3529	3585	3376	3397
Pediatric	3770	3765	3776	3800	3700
Average Length of Stay					
High-Risk Neonates	21.6	22.7	24.3	24.5	21.5
Healthy Newborns	2.5	2.5	2.5	2.6	2.5
Obstetric	3.2	3.3	3.2	3.3	3.2
Pediatric	4.5	4.4	4.5	4.4	4.7

Source: SPARCS 2008-2013.

The chart below presents utilization data for Strong Memorial Hospital's 26 bed Level IV Neonatal Intensive Care Unit. From 2011 – 2014, NICU Level IV occupancy increased from 119% to 130%, a 9% jump, as of 9/30/14. During this period, the average NICU Level IV occupancy was 124%.

Strong Memorial Hospital: Newborn Level IV – Intensive Care Utilization of 26 Certified Beds		
<u>Year</u>	<u>Patient Days</u>	<u>Occupancy</u>
2011	11,332	119%
2012	11,416	120%
2013	11,953	126%
2014*	9,325	130%

Source: SPARCS 2011-2014

*Reporting dates 1/1/14 through 9/30/14

Conclusion

The renovation and expansion of the NICU to add eight neonatal intensive care beds to the facility will help meet the increasing demand for subspecialty neonatal care in the region. As a designated Regional Perinatal Center, expansion of Strong Memorial Hospital's Level IV NICU will more efficiently allow the facility to provide critical care to neonates and their families throughout the Finger Lakes Region and beyond.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

Strong Memorial Hospital (SMH), an existing not-for-profit hospital, requests approval to renovate existing space within the hospital to certify an additional eight (8) Neonatal Intensive Care beds.

For the past three years, the NICU has operated over census. Most recently, in calendar year 2014 (through 11/19/14), the NICU operated over census for 161 days, or 50% of the year. The overflow has been managed by dispersing patients over three units—the NICU, the Pediatric ICU and the newborn nursery staffed with NICU physicians and nurses; but SMH believes that this is not an optimal, efficient or appropriate long-term solution.

The higher census and the need for additional beds has come from an increase in the number of preterm infants due to assisted fertility, increasing maternal age and multiple births, as well as SMH's designation as a Regional Perinatal Center that serves patients from out of the region for subspecialty needs.

First year staffing will increase by an additional 3.5 FTEs and remain at that level through the third year of operation.

Compliance with Applicable Codes, Rules and Regulations

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total project costs for the renovation and acquisition of moveable equipment is estimated at \$2,261,373, which is broken down as follows:

Renovation & Demolition	\$1,234,115
Design Contingency	123,412
Construction Contingency	123,412
Architect/Engineering Fees	77,000
Construction Manager Fees	34,320
Other Fees (consultant, etc.)	20,041
Movable Equipment	379,061
Telecommunications	255,653
CON Application Fees	2,000
Additional Processing Fee	<u>12,359</u>
Total Project Cost	\$2,261,373

Total project costs are based on a September 1, 2015 start date with a 12-month construction period.

Strong Memorial Hospital will fund the \$2,261,373 total project cost from accumulated funds.

Operating Budget

The applicant has submitted their first and third year incremental operating budget for the total NICU complement of beds (intensive, intermediate, and continuing care), in 2014/2015 dollars, as summarized below:

	<u>Current Year</u>	<u>Year 1 Incremental*</u>	<u>Year 3 Incremental*</u>	<u>Year 3 Cumulative*</u>
Revenues	\$38,181,812	\$461,154	\$461,154	\$38,642,966
Expenses:				
Operating	\$23,863,985	\$260,085	\$271,209	\$24,135,194
Capital	<u>\$797,412</u>	<u>\$139,101</u>	<u>\$139,101</u>	<u>\$936,513</u>
Total Expenses	\$24,661,397	\$399,186	\$410,310	\$25,071,707
 Net Income or (Loss)	 \$13,520,415	 \$61,968	 \$50,844	 \$13,571,259
 Utilization:				
Discharges	801	12	12	813
Patient Days	20,265	300	300	20,565
Occupancy%	92.53%			82.86%
 Cost per Discharge				
Operating	\$29,792.74			\$29,686.59
Capital	<u>\$995.52</u>			<u>\$1,151.92</u>
Total Cost Per Discharge	\$30,788.26			\$30,838.51

* Over current 2014/2015 base year.

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

Medicaid Fee-For-Service	21.0%
Medicaid Manage Care	32.9%
Commercial Fee-For-Service	37.6%
Commercial Manage Care	7.0%
All Other	<u>1.5%</u>
Total	100.0%

Expenses are based upon SMH's current experience in operating the neonatal care beds.

Utilization assumptions are based on SMH's historical pattern for inpatient NICU neonatal care services. The applicant has indicated that over the years pre-term birth rates have increased as a result of assisted fertility, increasing maternal age, and an increase in the number of multiple births. There has also been an increased in the survival rates of infants born pre-term, which has impacted NICU utilization. As a designated Regional Perinatal Center for the Finger Lakes Region, SMH is the only hospital providing Level IV neonatal intensive care for a nine county area. They also admit out of region high-risk births that require neonatal subspecialty care available at SMH. As a result, the applicant has experienced an occupancy rate greater than 92% for the full NICU complement of beds, with the Level IV unit averaging 124% occupancy from 2011 through September 30, 2014.

Capability and Feasibility

SMH will satisfy the \$2,261,373 total project cost from accumulated funds. BFA Attachment A is SMH's 2012-2013 certified financial summary, which indicates the availability of sufficient resources.

Working capital requirements are estimated at \$68,385 based upon two months of third year incremental cost and will be provided from operation. Review of BFA Attachment A indicates working capital requirements can be met through operations.

The incremental budgets project net incremental income for the first and third years of \$61,968 and \$50,844, respectively. Revenues are based on prevailing reimbursement methodologies while commercial payers are based on experience. The overall budget appears reasonable.

As shown on BFA Attachment A, for 2012 through 2013 SMH has maintained an average working capital position of \$365,309,559, average net asset position of \$497,492,664, and generated an average income from operation of \$109,704,876. BFA Attachment B is SMH's November 30, 2014 internal financial summary showing income from operations after clinical transfers of \$97,519,000 and net assets totaling \$626,094,220.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Financial Summary for 2012 and 2013, Strong Memorial Hospital
BFA Attachment B	Internal Financial Summary for November 30, 2014, Strong Memorial Hospital
FLHSA Attachment	Project Review and Recommendation



Public Health and Health Planning Council

Project # 142134-C Mohawk Valley Eye Surgery Center

Program: Diagnostic & Treatment Center
Purpose: Construction

County: Montgomery
Acknowledged: October 6, 2014

Executive Summary

Description

Amsterdam REC, LLC d/b/a Mohawk Valley Eye Surgery Center, an existing single-specialty ambulatory surgery center (ASC) located at 108 Holland Circle Drive in Amsterdam, Montgomery County, is requesting approval to become a multi-specialty ASC by adding interventional pain management services. Mohawk Valley Eye Surgery Center was established under CON 112179 and licensed as of June 11, 2013 for a five-year limited life.

As a contingency of approval, the center will submit a request for a new d/b/a such that the assumed name conveys the multi-specialty nature of the services.

DOH Recommendation

Contingent Approval, maintaining the current expiration date of the operating certificate of June 11, 2018.

Need Summary

Amsterdam REC, LLC d/b/a Mohawk Valley Eye Surgery Center, a single-specialty ophthalmology ASC proposes certification as a multi-specialty ASC by adding interventional pain management services in Amsterdam, Montgomery County. Amsterdam REC, LLC has determined the Center is not fully utilized, and

it has the capacity to handle additional cases. The number of projected visits in pain management services is 1,000 in year 1, with 28 percent Medicaid and two (2) percent charity care. These projections are based on the current practices of participating physicians.

Program Summary

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

Financial Summary

Project costs are \$42,220 and will be met with accumulated funds from Dr. Kwiat, sole member.

Budget:	Revenues:	\$712,874
	Expenses:	<u>196,150</u>
	Gain:	\$ 516,724

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, maintaining the current expiration date of the operating certificate of June 11, 2018, 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. A copy of the check must be uploaded into the Contingencies Tab within NYSECON upon mailing of the check. [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:
 - a. Data showing actual utilization including procedures;
 - b. Data showing breakdown of visits by payor source;
 - c. Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
 - d. Data showing number of emergency transfers to a hospital;
 - e. Data showing percentage of charity care provided, and
 - f. Number of nosocomial infections recorded during the year in question. [RNR]
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 acceptable dba recognizing that the facility provides more than just eye surgery services. [HSP]

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

February 12, 2015

Need Analysis

Background

Amsterdam REC, LLC d/b/a Mohawk Valley Eye Surgery Center (MVESC) requests approval to certify the single-specialty ophthalmology ambulatory surgery center (ASC) as a multi-specialty ASC, by adding interventional pain management services. It is located at 108 Holland Circle Drive, Amsterdam, 12010, Montgomery County. It opened with one operating room on June 11, 2013 with a five year limited life under CON 112179. The proposed pain management services are currently being performed in an office setting. With the approval of this project, these services will be provided in a regulated Article 28 facility. The operating certificate expiration date will remain as June 11, 2018.

Analysis

The service area includes Montgomery, Fulton, Herkimer, and Otsego Counties.

Mohawk Valley Eye Surgery Center is the only ambulatory surgery center in Montgomery County. Moreover, Fulton, Herkimer, and Otsego Counties have no freestanding ASCs.

Based on CON 112179, MVESC had the following projections for Year 1 and Year 3:

CON 112179: Projections	Year 1	Year 3
# of Procedures	826	877

CON 112179: Projections	% Procedures
Payor Source	
Medicare FFS	39.0%
Medicaid FFS	10.0%
Medicaid MC	12.0%
Commercial MC	35.0%
Private Pay	2.0%
Charity	2.0%
Total	100.0%

Based on utilization data submitted by the applicant, MVESC had 1,254 procedures from January to September 2014; Medicaid was 20.8 percent and charity was 2.8 percent.

Upon approval of this multi-specialty ASC, the number of projected visits in pain management services is 1,000 in year 1 and 1,060 visits in year 3 with 28 percent Medicaid and two (2) percent charity care. Projected utilization for Year 1 and Year 3 is as follows:

CON 142134: Projections	Year 1		Year 3	
	Visits	Percentage	Visits	Percentage
Medicare (FFS+MC)	350	35.0%	371	35.0%
Medicaid (FFS+MC)	280	28.0%	297	28.0%
Commercial (FFS+MC)	200	20.0%	212	20.0%
Private Pay				
Charity	20	2.0%	21	2.0%
All Other (Workers' Comp).	150	15.0%	159	15.0%
Total	1,000	100.0%	1,060	100.0%

MVESC is located in a Health Professional Shortage Area for Primary Care Services-Medicaid Eligible-Montgomery County. (Source: HRSA).

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

Conclusion

The proposed pain management services are currently being performed in an office setting. With the approval of this project, these services will be provided in a regulated Article 28 facility.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Project Proposal

Amsterdam REC, LLC, d/b/a Mohawk Valley Eye Surgery Center, an existing single-specialty ophthalmology ambulatory surgery center located at 108 Holland Circle Drive, in Amsterdam (Montgomery County), requests approval to add pain management services and become a multi-specialty ambulatory surgery center. The conversion to multi-specialty will not involve any renovation or alteration of the facility. It is anticipated that staffing will increase by 1.5 FTEs in the first year after completion and remain at that level through the third year.

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, contingent approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total cost for movable equipment is projected to be \$42,220, broken down as follows:

Movable Equipment	40,000
CON Application Fee	2,000
CON Processing Fee	<u>220</u>
Total Project Cost	<u>\$42,220</u>

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	\$672,420	\$712,874
Expenses:		
Operating	\$177,500	\$188,150
Capital	<u>8,000</u>	<u>8,000</u>
Total Expenses	\$185,500	\$196,150
Net Income(Loss)	<u>\$503,537</u>	<u>\$516,724</u>
Visits	1,000	1,060
Cost Per Visit	\$185.50	\$185.05

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

Medicare Fee-For-Service	35.0%
Medicaid Managed Care	28.0%
Commercial Fee-For-Service	20.0%
Other	15.0%
Charity Care	<u>2.0%</u>
Total	100.0%

Expense and utilization assumptions are based on the historical private practice of Dr. Paul Soccio, the physician who will join the medical staff of the Center after final approval by the Public Health and Health Planning Council.

Capability and Feasibility

Project costs are \$42,220 and will be met with accumulated funds from Dr. Kwiat, sole member of the ASC. Dr. Kwiat has submitted a personal bank statement showing he has sufficient funds for the total project cost.

The submitted budget projects a net profit of \$503,537 and \$516,724 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.

BFA Attachments A and B, financial summaries of Mohawk Valley Eye Surgery Center, show negative working capital, net equity as of December 31, 2013 and October 27, 2014 and a net loss from operations of \$113,482 as December 31, 2013. As of October 27, 2014, Mohawk Valley Eye Surgery Center is showing a net profit of \$260,983. The negative working capital, net equity and the net loss in 2013 and negative working capital and net equity as of October 27, 2014 were due to startup costs. Mohawk Valley Eye Surgery Center opened in September of 2013 and 2014 is the first full year of operations.

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.

Supplemental Information

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the ambulatory surgery center’s proposed expansion of services in their service areas. There follows a summary of the applicant’s response to DOH’s request for information on the proposed facility’s expanded volume of surgical cases, the sources of those cases, and on how additional staff will be recruited and retained by the ambulatory surgery center (ASC).

Facility: St. Mary’s Hospital at Amsterdam -- **No Response**
427 Guy Park Avenue
Amsterdam, New York 12010

Facility: Nathan Littauer Hospital -- **No Response**
99 East State Street
Gloversville, New York 12078

Supplemental Information from Applicant

Need and Sources of Cases: The applicant states that all of the facility’s pain management cases will be drawn from the office-based cases of Dr. Soccio, the pain management physician who will join the facility.

Staff Recruitment and Retention: The facility expects to add one 0.5 FTE registered nurse and 1.0 FTE licensed practical nurse to handle its interventional pain management cases. These positions will be filled by Dr. Soccio’s current employees. Additional staffing requirements, if any, will be met through recruitment from accredited schools and training programs and through advertisements in local newspapers and professional publications. To retain staff, the facility currently offers competitive salaries and benefits and maintains good human resource and communications systems. In addition, the facility provides a positive work environment and flexible working hours.

Office-Based Cases: Fully 100 percent of the projected pain management procedure volume to be added to the ASC’s caseload is currently performed in an office setting.

DOH Comment

In the absence of comments from hospitals in the ASC’s service area, the Department finds no basis on which to consider reversal or modification of the recommendation for approval based on public need, financial feasibility and operator character and

Attachments

- | | |
|------------------|--|
| BFA Attachment A | Financial Summary of Mohawk Valley Eye Surgery Center, 2013 draft |
| BFA Attachment B | Financial Summary of Mohawk Valley Eye Surgery Center, as of
October 27, 2014 draft |



Public Health and Health Planning Council

Project # 132305-C Jewish Home of Rochester

Program: Residential Health Care Facility
Purpose: Construction

County: Monroe
Acknowledged: December 12, 2013

Executive Summary

Description

Jewish Home of Rochester, a 362-bed skilled nursing facility located in Rochester, Monroe County, is requesting approval for a renovation and construction project. The certified bed capacity of Jewish Home is proposed to decrease to 328 beds at the conclusion of the project. The applicant also has an Adult Day Health Care Program (ADHCP) with 84 registrants, which will remain unchanged.

The proposed project includes construction of a total of 168 new resident rooms in Green House homes in the following configuration:

- Four new three-story Green House homes with each floor comprised of a household with twelve private bedrooms; and
- Two single-story Green House homes with twelve private bedrooms.

These rooms will replace the semi-private beds currently being operated at the Jewish Home site.

Jewish Home of Rochester is an affiliate of Jewish Senior Life, which is the nursing homes co-operator via CON #132135. Jewish Senior Life operates a full continuum of senior residential living options on its campus including independent living, assisted living and skilled nursing, in addition to a range of community based programs to meet the needs of seniors in the community at large.

DOH Recommendation
Contingent Approval

Need Summary

There will be a reduction of bed capacity from 362 to 328 as a result of this application.

Program Summary

The modernization of Jewish Home of Rochester will result in a greatly improved residential environment. The addition of Green House model of care will offer residents a choice of living arrangements, and the short term rehabilitation units will be modern and spacious.

Financial Summary

Total project costs of \$89,926,882 will be met as follows: Fundraising of \$27,784,577 and a loan of \$62,142,305 at an interest rate of 7.5% for a 30 year term.

Total project cost is \$89,926,882. However, based on current allowable bed caps, plus applicable fees, the total reimbursable cost is \$77,677,882.

Budget:

Revenues	\$44,573,000
Expenses	<u>44,277,400</u>
Excess of Revenues over Expenses	\$295,600

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

Recommendations

Health Systems Agency

The HSA recommends approval for this project.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
3. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
 - Submit an annual report for two years to the DOH which demonstrates substantial progress with the implement of the plan. The plan should include but not be limited to:
 - Information on activities relating to a-c above;
 - Documentation pertaining to the number of referrals and the number of Medicaid admissions;
 - Other factors as determined by the applicant to be pertinent.

The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
4. Submission and programmatic review and approval of the final floor plans for the construction of the Green Houses and the renovation of the existing Jewish Home building. Plans should demonstrate an equivalent residential environment, including activity space and resident amenities, between each renovated floor of the existing building, as well as the Green House units. [LTC]
5. Submission and programmatic review and approval of the final room layouts for all types of resident rooms, including the renovated Jewish Home building and the Green Houses. The plans should be labelled and depict the dimensions and total square footage of each resident room type. [LTC]
6. Submission of an expanded and updated phasing plan for the construction which explains how the existing residents will be selected for transfer into the new Green Houses, and how residents will be selected for transfer into the renovated short term rehabilitation nursing units. [LTC]
7. Submission of a commitment for a permanent mortgage for a maximum term of 30 years for the project to be provided from a recognized lending institution at a prevailing rate of interest that is determined to be acceptable by The Department of Health. This is to be provided within 120 days of approval of state hospital code drawings and before the start of construction. Included with the submitted permanent mortgage commitment must be a sources and uses statement and a debt amortization schedule, for both new and refinanced debt. [BFA]
8. Submission of documentation of contributions to be used as the source of financing, acceptable to the Department. [BFA]

9. Submission of design development drawings, complying with requirements of 10NCYRR Part 710.4, for review and approval by DASNY. [DAS]
10. Submission of State Environmental Quality Review (SEQR) findings. [SEQ]

Approval conditional upon:

1. The project must be completed within five years from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Submission and approval of the patient safety and transfer plan by the Western Regional Office-Rochester. [LTC]
3. The applicant is required to submit final construction documents, complying with requirements of 10NCYRR Part 710.7, to NYS DOH Bureau of Architecture and Engineering Facility Planning (BAEFP) prior to start of construction. [DAS]
4. The anticipated construction start date is 5/15/2015 and the anticipated construction completion date is 8/25/2017. It is the applicant's responsibility to request revised construction dates, if necessary. [AER]

Council Action Date

February 12, 2015

Need Analysis

Background

Jewish Home of Rochester seeks approval for renovation and construction to modernize the facility and to decertify 34 residential health care facility (RHCF) beds. Jewish Home of Rochester is an existing 362-bed Article 28 residential health care facility located at 2021 Winton Road South, Rochester, 14618, in Monroe County. Current plans for these decertified beds will be a conversion to Assisted Living Program (ALP) beds.

Analysis

As indicated in Table 1, there is currently a surplus of 1,150 beds in Monroe County below. The overall occupancy for Monroe County is 98.1% for 2012, as indicated in Table 2.

Table 1: RHCF Need – Monroe County

2016 Projected Need	4,167
Current Beds	5,370
Beds Under Construction	-53
Total Resources	5,317
Unmet Need	-1,150

Jewish Home of Rochester's utilization in 2010-2012 was 95.6%, 93.2%, and 94.4% respectively. Current utilization for this facility is 92.8%, which falls below the Department's 97% optimum, however, the reduction of 34 beds will put this facility at 97.5%, which exceeds the Department's optimum.

Table 2: Jewish Home of Rochester/Monroe County Occupancy

<u>Facility/County/Region</u>	<u>% Occupancy 2010</u>	<u>% Occupancy 2011</u>	<u>% Occupancy 2012</u>
Jewish Home of Rochester	95.6%	93.2%	94.4%
Monroe County	92.5%	90.3%	98.1%

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

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

Jewish Home of Rochester's Medicaid admissions of 5.0% in 2011 and 6.6% in 2012 did not meet the Monroe County 75% rate of 13.3% occurring in 2011 and 2012. Jewish Home of Rochester will be required to follow the contingent approval requirements as noted below.

Conclusion

Approval of this application will result in a reduction of excess RHCF bed capacity in the planning area and in a higher, more efficient level of occupancy for an improved and modernized facility.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Jewish Home of Rochester	Same
Address	2021 Winton Road South Rochester, NY 14618	Same
RHCF Capacity	362	328
ADHCP Capacity	84	Same
Type Of Operator	Voluntary	Same
Class Of Operator	Corporation	Same
Operator	Jewish Home of Rochester	Same

Program Review

Jewish Home (Jewish Home) of Rochester is an existing 362 bed nursing home which includes an adult day health care program with a program capacity of 84. Jewish Home is located on a 75 acre campus, which also includes separate independent living and assisted living apartment buildings. The project concept is to create a true multi-level campus providing a variety of residential alternatives. A separate application will request the addition of 34 assisted living program beds on the fifth floor of the existing Jewish Home building. The project will in turn completely renovate and modernize the Jewish Home building to create 100% single-bedded rooms. 110 of the newly renovated rooms will be programmed as short term rehabilitation units, and 50 rooms will remain as traditional long stay neighborhoods.

In concert with the reduction of beds in the existing building, the subject application proposes the construction of six separate Green Houses totaling 168 beds. The project will include two traditional one story Green Houses of 12 beds each, and four three-story Green Houses, each totaling 36 beds. This will be the first nursing home project to employ multi-level trademarked Green Houses in New York State. In keeping with the Green House model, the residences will be 100% single occupancy rooms surrounding the central living and dining area. The Green Houses will employ multi-purpose workers, or "shabazim", to care for the residents of the Green House.

The construction of the six Green Houses and renovation of the existing building will result in the decertification of 34 beds, which will be converted into ALP beds.

The applicant has submitted a phasing plan for the construction, which requires some fine tuning. Construction is scheduled to commence in December, 2015 on the four multi-story Green House units, with the traditional Green Houses to be underway by February, 2016. Upon completion of the initial two Green House units in November, 2016, residents of the first wing of Floors 3-6 in the existing Jewish Home building will be relocated into the two 36 bed Green House buildings. When the next two multi-story Green Houses are completed in December, 2016, residents of the second wing of floors 3-6 will occupy the new units. Renovations for the first wing of the existing Jewish Home building will commence in November, 2016 and complete in March, 2017. Renovations for the next three wings will follow, beginning in December, 2016, with the final fourth wing slated for completion in January, 2018. The completion of renovations for the first two wings of floors 3-6 will enable the decanting of the first two wings of the second floor in April, 2017. The renovation of the remaining two wings of the second floor is slated for July, 2017, with construction to complete in October, 2017. The final phase of the project will undertake the modest renovations to the first floor public areas, in May, 2017, and the renovation of the fourth wing of floors 3-6 in September, 2017. The project's estimated completion date is February, 2018. The applicant does not expect that the project will have any impact upon the overall census, or revenue during the construction period.

Physical Environment

The initial phase of the project will involve the construction of the Green Houses. The two single story houses will contain 12 single occupancy resident rooms, each with a bathroom containing European-type shower. The design includes the common elements of the Green House model, including hearth room, open dining area with meals prepared on premises, and spa room with whirlpool tub and salon services. The houses also feature a porch providing outdoor space which opens into the dining area. The design omits the garage usually included in traditional Green Houses, which may limit available storage space in the houses.

The three story Green Houses veer from the traditional model by locating houses on separate floors, with a spa room only located on the third floor. In order to comply with the Code, which requires the availability of assistive bathing on every floor, the applicant has agreed to create a separate stretcher shower on each floor. Egress from each floor is made via a single elevator adjacent to the entrance, or by a stairway located on the opposite end of the house. The elevator also doubles as the service elevator for transport of supplies and materials to the upper level houses.

Following the completion and occupancy of the Green Houses, Jewish Home will embark upon a comprehensive modernization of the existing nursing home building. The renovations will be focused upon transforming the nursing units to resident centered living space, with all bedrooms converted to single occupancy configuration. The second and third floor nursing units will be programmed as short term rehabilitation, and consist of 44 beds arrayed into sub-units of 10, 10, 11 and 13 beds respectively. The linear sub-units surround a core area which contains a 30 chair dining room with open kitchen, and a 14 chair private dining room and lounge area adjacent to the main dining room. A concierge desk is situated adjacent to the dining room, and its function will require subsequent development by the applicant. The opposite end of the core finds a den/library, with a socialization and gathering area connecting the den and the therapy room. A spa room with whirlpool tub and stretcher shower is situated on the northeast sub-unit, connected by corridor to the central core. The nursing suite is located on the northeast side, and includes a staff lounge and locker room. An additional bathing suite with stretcher shower is located on the other side of the nurse station. The floor includes a large rehabilitation area serving the residents of the floor. A bariatric sized resident room will be situated on the southeast sub-unit.

The sixth floor will be programmed as a conventional nursing unit serving mainly private pay residents, estimated as 50% private pay and 50% Medicaid. The design will offer a significant contrast to the other three floors, with the nursing unit consisting of only 28 beds divided into 7 bed sub-units. The resident rooms, or "SNF suites", will be roughly twice the size of the other bedrooms in the building, and include a living room separated from the sleeping area by the generously sized bathroom with shower. The living area includes a couch facing a large flat screen television, a lounge chair with end tables, and a kitchenette with an adjacent dining room table and chairs. The design seems more suggestive of hotel-style occupancy than skilled nursing residency. The applicant has noted that the living room and kitchenette will be used for family and friends visitation. The floor layout also differs from floors 2 and 3, with the additional central shower area omitted, consistent with the sizing for a nursing unit with 36% fewer beds. The nursing suite will expand into this area and the concierge satellite station will be eliminated. The use for this area has not been identified. The rehabilitation area on the sixth floor is also sized in relation to the reduced bed complement, with a square footage roughly half that of the therapy rooms on the lower floors. The additional space becomes a living and socialization area, complete with fireplace. A bariatric sized SNF suite is also included on the north wing.

The fourth floor will be a hybrid nursing unit, containing 22 short term rehabilitation and 22 conventional beds. The design of the floor will be similar to the second and third floors, but the rehab gym will be of reduced size, similar to the sixth floor, with the area used for additional activity space. The programmatic relationships on this floor will require additional consideration prior to the submission of final plans. The current fifth floor will be emptied, to be re-used as an assisted living program bed unit.

Compliance

Jewish of Home of Rochester is currently in substantial compliance with all applicable codes, rules and regulations.

Conclusion

The modernization of Jewish Home of Rochester will result in a greatly improved residential environment. The addition of Green House model of care will offer residents a choice of living arrangements, and the short term rehabilitation units will be modern and spacious. The applicant should compare the design of the renovated sixth floor rooms to the needs of the wheelchair bound, long stay resident. Similarly the design of the renovated fourth floor should meet the needs of both the short term rehabilitation and long-stay residents. Sensitivity should be maintained to ensure that all living spaces, including the renovated nursing units in the existing building and the new Green House units, demonstrate an equivalent residential environment.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total project cost for the new construction, renovations and acquisition of moveable equipment is estimated at \$89,926,882, broken down as follows:

New Construction	\$30,724,504
Renovation and Demolition	20,737,511
Site Development	5,577,364
Design Contingency	5,703,938
Construction Contingency	3,898,845
Planning Consultant Fees	536,702
Architect/Engineering Fees	5,094,739
Construction Manager Fees	1,415,205
Other Fees (Consultant Fees)	1,376,383
Moveable Equipment	5,967,809
Financing Costs	2,491,825
Interim Interest Expense	5,908,175
CON Fee	2,000
Additional Processing Fee	<u>491,882</u>
Total Project Cost	\$89,926,882
Total Reimbursable Cost	\$77,677,882

Project costs are based on a May 15, 2015 construction start date and a twenty-seven month construction period. **The Bureau of Architectural and Engineering Facility Planning has determined that project cost exceeds the allowable construction caps per bed. As a result, the reimbursable project cost is \$77,677,882.**

The applicant's financing plan is as follows:

Fundraising	\$27,784,577
Loan (7.5% interest rate for a 30 year term)	<u>62,142,305</u>
Total	\$89,926,882

Due to the applicant decertifying beds, the equity requirement will be reduced to 20% of reimbursable project cost.

Operating Budget

The applicant has submitted a budget for the whole facility, in 2014 dollars, for the third year after project completion. The budget is summarized below:

<u>RHCF (328 beds)</u>	<u>Per Diem</u>	<u>Total</u>
Revenues:		
Medicaid Managed Care	\$223.33	\$12,055,559
Medicare Fee-For-Service	410.62	4,773,846
Commercial Fee-For-Service	390.26	11,851,329
Commercial Managed Care	418.94	7,898,240
Ancillary Income		1,940,000
*Other Operating Income		<u>2,229,000</u>
Total Revenues		\$40,747,974
Expenses:		
Operating	\$286.62	\$32,783,197
Capital	<u>80.49</u>	<u>9,197,998</u>
Total Expenses	\$367.11	\$41,981,195
Excess of Revenues over Expenses		(\$1,233,221)
Utilization: (patient days)		114,273
Occupancy		95.45%

*Other operating income consists of \$450,000 in miscellaneous income such as A/P discounts, interest income, and \$1,779,000 in grant income (Jewish Home Foundation and Jewish Community Federation).

Utilization, broken down by payor source during the third year is as follows:

Medicaid Managed Care	47.01%
Medicare Fee-For-Service	10.12%
Commercial Fee-For-Service	26.44%
Commercial Managed Care	16.43%

ADHCP and Other Programs*

Revenues*	\$3,825,026
Expenses	<u>2,296,205</u>
Excess of Revenues over Expenses	\$1,528,821
Visits	27,375

* Other Programs revenue consists of \$925,000 for physician house calls, home services, and outpatient rehabilitation. ADHCP revenue is \$2,900,026.

Utilization, broken down by payor source for the third year for the ADHCP is as follows:

Medicaid Managed Care	94.66%
Private	5.34%

The total revenues and expenses for the facility during the third year is as follows:

Revenues	\$44,573,000
Expenses	<u>44,277,400</u>
Excess of Revenues over Expenses	\$295,600

Expense assumptions for the Green House were based on the staffing models and expense assumptions provided by the Green House organization. Expenses for the Tower, which includes the 110 Transitional Care beds, as well as 50 Long Term beds were based on current costs trended forward, with some adjustment for additional clinical staffing given the anticipated increase in acuity. Utilization assumptions for the Green House are based on the applicant's current occupancy rates and reflect a slight increase due to the fact that the number of long term care beds in the facility will be reduced with the reduction of 34 beds, as well as the conversion of 42 beds to transitional care. Utilization for the short term rehabilitation beds is based on current occupancy trends at the nursing home as well as market estimates for the future use of post-acute beds. Expense and utilization assumptions are based on historical experience.

Capability and Feasibility

Total project cost of \$89,926,882 will be met as follows: Fundraising of \$27,784,577 and a loan of \$62,142,305 at an interest rate of 7.5% for a 30 year term. As of this date, the applicant has indicated that they have received pledges of \$14,000,000. As a contingency of approval, the applicant must submit documentation of contributions to be used as the source of equity. If adequate funds are not received from fundraising, then the remaining funds will be provided via the Jewish Senior Life Foundation, Inc. BFA Attachment B are the 2012 and 2013 certified financial statements of Jewish Senior Life Foundation, Inc., which indicates the availability of sufficient funds to offset any shortfalls of fundraising efforts.

The submitted budget indicates an excess of revenues over expenses of \$295,600 during the third year after project completion. It is anticipated that with the decrease in the number of LTC beds (decertifying 34) and the use of an additional 42 beds for transitional care, the payor mix in the overall facility will change. The applicant is anticipating with the new Green House model the Jewish Home will be able to attract more private pay residents than currently, which will favorably impact the percentage of private pay. As a result, Medicaid utilization is projected to decrease. The submitted budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Effective February 1, 2015, all eligible beneficiaries in NYC age 21 and over, in need of long term placement in a nursing facility, will be required to join a Medicaid Managed Care Plan (MMCP) or a Managed Long Term Care Plan (MLTCP). On April 1, 2015, the counties of Nassau, Suffolk, and Westchester will be phased in, and the rest of the State is scheduled to transition beginning July 1, 2015, for both dual and non-dual eligible populations. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with the NH providers. In order to mitigate the financial impact to NH providers during the transition to managed care, a department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided further guidance requiring MCOs to pay the benchmark Medicaid 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 January 31, 2018 (NYC), March 31, 2018 (Nassau, Suffolk and Westchester), and June 30, 2018 (upstate), respectively.

BFA Attachment A is the financial summary of Jewish Home of Rochester from 2011 through 2013. As shown, the facility had an average positive working capital position and an average positive net asset position from 2011 through 2013. Also, the facility incurred average operating losses of \$1,345,253 from 2011 through 2013. The applicant indicated that the reason for the historical operating losses were the result of the following:

- The Transitional Care Unit had a change in the nursing management, which resulted in overstaffing;
- The physical and occupational therapy departments were not as efficient as they should have been resulting in higher expenses;
- There was a significant turn over in administrative areas, such as finance, human resources and other support departments, resulting in overtime and higher training costs;
- Several residents of the nursing home contracted the Noro Virus in early 2012 and admissions had to be limited, which reduced the census and negatively impacted revenues from the ADHCP.

To improve operations, the applicant implemented a cost containment project in 2012 that significantly reduced operating expenses. All aspects of expenditures were reviewed including payroll costs, supplies, expenses and contract costs. Cost efficiencies were continued in 2013 with the elimination of the dining services contract.

As shown on Attachment B, Jewish Senior Life Foundation, Inc. had an average positive working capital position and an average positive net asset position from 2012 through 2013. Also, the entity achieved an average excess of revenues over expenses of \$3,769,685 from 2012 through 2013.

BFA Attachment C is the October 31, 2014 internal financial statements of Jewish Home of Rochester. As shown, the entity had a positive working capital position and a positive net asset position for the period through October 31, 2014. Also, the entity achieved an income from operations of \$690,715 through October 31, 2014. Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner and contingent approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

- | | |
|--------------------|--|
| BFA Attachment A | Financial Summary - Jewish Home of Rochester |
| BFA Attachment B | Financial Summary - Jewish Senior Life Foundation, Inc. |
| BFA Attachment C | October 31, 2014 internal financial statements, Jewish Home of Rochester |
| BNHLC Attachment A | Quality Measures and Inspection Report |



Public Health and Health Planning Council

Project # 132178-E Big Apple Dialysis Management, LLC

Program: Diagnostic and Treatment Center **County:** Kings
Purpose: Establishment **Acknowledged:** October 4, 2013

Executive Summary

Description

Big Apple Dialysis Management, LLC d/b/a Big Apple, a for-profit corporation located at 23-14 College Point Blvd, College Point, NY, requests approval to become the established operator of four dialysis center programs currently operated by the New York City Health and Hospitals Corporation (NYCHHC). Big Apple will acquire the dialysis centers through an asset purchase agreement and will operate the Kings County Hospital site as the main clinic location. The remaining three sites will be operated as extension clinic sites.

The four locations and the number of End-Stage Renal Disease (ESRD) stations per site are as follows:

- Kings Co. Hospital site at 451 Clarkson Avenue, Dialysis Unit Room C6210, Brooklyn – 26 stations;
- Lincoln Hospital site at 234 East 149th Street, Hemodialysis Unit Bronx – 8 stations;
- Metropolitan Hospital site at 1901 First Avenue, Dialysis Unit, New York – 12 stations;
- Harlem Hospital site at 506 Lenox Avenue-Room 18-107 Dialysis Unit, New York – 11 stations.

All of the dialysis centers/ESRD stations noted above are located within their respective hospitals and no change or modifications will occur to the approved number of stations or program locations upon the approval of the change in ownership.

Big Apple will enter into four separate license agreements with NYCHHC for the right to occupy the space and continue to provide ESRD services at each respective site. There will be no change in the physical environment of the facilities and no disruption in services to existing patients. The ESRD clinics are outpatient only clinics and will not be accepting any

patients for dialysis services that are inpatients of the hospital within which the dialysis clinic is located. Such inpatients will receive their dialysis treatments in the given hospital's acute dialysis center. Big Apple has stated that once the project receives contingent approval they will start to hire and retain all of the necessary dialysis staff members. This hiring process will prevent a lapse in services once the change in ownership is fully approved.

The members of Big Apple and their ownership percentages are as follows: Dr. Jodumutt G. Bhat (50%) and Dr. Nirmal Matoo (50%). Both members are New York State licensed Nephrologists.

The members of Big Apple Dialysis also own the following seven dialysis centers in New York State: Central Brooklyn Dialysis Center, LLC; East End Dialysis Management, LLC; New Hyde Park Dialysis Center, LLC; Newtown Dialysis Center, Inc.; New York Renal Associates, Inc.; Ridgewood Dialysis Center, Inc.; and West Nassau Dialysis Center, Inc. Shown as BFA Attachment D are the 2012 and 2013 certified and 1/1/2014 – 7/31/2014 internal financial statements for the above listed facilities.

DOH Recommendation

Contingent Approval

Need Summary

All three counties serve a total population of 5,593,198 with a total of 1674 stations, including approval of not-yet-operational stations. There continues to be need in all three counties. These stations are necessary to provide continued service to patients in the service areas.

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

is based on the 30 day Libor rate plus 3.00%. The current 30 day Libor rate per the Wall Street Journal published December 4, 2014, is 0.16%.

There are no project costs associated with this CON.

Financial Summary

NYCHHC is selling the four ESRD dialysis programs listed above to Big Apple for a purchase price of \$1,137,380.88. The purchase price is based on the estimated current fair market value of the equipment located within the centers. Payment of the purchase price will be met as follows: \$113,738.88 in equity from the proposed members, and a loan of \$1,023,642 with a 5-year term at 3.16% interest rate. The interest rate

<u>Budget:</u>	<u>Year 1</u>	<u>Year 3</u>
Revenues:	\$15,100,828	\$16,897,520
Expenses:	<u>\$12,021,686</u>	<u>\$13,334,998</u>
Net income/(loss):	\$3,079,142	\$3,562,522

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 an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital for each of the four (4) sites. [HSP]
2. Submission of a proposed Medical Director Agreement, acceptable to the Department. (The document entitled "Medical Director Agreement" submitted with the application delegates more authority to the contractor, Physicians Affiliate Group of New York, than is provided for in regulation. Specifically, it is an employment contract for the provision of multiple, unnamed, Medical Directors at four separate sites. As drafted, it constitutes an unacceptable management contract because the established operator is not retaining direct independent authority to appoint and discharge the Medical Directors as required by regulation.) [HSP]
3. Submission of an executed loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of site specific executed license agreements, acceptable to the Department of Health, for site control of the following dialysis center clinic programs: Kings County Hospital Center site, Lincoln Hospital Center site, Metropolitan Hospital Center site, and Harlem Hospital site. [BFA]
6. Submission of site specific executed administrative service agreements, acceptable to the Department of Health, for the following dialysis center clinic programs: Kings County Hospital Center site, Lincoln Hospital Center site, Metropolitan Hospital Center site, and Harlem Hospital site. [BFA]
7. The submission of existing conditions schematic floor plans and architect's letter of certification for existing buildings, for review and approval. [AER]
8. Submission of a completed Schedule 3. [CSL]
9. Submission of an executed Certificate of Assumed Name, acceptable to the Department and clarification regarding whether each location requires a Certificate of Assumed Name – if they are all operating under different names. [CSL]
10. Submission of an executed Certificate of Amendment of the Articles of Organization, acceptable to the Department. [CSL]
11. Submission of an executed Operating Agreement (and Joinder), acceptable to the Department. [CSL]
12. Submission of an executed Administrative Services Agreement for all four (Harlem, Kings, Lincoln and Metropolitan) locations, acceptable to the Department. [CSL]
13. Submission of an executed license agreement for all four (Harlem, Kings, Lincoln and Metropolitan) sites, acceptable to the Department. [CSL]
14. Submission of an executed Purchase and Sale Agreement. [CSL]

Approval conditional upon:

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

Council Action Date

February 12, 2015

Need Analysis

Background

Big Apple is seeking approval to be established as the new operator of four existing dialysis centers. These centers are as follows:

- Kings County Hospital Center, a 26-station chronic dialysis facility located at 451 Clarkson Avenue in Brooklyn, 11203;
- Lincoln Medical and Mental Health, an 8-station chronic dialysis facility located at 234 East 149th Street in the Bronx, 10451;
- Metropolitan Hospital Center, a 12-station chronic dialysis facility located at 1901 First Avenue in Manhattan, 10029 ;
- Harlem Hospital, an 11-station chronic dialysis unit located at 506 Lenox Ave Room 18-107 in Manhattan,10037.

There is need in Kings, Bronx, and New York Counties for additional chronic dialysis stations. Retention of these existing facilities is necessary for community residents and patients. There will be no changes in the number of stations or the services offered at the facilities under the proposed new operator.

Analysis

The service area for Big Apple and the facilities they are purchasing is Kings, Bronx, and New York Counties.

Kings Population - 2,565,635

Ages 65 and Over:	11.7%	State Average:	14.1%
Nonwhite:	64.2%	State Average:	42.4%

Bronx Population - 1,408,473

Ages 65 and Over:	10.9%	State Average:	14.1%
Nonwhite:	89.2%	State Average:	42.4%

New York County Population - 1,619,090

Ages 65 and Over:	13.9%	State Average:	14.1%
Nonwhite:	52.4%	State Average:	42.4%

Source: U.S. Census 2012

The non-white and elderly groups are target groups with the highest need for dialysis services.

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 calculating the need for additional stations, the Department bases the projected need on establishing additional free standing stations.

Existing Stations

Kings – 585 current stations and 132 in pipeline
 Bronx- 389 current stations and 93 in pipeline
 New York- 380 current stations and 95 in pipeline

Based upon DOH methodology, Kings County could treat 3227 patients with the operational stations and pipeline stations combined. Bronx County could treat 2169 patients with the operational stations and pipeline stations combined. New York County could treat 2138 patients with the operational stations and pipeline stations combined.

Projected Need

	2011		2016	
	Total Patients Treated	Total Residents Treated	***Projected Total Patients Treated	***Projected Residents Treated
Kings County	3954	4507	4584	5073
Free Standing Stations Needed	879	1002	1019	1128
Existing Stations	585	585	585	585
Total Stations (Including Pipeline)	717	717	717	717
Net new stations from this project	0	0	0	0
Unmet Need With Approval	162	285	302	411

	2011		2016	
	Total Patients Treated	Total Residents Treated	***Projected Total Patients Treated	***Projected Residents Treated
Bronx County	2616	2739	3033	3083
Free Standing Stations Needed	582	609	674	686
Existing Stations	389	389	389	389
Total Stations (Including Pipeline)	482	482	482	482
Net new stations from this project	0	0	0	0
Unmet Need With Approval	100	127	192	204

	2011		2016	
	Total Patients Treated	Total Residents Treated	***Projected Total Patients Treated	***Projected Residents Treated
New York County	1917	2756	2223	3102
Free Standing Stations Needed	426	613	494	690
Existing Stations	380	380	380	380
Total Stations (Including Pipeline)	475	475	475	475
Net new stations from this project	0	0	0	0
Unmet Need With Approval	-49	138	19	215

**FS – Free Standing

***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

All three counties serve a total population of 5,593,198 with a total 1674 stations, including pipeline stations. There continues to be need in all three counties. These stations are necessary to provide continued service to patients in the service areas, thus approval is recommended.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

Establish Big Apple Dialysis Management, LLC as the new operator of four (4) dialysis programs/centers that are currently being operated by the New York City Health & Hospitals Corporation. The center in Kings Hospital will be designated as the main site, and three (3) remaining centers, located in Lincoln Hospital, Metropolitan Hospital and Harlem Hospital, will be designated as extension sites. The applicant does not anticipate any physical changes or changes to the number of stations.

Proposed Operator	Big Apple Dialysis Management, LLC
Doing Business As	Big Apple Dialysis at Kings County Hospital
Site #1 Address	451 Clarkson Avenue, Brooklyn
Approved Services	Chronic Renal Dialysis (26 Stations)
Shifts/Hours/Schedule	Open 6 days per week, nearly 3 shifts per day.
Staffing (1st Year/3rd Year)	28.0 FTEs and will remain at that level by the third year of operation.
Medical Director(s)	Gary Briefel, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided onsite by Kings County Hospital.

Proposed Operator	Big Apple Dialysis Management, LLC
Doing Business As	Big Apple Dialysis at Lincoln Hospital
Site #2 Address	234 East 149 th Street, Bronx
Approved Services	Chronic Renal Dialysis (8 Stations)
Shifts/Hours/Schedule	Open 6 days per week, nearly 3 shifts per day.
Staffing (1st Year/3rd Year)	14.1 FTEs and will remain at that level by the third year of operation.
Medical Director(s)	Isaiarasi Gnanasekaran, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided onsite by Lincoln Hospital.

Proposed Operator	Big Apple Dialysis Management, LLC
Doing Business As	Big Apple Dialysis at Metropolitan Hospital
Site #3 Address	1901 First Avenue, Manhattan
Approved Services	Chronic Renal Dialysis (12 Stations)
Shifts/Hours/Schedule	Open 6 days per week, nearly 3 shifts per day.
Staffing (1st Year/3rd Year)	13.0 FTEs and will remain at that level by the third year of operation.
Medical Director(s)	Ashok P. Chaudhuri, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided onsite by Metropolitan Hospital

Proposed Operator	Big Apple Dialysis Management, LLC
Doing Business As	Big Apple Dialysis at Harlem Hospital
Site #4 Address	506 Lenox Avenue, Manhattan
Approved Services	Chronic Renal Dialysis (11 Stations)
Shifts/Hours/Schedule	Open 6 days per week, nearly 3 shifts per day.
Staffing (1st Year/3rd Year)	15.7 FTEs and will remain at that level by the third year of operation.
Medical Director(s)	LeRoy Herbert, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided onsite by Harlem Hospital

Character and Competence

The members of the LLC are:

<u>Name</u>	<u>Percent</u>
Jodumutt G. Bhat, MD	50.0%
Nirmal Mattoo, MD	50.0%

Drs. Bhat and Mattoo are both local physicians, board-certified in Internal Medicine. Dr. Mattoo holds a subspecialty in Nephrology. As shareholders in Atlantic Dialysis Management Services, they each have over 20 years of experience operating multiple free-standing dialysis centers in New York State.

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

A table has been prepared (**HSP Attachment A**) which lists the 10 quality performance measures (based on treatment and patient outcomes) for the four HHC and twelve (12) applicant dialysis facilities using publicly available information from the Centers for Medicare and Medicaid Services (CMS) website, "Medicare.gov Dialysis Facility Compare" <http://www.medicare.gov/dialysisfacilitycompare/search.html>.

A Summary Statistic (the percent of scores at, or better than, the New York State average) for the acquiring entity (Bhat and Mattoo) and the relinquishing entity (HHC) is presented below. 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 above NYS Average 100-((8)/(5))
HHC	4	10	40	5	35	3	10	13	63%
Bhat & Mattoo	12	10	120	12	108	1	34	35	68%

Data taken from <http://www.medicare.gov/DialysisFacilityCompare/search.html> as it appeared on 12/4/14.

Additionally, the applicant commissioned a (third party) quality assessment study to compare publicly available Centers for Medicare and Medicaid Services (CMS) dialysis facility quality measures at both the HHC dialysis operations and those of the applicant members. The report was prepared by Nephrologists Drs. Hart and Perumal of Cook County Health & Hospitals System (Chicago, IL) and is included for review as **HSP Attachment B**.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted a draft asset purchase agreement, which is summarized as follows:

Seller:	New York City Health and Hospitals Corporation
Purchaser:	Big Apple Dialysis Management, LLC
Acquired Assets:	The facilities' physical assets including: reverse osmosis system, dialysis machines, telephone, fax and computers; all furniture; all inventory and supplies located at the facilities; all rights and interest in and to claims made or to be made by seller against the party from whom seller purchased the assets, and its principals and any recoveries or proceeds.
Excluded Assets:	Cash and cash equivalents immediately preceding the closing date; all accounts receivable relating to services rendered prior to the closing date; all retroactive rate increases and/or lump sum or other payments, which may be paid on or after the closing date for services rendered prior to the closing date; all payments or cash equivalent credits paid or accruing for periods prior to the closing date; Seller's Medicare and Medicaid provider numbers and agreements; all income tax refunds and deposits for periods prior to the closing dates; all original documents and records of the Seller; goodwill and other intangible assets used in the operations of the facilities; any real property or real property improvements used in the operations of the facilities. The Seller retains the ownership of real property and improvements and licenses to Buyer their use under the License Agreement.
Assumed and Excluded Liabilities:	None
Purchase Price:	\$1,137,380.88 allocated as follows: <ul style="list-style-type: none"> • Kings County Hospital Ctr. – \$655,104.84 • Lincoln Hospital Center – \$35,800 • Metropolitan Center – \$353,676.04 • Harlem Hospital Center – \$92,000
Payment:	Members' equity – \$113,738.88 Loan – \$1,023,642 (5 year term, 3.16% interest)

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

Administrative Services Agreements

The applicant submitted a draft administrative service agreement for each discrete site. The agreements are identical in terms, except for the compensation amount for the respective sites, as summarized below:

Provider:	Atlantic Dialysis Management Services, LLC (ADMS)
Facility:	Big Apple Dialysis at Kings County Hospital (main site) Big Apple Dialysis at Lincoln Hospital (extension site) Big Apple Dialysis at Metropolitan Hospital (extension site) Big Apple Dialysis at Harlem. Hospital (extension site)
Services Provided:	Billing and collection services excluding physician professional services; accounting and financial services including developing and presenting annual budgets; quality and utilization controls; installation of ADMS proprietary and confidential dialysis clinical information system software program (Dialysis System) to support clinical and billing operations; discount pricing of all supplies, inventory and drugs necessary for operation. The dialysis centers shall be responsible for and pay directly to the laboratory any lab services ordered for the patients treated at the dialysis centers.
Term:	3 Years with unlimited 1 year renewal terms.
Payments:	Total Annual Compensation (Bi-Weekly Payments) as follows:
- Kings:	Yr. 1 \$300,000 (\$11,538.46), Yr. 2 \$350,000 (\$13,461.54), Yr. 3 \$400,000 (\$15,384.62)
- Lincoln:	Yr. 1 \$200,000 (\$7,692.31), Yr. 2 \$250,000 (\$9,615.38), Yr. 3 \$300,000 (\$11,538.46)
- Metro:	Yr. 1 \$200,000 (\$7,692.31), Yr. 2 \$250,000 (\$9,615.38), Yr. 3 \$300,000 (\$11,538.46)
- Harlem:	Yr. 1 \$300,000 (\$11,538.46), Yr. 2 \$350,000 (\$13,461.54), Yr. 3 \$400,000 (\$15,384.62)

Both ADMS and the Big Apple are owned by the same individuals with the same ownership percentages: Dr. Jodumutt G. Bhat (50%) and Dr. Nirmal Matoo (50%).

License Agreement

The applicant has submitted draft license agreements for the proposed sites as summarized below:

Premises:	Kings site: 6 th floor "C" building Lincoln site: interim location 9 th floor, permanent location 7 th floor Metropolitan site: 14 th floor Main hospital building Harlem site: 4 th floor new patient pavilion
Licensor:	New York City Health and Hospitals Corporation
Licensee:	Big Apple Dialysis Management, LLC
Fees:	Kings: \$484,380 annually (\$54.00/sq. ft.) Lincoln: interim \$239,920 annually (\$40/sq. ft.), permanent \$296,800 annually (\$40/sq. ft.) Metropolitan \$250,750 annually (\$50/sq. ft.) Harlem \$463,000 annually (\$50/sq. ft.) On 5 th anniversary of start date fees for all sites will increase 10% above original fees.
Term:	5-year term with one four (4) year extension
Provisions:	Licensor will provide utilities and maintenance services

The applicant has stated that the proposed license agreements are arm's length arrangements.

Operating Budget

The applicant has submitted year 1 and year 3 operating budgets, in 2014 dollars, for each discrete site. Presented below are the consolidated year 1 and year 3 budgets:

	<u>Year 1</u>	<u>Year 3</u>
Total Revenues	\$15,090,828	\$16,897,520
Expenses:		
Operating	\$10,138,306	\$11,451,618
Capital	<u>1,883,380</u>	<u>\$1,883,380</u>
Total Expenses	\$12,021,686	\$13,334,998
Net Income/(Loss)	\$3,069,142	\$3,562,522
Utilization: (treatments)	54,187	60,767
Cost per treatment	\$221.86	\$219.44

Expenses include the cost of pharmaceuticals.

Consolidated utilization by payor source for years 1 and 3 subsequent to the change in operator is summarized below:

	<u>Year 1</u>	<u>Year 3</u>
Medicaid Fee-For-Service	10.69%	11.38%
Medicare Fee-For-Service	78.62%	77.63%
Commercial Fee-For-Service	<u>10.69%</u>	<u>10.99%</u>
Total	100.00%	100.00%

Expense and utilization assumptions are based on the historical experience of the applicant's other dialysis facilities.

Capability and Feasibility

The purchase price for the four sites is \$1,137,380.88, allocated as follows: Kings \$655,104.84; Lincoln \$35,800; Metropolitan \$353,676.04; and Harlem \$92,000. Big Apple will meet the \$1,137,380.88 purchase price as follows: \$113,738.88 in equity from the proposed members, with the remaining \$1,023,642 coming from a loan at the above stated terms. There are no project costs associated with this CON.

Working capital requirements are estimated at \$2,222,500 based upon two months of Year 3 expenses. The proposed members will provide \$1,111,250 of the working capital from personal resources. The remaining \$1,111,250 will be provided through a proposed one year working capital line of credit at a 3.25 % interest rate. The interest rate is based on the current prime rate, which is 3.25% as of December 4, 2014, as published in the Wall Street Journal. BFA Attachment A is the personal net worth statements of the members which indicate sufficient liquid resources to meet both the equity and working capital requirements.

BFA Attachment C is the pro forma balance sheet for Big Apple which shows consolidated operations starting with \$1,224,987 in members' equity. The site specific operations will start with the following members' equity: Kings \$396,103, Lincoln \$232,228, Metropolitan \$219,765 and Harlem \$263,152.

Year 1 shows a combined net income of \$3,069,142 for the four sites with site specific net income as follows: Kings \$ 866,728; Lincoln \$ 694,968; Metropolitan \$316,415; and Harlem \$1,191,031. Year 3 shows a combined net income of \$3,562,522 for the four sites with site specific net income as follows: Kings \$1,398,674; Lincoln \$728,573; Metropolitan \$215,846; and Harlem \$1,219,429.

Revenues reflect current reimbursement methodologies for Medicaid and Medicare. Commercial revenues are based on Big Apple's experience in operating other dialysis centers throughout New York State. The budget is reasonable.

BFA Attachment D is the 2012 and 2013 certified and 1/1/2014 – 7/31/2014 internal financial statements of the following facilities also owned by the members:

- Central Brooklyn Dialysis Center, LLC: The D&TC generated both positive average working capital and net asset positions, and had an average net income of \$1,806,203 for the period 2012 through 2013. The D&TC generated both positive working capital and net asset positions and had a net income of \$941,184 for the period 1/1/2014 – 7/31/2014.
- East End Dialysis Management, LLC. The D&TC generated both positive average working capital and net asset positions, and had an average net income of \$394,131 for the period 2012 through 2013. The D&TC generated both positive working capital and net asset positions, and had a net income of \$357,796 for the period 1/1/2014 – 7/31/2014.
- New Hyde Park Dialysis Center, LLC. The D&TC generated both positive average working capital and net asset positions, and had an average net income of \$1,215,858 for the period 2012-2013. The D&TC generated both positive working capital and net asset positions, and had a net income of \$727,660 for the period 1/1/2014 – 7/31/2014.
- Newtown Dialysis Center, Inc. The D&TC generated both positive average working capital and net asset positions, and had an average net income of \$749,654 for the period 2012-2013. The D&TC generated both positive working capital and net asset positions, and had a net income of \$850,811 for the period 1/1/2014 – 7/31/2014.
- New York Renal Associates, Inc. . The D&TC generated both positive average working capital and net asset positions, and had an average net income of \$1,053,183 for the period 2012-2013. The D&TC generated both positive working capital and net asset positions, and had a net income of \$903,392 for the period 1/1/2014 – 7/31/2014.
- Ridgewood Dialysis Center, Inc. The D&TC generated both positive average working capital and net asset positions, and had an average net income of \$1,709,752 for the period 2012 through 2013. The D&TC generated both positive working capital and net asset positions, and had a net income of \$1,450,743 for the period 1/1/2014 – 7/31/2014.
- West Nassau Dialysis Center, Inc. The D&TC generated both average positive working capital and positive net asset positions and had an average net income of \$1,075,947 for the period 2012-2013. The D&TC generated both positive working capital and net asset positions, and had a net income of \$548,988 for the period 1/1/2014 – 7/31/2014.

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

HSP Attachment A	CON 132178 Big Apple Dialysis Management, LLC - "Dialysis Facility Compare"
HSP Attachment B	CON 132178 Big Apple Dialysis Management, LLC – Quality Assessment Study (commissioned and submitted by applicant)
BFA Attachment A	Big Apple Dialysis Management, LLC Member's net worth statements
BFA Attachment B	Big Apple site specific Year 1 budgets and utilization
BFA Attachment C	Pro forma balance sheet for Big Apple Management, LLC and the 4 sites
BFA Attachment D	The 2012 and 2013 certified and 1/1/2014 – 7/31/2014 internal financial statements of the following facilities: <ul style="list-style-type: none">• Central Brooklyn Dialysis Center, LLC• East End Dialysis Management, LLC• New Hyde Park Dialysis Center, LLC• Newtown Dialysis Center, Inc.• New York Renal Associates, Inc.• Ridgewood Dialysis Center, Inc.• West Nassau Dialysis Center, Inc.



Public Health and Health Planning Council

Project # 142115-E Pure Life Renal of Buffalo, Inc

Program: Diagnostic & Treatment Center
Purpose: Establishment

County: Erie
Acknowledged: September 23, 2014

Executive Summary

Description

Pure Life Renal of Buffalo, Inc. (Pure Life), a to-be formed corporation, requests approval to become the operator of Comprehensive Dialysis Center of Western New York, Inc. (Comprehensive Dialysis), an existing Article 28 diagnostic and treatment center (D&TC) located at 6010 Main Street, Williamsville (Erie County), that provides in-center and home-based renal dialysis services. Pure Life will be a subsidiary of Pure Life Renal, Inc., a Delaware C Corporation that provides dialysis services to end stage and acute renal failure patients. Pure Life Renal, Inc. will own 100% of the stock of Pure Life Renal of Buffalo, Inc. and will provide all financing for the purchase of the program and provide working capital needs. The ownership of Pure Life Renal, Inc. is shown as BFA Attachment D.

Pure Life Renal, Inc. entered into a lease agreement with Buffalo Medical Group Building, Inc. (lessor), to lease the premises located at 6010 Main Street, Williamsville, for the purpose of operating the outpatient renal dialysis clinic. There will be no disruption in services in the implementation of this arrangement.

DOH Recommendation

Contingent Approval

Need Summary

Erie County currently has a population of 919,866 with 1,132 residents needing dialysis treatment. Currently there are 256 total stations approved to be operational

Erie County which can treat 1,152 patients according to the Department of Health’s methodology. This project would not bring about a change in the dialysis capacity of Erie County.

Program Summary

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

Financial Summary

The purchase price of the business is \$12,000,000 based on Pure Life’s assessment of the anticipated return on equity of the purchase. Payment of the purchase price will be met as follows: \$12,000,000 from the operations of Pure Life Renal, Inc.

There are no project costs associated with this CON.

Budget:

Revenues	\$7,739,189
Expenses	<u>\$6,665,481</u>
Net Income/(Loss)	\$1,073,708

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 an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
2. Submission of an executed Medical Director Agreement, acceptable to the Department. [HSP]
3. Submission of an executed Assignment and Assumption Agreement associated with the asset purchase agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed Assignment and Assumption Agreement associated with the lease rental agreement, acceptable to the Department of Health. [BFA]
5. Submission of documentation showing the receipt of the additional funds from the sale of the Series A stock, acceptable to the Department of Health. [BFA]
6. Submission of the resolution of partners, corporate directors, or LLC managers, as the case may be, authorizing the project. [CSL]
7. Submission of Bylaws with the following amendments: (1) removal of proxy language or amended to provide that the proxy may vote only as specifically instructed by the shareholder with regard to each vote, unless the shareholder's proxy is another shareholder approved by the Public Health and Health Planning Council to vote the shares that are covered by the proxy. [CSL]
8. Submission of an executed Certificate of Incorporation which must comply with 10 NYCRR Section 620.1. [CSL]
9. Submission of original stockholder affidavits from each stockholder including the specific information set forth in 10 NYCRR Section 620.1(b). [CSL]
10. Submission of a stock certificate including specific language set forth in 10 NYCRR 620.1(a)(4). [CSL]
11. Submission of the Certificate of Incorporation and Bylaws of Pure Life Renal, Inc. [CSL]
12. Submission of an executed and dated Application for Authority authorizing Pure Life Renal, Inc., a Delaware corporation, to conduct business in the State of New York. [CSL]
13. Submission of a photocopy of the executed Assignment and Assumption Agreement with the following amendments: (1) all blanks must be filled in, (2) the document must be executed. [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

February 12, 2015

Need Analysis

Project Description

Pure Life Renal of Buffalo, Inc., is seeking approval to transfer ownership of Comprehensive Dialysis Center of Western New York, Inc., a 25 station renal dialysis diagnosis and treatment center located at 6010 Main Street, Williamsville 14221. This project would have no impact on the number of renal dialysis stations in the county.

Analysis

The primary service area for this facility is Erie County, which had a population estimate of 919,866 in 2013. The percentage of the population aged 65 and over was 16.3%. The nonwhite population percentage was 23.1%. These are the two population groups that are most in need of end stage renal dialysis service. Comparisons between Erie County and New York State are listed below.

	<u>Erie County</u>	<u>State Average</u>
Ages 65 and Over:	16.3%	14.1%
Nonwhite:	23.1%	42.8%

Source: U.S. Census 2013

Capacity

The Department's methodology to estimate capacity for chronic dialysis stations is specified in Part 709.4 of Title 10 and is as follows:

- One free standing station represents 702 treatments per year. This is based on the expectation that the center will operate 2.5 patient shifts per day at 6 days per week, which can accommodate 15 patients per week (2.5 x 6 x 15 x 52 weeks). This projected 702 treatments per year is based on a potential 780 treatments x 52 weeks x 90% utilization rate = 702. The estimated average number of dialysis procedures each patient receives per year is 156.
- One hospital based station is calculated at 499 treatments per year per station. This is the result of 2.0 shifts per day x 6 days per week x 52 weeks x 80% utilization rate. One hospital based station can treat 3 patients per year.
- Per Department policy, hospital-based stations can treat fewer patients per year. Statewide, the majority of stations are free standing, as are the majority of applications for new stations. As such, when calculation the need for additional stations, the Department bases the projected need on establishing additional free standing stations.
- There are currently 256 free standing chronic dialysis stations operating in Erie County and 0 in pipeline for a total of 256. This project will not result in any changes to the capacity in the county. The total will remain 256 chronic dialysis stations. These stations will be able to treat 1,152 patients.

Erie County Projected Need

	2012	2013	2017	
	Patients Treated	Residents Treated	Projected Patients Treated*	Projected Residents Treated*
	1175	1132	1363	1274
Free Standing Stations Needed	262	252	303	284
Existing Stations	256	256	256	256
Pipeline Stations	0	0	0	0
Total Stations with Pipeline	256	256	256	256
w/Approval of This CON and Pipeline	256	256	256	256
Unmet Need With Approval	6	-4	47	28

*Patient data is from 2012 and is projected out 5 years, assuming a 3% annual rate of increase. Resident 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 2012.

Conclusion

The facility accommodates a population in need of access to dialysis stations in the service area. The 256 stations in Erie County currently serve a population of 919,866 residents and the county is near capacity for dialysis stations. This indicates that these resources are well-utilized. The proposed ownership change would have no impact on the number of renal dialysis stations, and the facility would continue to provide this critical service.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

Pure Life Renal of Buffalo, Inc., a to-be-formed corporation, requests approval for the transfer of ownership of Comprehensive Dialysis Center of Western New York, Inc. The existing 25-station center is located at 6010 Main Street in Williamsville (Erie County). If approved, the name of the facility will be changed to Pure Life Renal of Buffalo, Inc. and this will represent the first dialysis center owned/operated by Pure Life Renal, Inc. There are no significant programmatic changes anticipated as a result of this proposal.

Proposed Operator	Pure Life Renal of Buffalo, Inc.
Site Address	6010 Main Street Williamsville, NY (Erie County)
Approved Services	Chronic Renal Dialysis (25 stations) Home Hemodialysis Training & Support Home Peritoneal Dialysis Training & Support
Shifts/Hours/Schedule	3 shifts per day, 6 days per week Monday/Wednesday/Friday 5:30am – 9:30 pm Tuesday/Thursday/Saturday 5:30 am – 8:30 pm
Staffing (1st Year / 3rd Year)	33.09 FTEs / 34.59 FTEs
Medical Director(s)	Inkee Min, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Millard Fillmore Suburban Hospital 2.2 miles / 5 minutes

Character and Competence

Pure Life Renal, Inc. holds 100% shares of Pure Life Renal of Buffalo, Inc.

<u>Name</u>	<u>Percent</u>
Pure Life Renal of Buffalo, Inc.	100%
Pure Life Renal, Inc. (100%)	

The proposed board members of Pure Life Renal of Buffalo, Inc. are:

<u>Name</u>	<u>Position Held</u>
Orestes Lugo (CEO of Pure Life Renal, Inc.)	President
Jeff Fernandez (CFO of Pure Life Renal, Inc.)	Treasurer
Stefano Sola (Stockholder of Pure Life Renal, Inc.)	Secretary

Messrs. Lugo and Fernandez each have considerable employment experience in health care entities providing renal dialysis services. Mr. Sola has extensive experience in international finance.

The proposed Medical Director, Dr. Min, has been a practicing physician for over 30 years and is 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.

Between 2002 and 2009, when Mr. Lugo was in the position of Chief Financial Officer (CFO) and Mr. Fernandez was in the position of Controller, Renal Care Partners, Inc. was the parent entity of 24 dialysis centers operating in eight (8) states. In March 2007, the Centers for Medicare and Medicaid Services (CMS) determined that a center operating in Hialeah, Florida was not in substantial compliance with four (4) Medicare conditions for coverage and subsequently terminated the Hialeah center's Medicare participation. (None of the compliance issues noted related to Messrs. Lugo and Fernandez' duties and responsibilities.) In 2009, Renal Care reorganized its own management and appointed Mr. Lugo as the Chief Executive Officer and Mr. Fernandez as CFO. The dialysis facilities have sustained substantial compliance.

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

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Financial Analysis

Asset Purchase Agreement

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

Date:	September 15, 2014
Seller:	Comprehensive Dialysis Center of Western New York, Inc.
Purchaser:	Pure Life Renal, Inc.
Acquired Assets:	Seller's right, title and interest in all of the following assets owned and used by the seller in the business: All inventories and other materials; All supplies, equipment, vehicles, machinery, furniture, fixtures, leasehold improvements and other tangible personal property; All proprietary knowledge, trade secrets, patient, physician and referral lists, technical information, quality control data, processes, methods or rights; The business as a going concern and its franchises, insurance policies, telephone numbers, customer and vendor lists, assigned contracts, personal property leases, advertising material and data, obligations owing to CDC, all physical and electronic data relating to the business; All other tangible and intangible property, other than the excluded assets.
Excluded Assets:	All cash owned by the Seller, including any bank accounts owned by the Seller as of the closing; All accounts and other receivables payable and reimbursable to the Seller relating to the period prior to the closing date.
Assumed Liabilities:	N/A
Excluded Liabilities:	N/A
Purchase Price:	\$12,000,000
Payment:	\$1,200,000 non-refundable deposit upon execution of this agreement, \$1,260,000 refundable deposit upon execution of the agreement, \$9,540,000 payable at closing.

The applicant has submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding, any agreement, arrangement or understanding between the applicant and transferor to the contrary, to be liable and 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 Seller of its liability and responsibility. Currently, the facility has no outstanding audit liabilities and assessments.

Lease Rental Agreement

The applicant has submitted an executed lease rental agreement for the proposed site, the terms are summarized below:

Date:	September 4, 2014
Lessor:	Buffalo Medical Group Building, Inc.
Lessee:	Pure Life Renal, Inc.
Premises:	14,428 sq. ft. located at 6010 Main Street, Williamsville, NY
Term:	5 years with 2 additional 5 year renewal terms
Payment:	\$259,704 for year 1 (\$18.00 per sq. ft.), with a \$0.25 per sq. ft. increase annually over the prior lease year.
Provisions:	The lessee shall be responsible for maintenance, utilities and real estate taxes.

The applicant has stated that the proposed lease is an arm's length agreement. The applicant has submitted two letters from realtors attesting to the reasonableness of the per square foot rental.

Assignment and Assumption Agreements

The applicant has submitted draft Assignment and Assumption Agreements for both the assignment of the asset purchase agreement and the lease associated with this project, as shown below:

Assignor:	Pure Life Renal, Inc.
Assignee:	Pure Life Renal of Buffalo, Inc.
Assets Transferred:	All of the acquired assets listed in the asset purchase agreement
Excluded Assets:	All of the excluded assets listed in the asset purchase agreement
Liabilities:	N/A
Lease Assigned:	Lease associated with premises located at 6010 Main Street, Williamsville, NY
Lease Terms/Payments and Provisions:	No change

Operating Budget

The applicant has submitted the Current Year, Year 1 and Year 3 operating budgets for the facility, in 2015 dollars, as shown below:

	<u>Current Year</u>	<u>Year 1</u>	<u>Year 3</u>
Revenues:			
Medicaid Fee For Service	\$145,856	\$148,773	\$154,784
Medicaid Managed Care	729,281	743,867	773,919
Medicare Fee For Service	2,771,268	2,826,694	2,940,892
Medicare Managed Care	3,062,981	3,124,240	3,250,460
Commercial	<u>583,425</u>	<u>595,093</u>	<u>619,135</u>
Total Revenues	\$7,292,811	\$7,438,667	\$7,739,189
Expenses:			
Operating	\$4,725,470	\$4,851,333	\$5,033,963
Capital	<u>238,296</u>	<u>1,675,961</u>	<u>1,631,518</u>
Total Expenses	\$4,963,766	\$6,527,294	\$6,665,481
Net Income	\$2,329,045	\$911,373	\$1,073,708
Utilization (Treatments)	25,117	25,366	25,873
Cost Per Treatment	\$197.63	\$257.32	\$257.62

The significant increase in capital expenses from the current year to years 1 and 3 is due to the following:

- An increase in annual rental expense by approximately \$100,000 due to an increase in the base rent.
- An increase of approximately \$1.3 Million per year for the amortization of intangible assets (trade name, non-compete agreements and patient relationships) recorded in purchase accounting resulting from the acquisition of the clinic.

Utilization by payor source for the Current Year, Year 1 and Year 3, subsequent to the change in ownership, is summarized below:

Payor:	<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>
Medicaid Fee For Service	351	1.40%	355	1.40%	362	1.40%
Medicaid Managed Care	1,626	6.47%	1,642	6.47%	1,675	6.47%
Medicare Fee For Service	14,708	58.56%	14,855	58.56%	15,153	58.57%
Medicare Managed Care	6,636	26.42%	6,702	26.42%	6,837	26.43%
Commercial	1,646	6.55%	1,662	6.55%	1,696	6.56%
Charity Care	<u>150</u>	<u>.60%</u>	<u>150</u>	<u>.59%</u>	<u>150</u>	<u>.58%</u>
Total	25,117	100.00%	25,366	100.00%	25,873	100.00%

Expense and utilization assumptions are based on the historical experience of the current operator, with the assumption of an annual 2% increase in revenues and an annual 1% increase in visits (treatments). These assumptions appear reasonable.

Capability and Feasibility

The total purchase price for the operation of the facility is \$12,000,000. Pure Life will meet the purchase price as follows: \$12,000,000 from the operations of Pure Life Renal, Inc., the facility's sole shareholder. There are no project costs associated with this CON.

Working capital requirements are estimated at \$1,087,882, based upon two months of Year 1 expenses. The applicant will provide the full amount of the working capital requirement from the operations of Pure Life Renal, Inc., the applicant's sole shareholder. BFA Attachment B is the internal financial statement for Pure Life Renal, Inc. for the period February 10, 2014 through October 31, 2014, which indicates insufficient liquid resources to meet both the equity and working capital requirements for this project. The applicant has explained that they are in the process of raising funds through the sale of Series A Stock in the business and have an agreement in place to receive \$10,500,000 in additional funds by the first quarter of 2015. When this additional money is received, the facility will have sufficient liquid resources to meet both the equity and working capital requirements, therefore making it financially feasible.

BFA Attachment C is the Pro Forma Balance sheet for Pure Life, which shows that the operations will start with \$13,200,000 in equity. It is noted that assets include \$3,433,000 in goodwill and \$8,302,000 in net intangible assets, which are not available liquid resources, nor are they recognized for Medicaid reimbursement purposes. Thus, the net asset position would be a positive member's equity position of \$1,465,000.

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	Pure Life Table of Organization
BFA Attachment B	Internal Financial Statements for Pure Life, Inc.
BFA Attachment C	Pro-Forma Balance Sheet of Pure Life Renal of Buffalo, Inc.
BFA Attachment D	Pure Life Renal, Inc. ownership list



Public Health and Health Planning Council

Project # 142218-E NYU Lutheran Medical Center

Program: Hospital
Purpose: Establishment

County: Kings
Acknowledged: December 5, 2014

Executive Summary

Description

NYU Langone Health System, Inc. (NYUHS), an existing not-for-profit corporation which is controlled by New York University (NYU), a not-for-profit corporation in New York County, requests approval to become the active parent and co-operator of Lutheran Medical Center, a 450-bed not-for-profit hospital located at 150 55th Street, Brooklyn (Kings County). NYUHS would replace Lutheran Medical Center Health System, Inc. as the sole corporate member of Lutheran Medical Center. Approval is also sought to change the name of the Lutheran Medical Center to NYU Lutheran Medical Center.

The purpose of the transaction is to establish a more integrated system with the objectives of improving quality, increasing access and lowering the costs of health care in the communities served by Lutheran Medical Center. There will be no change in authorized services or the number or type of beds as a result of approval of this project. Also, there are no projected changes in the utilization, revenues or expenses of Lutheran Medical Center as a direct result of this project. The hospital will maintain a separate not-for-profit corporation licensed under Article 28 of the Public Health Law, maintaining its separate operating certificate following completion of the project.

As active parent and co-operator, NYUHS will have the following rights, powers and authorities with respect to Lutheran Medical Center:

- Electing the Corporation's Board of Trustees;
- Removing the Corporation's Board of Trustees;
- Filling any vacancies in the Corporation's Board of Trustees;
- Amending or repealing these By-laws or adopting new By-laws;

- Approving the Corporation's merger or consolidation with another entity;
- Approving the sale, lease, exchange or other disposition of all, or substantially all, the assets of the Corporation;
- Reviewing the vision, mission and strategic and financial plans to the Corporation;
- Reviewing the Corporation's annual operating and capital budgets, provided that final approval of the budgets shall remain with the Corporation;
- Approving any transaction having a value of \$25,000,000 or more; and
- Approving the creation, acquisition and/or dissolution of an entity in which the Corporation is proposed to be, or is, the contracting member.

Presented as BFA Attachment A are the organizational charts of Lutheran Medical Center and NYU Langone Health System, Inc. pre-closing and post-closing.

DOH Recommendation

Contingent Approval

Need Summary

This project will not change utilization, services, or beds. This transaction will help with the financial stability of the facility, improve access to clinical expertise, and establish a commitment to high quality care. NYUHS plans to expand the IT infrastructure and connectivity at Lutheran to further improve patient 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.

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

Financial Summary

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

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 evidence of approval by the Office of Mental Health, acceptable to the Department. [PMU]
2. Submission of the executed Certificate of Incorporation of NYULMC System, Inc., acceptable to the Department. [CSL]
3. Submission of an executed amendment to the Certificate of Incorporation of NYULMC System, Inc., acceptable to the Department, that changes the corporation's name to NYU Langone Health System, Inc. [CSL]
4. Submission of an executed amendment to the Certificate of Incorporation of Lutheran Medical Center, acceptable to the Department. [CSL]
5. Submission of the finalized Amended and Restated Constitution and Bylaws of NYU Lutheran Medical Center, acceptable to the Department. [CSL]
6. Submission of the Certificate of Incorporation of NYU Hospitals Center, and any amendments thereto, acceptable to the Department. [CSL]
7. Submission of the bylaws of NYU Hospitals Center, 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

February 12, 2015

Need Analysis

Background

A newly formed entity, NYU Langone Health System, Inc., controlled by New York University, seeks approval to be established as the active parent and co-operator of Lutheran Medical Center (LMC), a 450-bed voluntary not-for-profit facility located at 150 55th street Brooklyn, NY 11220. The applicant plans to change the facility name to NYU Lutheran Medical Center upon project approval.

Lutheran Hospital Certified Beds	
<u>Category</u>	<u>Beds</u>
Top of Form	11
Chemical Dependence - Detoxification	8
Coronary Care	8
Intensive Care	24
Maternity	28
Medical / Surgical	282
Neonatal Continuing Care	6
Neonatal Intermediate Care	4
Pediatric	14
Physical Medicine and Rehabilitation	30
Psychiatric	35
Total	450

Conclusion

This project will allow the health system to operate in a more cost effective manner, provide a more streamlined patient health system, and offer better access to care.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

A newly formed entity, NYU Langone Health System, Inc. (NYUHS), for which New York University (NYU), a not-for-profit corporation, is the passive parent, seeks approval to be established as the active parent and co-operator of the Lutheran Medical Center (LMC), an existing 450-bed not-for-profit hospital located in Kings County. Approval is also sought to change the name of LMC to NYU Lutheran Medical Center. Additionally, shortly after NYUHS is approved as the active parent and co-operator of LMC, NYU Medical Center will seek approval to become the co-operator of LMC's Cardiac Catheterization Lab. The applicant does not anticipate any change in staffing, authorized services or number and/or type of bed complement.

NYU Langone Medical Center, located in Manhattan, is composed of the NYU School of Medicine which, since 1841, has trained thousands of physicians and scientists and three (3) hospitals: Tisch Hospital, its flagship acute care facility; the Rusk Institute of Rehabilitation Medicine, a university-affiliated facility devoted entirely to rehabilitation medicine; and the NYU Hospital for Joint Diseases, a facility dedicated to orthopedics and rheumatology.

Lutheran Medical Center is the principal provider of healthcare for the residents of southwest Brooklyn. Its emergency department is designated as a Level I Trauma Center as well as a Regional Stroke Center and it has one of the largest Federally Qualified Health Center networks in the nation, to include school-based health centers and social support services, a Level 3 Patient-Centered Medical home, and affordable housing and support services to older adults.

The applicant views an NYUHS-Lutheran affiliation as an opportunity to respond to the changing health care environment in Brooklyn through financial stability, leadership, expertise in population health and IT infrastructure which will support the delivery of comprehensive, highly coordinated care to Brooklyn patients and support local providers.

Character and Competence

The proposed Board of Directors of NYUHS is comprised of:

Robert I. Grossman, MD	CEO/Director
Robert Berne, PhD	Director
Kenneth G. Langone	Director

Dr. Grossman serves as both Dean of the New York University School of Medicine and Chief Executive Officer of NYU Langone Medical Center. Mr. Berne is the Executive Vice President for Health at New York University and Mr. Langone is the CEO of Invemed Associates, an investment banking firm.

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

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.

Between 2006 and 2008, the Department issued the following four (4) Stipulations and Orders to NYU Hospital Center:

- 11/16/06 - \$16,000 fine based on an investigation of two occurrences of wrong-sided surgery (one involving a hernia and the other involved removal of a catheter).
- 2/7/07 - \$6,000 fine based on a complaint investigation regarding the care rendered to a patient who had jaw surgery involving fixation. Following periods of extensive bleeding, the patient arrested. Intubation was hindered by the fixation and the patient died.
- 5/29/07 - \$6,000 fine based on an incident involving the care rendered to an infant who presented to the ED bleeding from a tracheotomy site. There were significant delays in diagnosing a bowel that had herniated into the chest cavity and delays in recognizing the infant's deteriorating condition and notifying senior staff which led to the patient's death.
- 5/28/08 - \$6,000 fine based on an incident relating to a patient who was admitted for treatment of a long-standing, poorly controlled seizure disorder. Hospital policy required continuous monitoring of such a patient but said monitoring did not occur due to a known problem with equipment at the nursing station.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Capability and Feasibility

There are no issues of capability or feasibility, as there is no project cost or budgets associated with this application.

BFA Attachment B is the 2012 and 2013 consolidated certified financial statements of NYU Hospitals Center. As shown, 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 \$141,606,500 from 2012 and 2013.

BFA Attachment C is the August 31, 2014 internal financial statements of NYU Hospitals Center. As shown, the hospital had a positive working capital position and a positive net asset position through August 31, 2014. Also, the facility achieved an operating income of \$214,791,000 through August 31, 2014.

BFA Attachment D is the 2012 and 2013 certified financial statements of Lutheran HealthCare. As shown, the entity had an average positive working capital position and an average positive net asset position from 2012 through 2013. Also, the entity incurred average operating losses of \$16,341,500 from 2012 through 2013. The applicant has indicated that the reasons for the losses are the result of the following:

- The losses were primarily generated by Lutheran Healthcare's physician corporation, which had been supported by the positive margins generated at Lutheran Medical and Lutheran Family Health Centers.
- The operations of Health Plus were sold on May 1, 2012, and then changed its name to OHP. OHP's function as of May 1, 2012, was to pay off liabilities, resolve all claims, collections and receivables (basically to run-out the company). In 2012 the company incurred significant additional cost as a result of the sale for staff retention bonus, severance and terminating cost that resulted in the loss from operations.
- The loss in 2013 was due to a run-out of administrative cost and settlements of above recorded liabilities.

The applicant implemented the following steps to improve operations:

- Over the last few years, the hospital invested in the retention and recruitment of physician and physician practices. Revenues will increase as the practices grow and they are able to negotiate better rates and realize additional admissions. Management is currently reviewing many of the physician practice sites to reduce costs through consolidation and efficiency.
- Under the proposed arrangement, the physician corporation of Lutheran Healthcare will become part of NYU School of Medicine's Faculty Group Practice. This will eliminate the losses from Lutheran Healthcare, and the management of these physicians within the larger Faculty Group Practice will provide improved revenue collections and more efficient overhead.

BFA Attachment E is the September 30, 2014 internal financial statements of Lutheran HealthCare. As shown, the entity had a positive working capital position and a positive net asset position through September 30, 2014. Also, the entity incurred operating losses of \$19,123,000 through September 30, 2014. The losses through September 30, 2014 were due to the run-out of administrative cost settlements above recorded liabilities of OHP. The hospital is at the tail-end of the run-out and they anticipate a resolution by May 1, 2015.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Organizational Chart
BFA Attachment B	Financial Summary - 2012 and 2013 certified financial statements of NYU Hospitals Center
BFA Attachment C	August 31, 2014 internal financial statements of NYU Hospitals Center
BFA Attachment D	Financial Summary - 2012 and 2013 certified financial statements of Lutheran HealthCare
BFA Attachment E	September 30, 2014 internal financial statements of Lutheran HealthCare



Public Health and Health Planning Council

Project # 141253-E South Brooklyn Endoscopy Center

Program: Diagnostic and Treatment Center **County:** Kings
Purpose: Establishment **Acknowledged:** June 13, 2014

Executive Summary

Description

Digestive Disease Diagnostic and Treatment Center, LLC d/b/a South Brooklyn Endoscopy Center (the Center), a New York limited liability company, is an existing Article 28 freestanding ambulatory surgical center (FASC) located at 214 Avenue P, Brooklyn (Kings County). The Center is certified as a single-specialty FASC specializing in the field of gastroenterology and is also certified to provide Lithotripsy O/P procedures.

On November 14, 2008, the applicant received contingent Public Health and Health Planning Council (PHHPC) approval under CON #081088 for the establishment and construction of a FASC with a limited life of five (5) years from the date of issuance of an operating certificate. The applicant received its operating certificate effective December 29, 2009; hence, the Center's current limited life certification expired December 29, 2014. The applicant is requesting approval to extend its limited life for three (3) years, and also requests a partial change in the ownership of the facility. The ownership change consists of the removal of two current members, Dr. Oleg Gutnik and Mr. Jordan Fowler, and the transfer of 40% ownership interest in the Center to four new members: Dr. Rabin Rahmani, Dr. Ian Wall, Dr. Nison Badalov, and Dr. Pierre Hindy.

Membership in the Center is currently composed of 2 corporate entities, Frontier Healthcare Associates, LLC and Beth Israel Ambulatory Care Services Corp, and 10 individual members. Upon approval of this application, there will be a total of 14 members including two corporate entities. The proposed issuance of new membership interest exceeds 25% ownership change within five years, and therefore requires PHHPC approval.

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

Current Owners		Proposed Owners	
Members:	%	Members:	%
Frontier Healthcare	7.73	Frontier Healthcare	4.13
Beth Israel Ambulatory Care Srvs Corp	11.46	Beth Israel Ambulatory Care Srvs Corp	6.12
Mark Chu, M.D.	5.33	Mark Chu, M.D.	1.75
Danny Chu, M.D.	5.33	Danny Chu, M.D.	1.75
Lorenzo Ottaviano, M.D.	5.33	Lorenzo Ottaviano, M.D.	1.75
Zhanna Gutnik, M.D.	11.33	Zhanna Gutnik, M.D.	4.50
Jay Weissbluth, M.D.	17.32	Jay Weissbluth, M.D.	10.00
Alex Shapsis, M.D.	11.99	Alex Shapsis, M.D.	10.00
Igor Grosman, M.D.	11.99	Igor Grosman, M.D.	10.00
Paul Cohen, M.D.	11.99	Paul Cohen, M.D.	10.00
Oleg Gutnik, M.D.	.10	Dr. Rabin Rahmani	10.00
Jordan Fowler	.10	Dr. Ian Wall	10.00
		Dr. Nison L. Badalov	10.00
		Dr. Pierre Hindy	10.00
Total	100.00	Total	100.00

DOH Recommendation

Contingent Approval for a three year extension of the operating certificate from the date of the Public Health and Health Planning Council recommendation letter.

Need Summary

Based on CON 081088, SBEC was approved with contingencies for a three year limited life with Medicaid at five percent and charity care at two percent. The Center has satisfied its contingency that required filing annual reports with DOH. Upon approval of this project, the applicant projects to have a total of 9,935 procedures in year 1 with Medicaid at 35.5 percent and charity care at two percent. Based on the efforts taken by the applicant to improve its charity care, their application budget includes a projected charity care allowance of two percent, which they are confident that they can achieve in Year 1. There will be no changes in services.

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 proposal. The purchase price of \$1,192,884 will be met with \$298,221 in personal equity from each of the four proposed new members.

		<u>Year One</u>	<u>Year Three</u>
Budget:	Revenues	\$8,304,631	\$8,597,199
	Expenses	<u>\$6,186,839</u>	<u>\$6,487,409</u>
	Gain/(Loss)	\$2,117,792	\$2,109,790

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 for a three year extension of the operating certificate from the date of the Public Health and Health Planning Council recommendation letter, contingent upon:

1. Submission of an executed loan commitment from Dr. Hindy acceptable to the Department of Health. [BFA]
2. Submission of an executed loan commitment from Dr. Wall acceptable to the Department of Health. [BFA]
3. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the DOH beginning in the second year of operation. Said reports should include:
 - a. Data showing actual utilization including procedures;
 - b. Data showing breakdown of visits by payor source;
 - c. Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
 - d. Data showing number of emergency transfers to a hospital;
 - e. Data showing percentage of charity care provided, and
 - f. Number of nosocomial infections recorded during the year in question.
 - g. Corrective measures implemented for submitting data to SPARCS. [RNR]
4. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
5. Submission by the governing body of the ambulatory surgery center of a detailed plan that will be implemented to improve charity care to two (2) percent. [RNR]
6. Submission of a photocopy of an executed amendment to the applicant's Articles of Organization, acceptable to the department. [CSL]

Approval conditional upon:

1. The project must be completed within one year from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The applicant must submit proof from the Department of State of the filing of a certificate of amendment of its Articles of Organization that has found to be acceptable to the Department of Health. [DLA]

Council Action Date

February 12, 2015

Need Analysis

Project Description

Digestive Diseases Diagnostic and Treatment Center, LLC d/b/a South Brooklyn Endoscopy Center (SBEC), an existing single specialty (gastroenterology) Article 28 diagnostic and treatment center, requests approval to extend its limited life for three (3) additional years following a limited life of five-years from December 29, 2009 to December 29, 2014 (CON 081088). In addition, SBEC also requests approval to transfer 40 percent membership interest to four (4) new physician members and to remove two (2) existing members. The facility is located at 214 Avenue P, Brooklyn, 11204, Kings County.

Analysis

The table below provides information on the number of projected procedures and actual utilization for 2013. It shows that the applicant provided well above the projected number of procedures of 4,509. The actual utilization for Medicaid was 34.2 percent, close to the projected utilization at 35.3 percent. The applicant provided only 0.1 percent charity care, and thus did not meet its projection of two (2) percent (CON 081088).

South Brooklyn: Procedures	Projected 2013	Projected 2013	2013 Actual	2013 Actual
Medicare Total	938	20.8%	1,041	20.3%
Medicaid Total	1,592	35.3%	1,757	34.2%
Commercial	1,960	43.5%	2,334	45.5%
Private/Other	17	0.4%	0	0.0%
Charity	2	0.0%	3	0.1%
Total	4,509	100.0%	5,135	100.0%

Upon approval of this application, SBEC projects to have a total of 9,935 procedures in year 1 and 10,286 procedures in year 3 with Medicaid at 35.5 percent and charity care at 2.0 percent. The proposed addition of four (4) new physicians supports the projected increases for Years 1 and 3.

141253: South Brooklyn Procedures	Projections Year 1	Projections Year 3	Projections Years 1 and 3
Medicare	2,074	2,150	20.9%
Medicaid	3,522	3,650	35.5%
Commercial	4,124	4,262	41.4%
Private/Other	16	18	0.2%
Charity	199	206	2.0%
Total	9,935	10,286	100.0%

Annual Reports for 2010 to 2013 submitted by the applicant indicate that the applicant has not met its original commitment of two (2) percent charity care. During these years, charity care was less than one (1) percent. The applicants acknowledge the fact that their charity care utilization has been lower than the original projection. They relied on member referrals for charity care cases; it was difficult for them to obtain and refer a satisfactory number of cases to meet the projected rate. To ameliorate this, they have partnered with Charles B. Wang Community Health Center to obtain charity care case referrals. Additionally, SBEC is also in the process of implementing a formal, written Charitable Care Program to provide charity care to its communities. Based on these efforts, the applicants expect their charity care rate to grow to at least two (2) percent in Year 1.

The numbers for total visits shown on Annual Reports submitted by the applicant are comparable to those on the Statewide Planning and Research Cooperative System (SPARCS); however, there are discrepancies between the numbers for Medicaid and Medicare among the two sources. The applicant believes that this is due to the difference in the breakout of cases on Applicants' Annual Reports and on SPARCS. Specifically, on the SPARCS report, it appears that in certain years the Medicaid and Medicare figures represent just Fee-for-Service (FFS) visits, and that the Managed Care visits (for Medicaid and Medicare) were erroneously ascribed to the Commercial Insurance category by the applicants.

The applicants are committed to serving patients in need of care regardless of their ability to pay or the source of payment.

Program Analysis

Project Proposal

Digestive Diseases Diagnostic and Treatment Center, LLC d/b/a South Brooklyn Endoscopy Center, an existing single specialty (gastroenterology) Article 28 diagnostic and treatment center in Kings County, requests permission to extend the Center's limited life for three (3) years following a five (5) year limited life (under CON 081088). There will be no changes in services however, due to the addition of four (4) new physician members to the center, staffing is expected to increase from 6.0 FTEs to 15.0 FTEs in the first year and then to 16.0 FTEs by the third year.

Additionally, South Brooklyn Endoscopy Center seeks approval to transfer 40% membership interest in the center to four (4) new physician members who will each purchase a 10% interest in the Center. In addition, two (2) existing members of the Center will withdraw from the Center as individual members. There is no construction or other capital cost associated with this proposal.

The following table details the proposed change in ownership:

Member Name	Current Membership Interest	Membership Interest Proposed
Oleg Gutnik, MD	0.10%	----
Jordan Fowler	0.10%	----
Frontier Healthcare Assoc., LLC Oleg Gutnik, MD (50%) Jordan Fowler (50%)	7.73%	4.13%
Beth Israel Ambulatory Care Services, Corp <i>*Adam Henick – board member</i> <i>*Donald Scanlon – board member</i> <i>*Jeremy Boal, MD – board member</i>	11.46%	6.12%
Mark Chu, DO	5.33%	1.75%
Danny Chu, MD	5.33%	1.75%
Lorenzo Ottaviano, MD	5.33%	1.75%
Zhanna Gunik, MD	11.33%	4.50%
Jay Weissbluth, MD (Manager)	17.32%	10.0%
Alex Shapsis, MD	11.99%	10.0%
Igor Grosman, MD	11.99%	10.0%
Paul Cohen, MD	11.99%	10.0%
<i>*Rabin Rahmani, MD</i>	----	10.0%
<i>*Ian Wall, DO</i>	----	10.0%
<i>*Nison Badalov, MD</i>	----	10.0%
<i>*Pierre Hindy, MD</i>	----	10.0%
<i>*Members subject to review</i>		

Character and Competence

The four new proposed individual members, Rabin Rahmani, MD; Ian Wall, DO; Nison Badalov, MD; and Pierre Hindy, MD, are all practicing general surgeons, who are board-eligible in gastrointestinal endoscopy

The withdrawing members are: Oleg Gutnik, MD and Jordan Fowler (who will continue as members of Frontier Healthcare Associates, LLC, which is an existing member of the Center).

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Membership Purchase Agreement

The applicant has submitted an executed membership purchase agreement for the change of 40% membership interest of Digestive Disease D&TC, the terms of which are summarized below:

Purpose:	Sale of 40% membership interest in Digestive Disease Diagnostic and Treatment Center, LLC d/b/a South Brooklyn Endoscopy Center
Date:	May 8, 2014
Sellers:	Frontier Healthcare Associates, LLC (3.60%), Beth Israel Ambulatory Care Services Corp (5.34%), Mark Chu, M.D. (3.58%), Danny Chu, M.D. (3.58%), Lorenzo Ottaviano, M.D. (3.58%), Zhanna Gutnik, M.D. (6.83%), Jay Weissbluth, M.D. (7.32%), Alex Shapsis, M.D. (1.99%), Igor Grosman, M.D. (1.99%), Paul Cohen, M.D. (1.99%), Oleg Gutnik, M.D. (0.10%), and Jordan Fowler (0.10%)
Purchasers:	Dr. Rabin Rahmani (10.00%), Dr. Ian Wall (10.00%), Dr. Nison L Badalov (10.00%) and Dr. Pierre Hindy (10.00%)
Purchase Price:	\$1,192,884 (\$29,882.10 per percent)
Payment:	\$12,000 dollars (\$3,000 per purchaser) good faith deposit at execution of agreement held in escrow, with the remaining \$1,180,884 due at closing (\$295,221 per purchaser)

Operating Budgets

Following is a summary of the submitted operating budget, presented in 2015 dollars, for the first and third year subsequent to change in ownership:

	<u>Per Proc.</u>	<u>Year 1</u>	<u>Per Proc.</u>	<u>Year 3</u>
Revenues:				
Medicaid Fee For Service	\$853.97	\$84,543	\$853.97	\$84,543
Medicaid Managed Care	\$853.97	\$2,923,126	\$853.97	\$3,032,434
Medicare Fee For Service	\$853.96	\$1,622,517	\$853.96	\$1,687,417
Medicare Managed Care	\$853.97	\$148,590	\$853.97	\$148,590
Commercial Fee For Service	\$853.97	\$3,521,756	\$853.97	\$3,639,604
Private Pay/Other	\$256.19	<u>\$4,099</u>	\$256.17	<u>\$4,611</u>
Total		\$8,304,631		\$8,597,199
Expenses:				
Operating		\$5,615,311		\$5,867,084
Capital		<u>\$571,528</u>		<u>\$620,325</u>
Total		\$6,186,839		\$6,487,409
Net Income/(Loss)		\$2,117,792		\$2,109,790

Utilization by payor source for the Current Year and Years 1 and 3 subsequent to the change in owner/operator is summarized below:

	2013 <u>Projected Utilization</u>	2013 <u>Actual Utilization</u>	Projected <u>Year 1 Utilization</u>	Projected <u>Year 3 Utilization</u>
<u>Payor Source:</u>				
Medicare Fee For Service	851	867	1,900	1,976
Medicare Managed Care	87	174	174	174
Medicaid Fee For Service	110	99	99	99
Medicaid Managed Care	1,482	1,658	3,423	3,551
Commercial	1,960	2,334	4,124	4,262
Private Pay/Other	17	0	16	18
Charity Care	<u>2</u>	<u>3</u>	<u>199</u>	<u>203</u>
Total	4,509	5,135	9,935	10,286
	2013 <u>Projected %</u>	2013 <u>Actual %</u>	Projected <u>Year 1 %</u>	Projected <u>Year 3 %</u>
<u>Payor Source:</u>				
Medicare Fee or Service	18.87%	16.88%	19.12%	19.21%
Medicare Managed Care	1.93%	3.39%	1.75%	1.69%
Medicaid Fee For Service	2.44%	1.93%	1.00%	.96%
Medicaid Managed Care	32.87%	32.29%	34.45%	34.52%
Commercial	43.47%	45.45%	41.52%	41.44%
Private Pay/Other	.38%	0%	.16%	.18%
Charity Care	<u>.04%</u>	<u>.06%</u>	<u>2.00%</u>	<u>2.00%</u>
Total	100.00%	100.00%	100.00%	100.00%

The anticipated increase in utilization from the current year (2013) to the projected Years 1 and 3 is due to the addition of 4 new doctors to the practice.

The Department has reviewed the facility's certified 2010 through 2013 cost report submissions and determined that the facility has not meet the 2% charity care commitment as provided in their establishment CON. The applicant indicated that the Center experienced 34.22% Medicaid utilization in 2013, exceeding their original Year 1 and Year 3 commitment of 5% Medicaid utilization, but acknowledges the charity care shortfall. The Center primarily relied upon member referrals for charity care cases, and the applicant indicates that while the members worked diligently to refer charity care patients to the Center, the need for additional charity care referral sources has become evident. To increase charity care volume, the facility implemented a formal Charity Care Program in 2014 to ensure that they serve the needs of the local community. After vetting alternatives, the Center entered into a partnership with Charles B. Wang Community Health Center, an organization dedicated to serving low income communities, to help refer charity care patients to the Center. The partnership began in September 2014 and they have already seen several additional referrals as a result. The Center is hopeful that this proactive relationship will allow them to increase charity care cases to at least the 2% level going forward. In addition to charity care cases, the Center will continue its emphasis on serving lower income populations.

After reviewing the corrective action information provided by the applicant, the Department recommends a three (3) year limited life extension to allow the facility additional time to achieve their 2% charity care commitment.

Capability and Feasibility

The purchase price of \$1,192,884 will be met with \$298,221 in personal equity from each proposed new member. BFA Attachment A, the net worth of two of the four proposed members, indicates that they do not have sufficient resources available to meet the required equity. The two members, Dr. Pierre Hindy and Dr. Ian Wall, have provided letters of interest from Chase bank for personal loans in the amount of \$250,000 each, at 5% interest for a 5 year term. When these loans are secured, there will be sufficient resources to fund this transaction.

The submitted budget indicates an excess of revenues over expenses of \$2,117,792 during Year 1 and \$2,109,790 during Year 3 of operations. The budget is reasonable.

BFA Attachment B is the 2012 and 2013 certified financial summary for Digestive Disease D&TC, which indicates that the facility experienced both positive average working capital and members' equity positions. The facility also generated an average net income of \$1,909,382 for the years 2012 and 2013.

BFA Attachment C is the internal financial summary for Digestive Disease D&TC for the period 1/1/2014-10/31/2014, which indicates that the facility experienced a positive working capital position and a negative members' equity position. The facility also generated a net income of \$2,419,125 for the period ended 10/31/2014. The negative members' equity position is due to a loan the Center took out in early 2014 to retire pre-existing debt and repurchase shares from existing members. The loan was for \$2.587 million, with approximately \$225,000 used to retire the debt and approximately \$2,362,000 used to repurchase shares from existing members of the Center. The repurchased shares equated to 24.9% in ownership interest. The loan has already been paid down to \$2.523 million by 10/31/2014. If the loan had not been taken out, the Center would have had a positive members' equity position for the period as shown below:

	Original 2014 Internal Balance Sheet (with loan included)	Revised 2014 Internal Balance Sheet (without loan included)
Total Assets	\$1,361,816	\$1,361,816
Total Current Liabilities	\$138,488	\$138,488
Total Long Term Liabilities	\$2,253,027	\$0
Total Liabilities	\$2,391,515	\$138,488
Members' Equity	(\$1,029,699)	\$1,223,328

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth Statement of New Members
BFA Attachment B	2012-2013 Financial Summary, Digestive Disease Diagnostic and Treatment Center, LLC d/b/a South Brooklyn Endoscopy Center
BFA Attachment C	1/1/2014-10/31/2014 Internal Financial Summary, Digestive Disease Diagnostic and Treatment Center, LLC d/b/a South Brooklyn Endoscopy Center



Public Health and Health Planning Council

Project # 142152-E Odyssey Community Services, Inc.

Program: Diagnostic & Treatment Center **County:** New York
Purpose: Establishment **Acknowledged:** October 15, 2014

Executive Summary

Description

Odyssey Community Services, Inc. a to-be-formed New York State not-for-profit corporation, seeks approval to be established as the operator of an Article 28 diagnostic and treatment center (D&TC) facility, which is currently operated as an extension clinic of Odyssey House of New York, Inc. (Odyssey House). The D&TC is located at 219 East 121st Street, New York, 10035 (New York County). Odyssey House seeks to establish the extension clinic site as a separate Article 28 D&TC entity so it can obtain designation as a Federally Qualified Health Center (FQHC) Look-Alike clinic. Odyssey House will submit a closure plan to the Department for its extension clinic upon Public Health and Health Planning Council approval of this application. There is no construction proposed for this project.

DOH Recommendation

Contingent Approval

Need Summary

Proposed services are Medical Services-Primary Care, Medical Services-Other, and Dental O/P. The proposed project will continue providing medical services to patients referred from Odyssey House, in addition to serving the communities of the service area. The number of projected visits is 14,476 in year 1, with Medicaid at 87.14 percent, and charity care at 11.85 percent.

Program Summary

The Department's recommendation for approval has been made after consideration of the statutory factors found in the New York State Correction Law (Sections 752 and 753).

Financial Summary

There are no project costs associated with this application. There is no asset purchase agreement associated with this application.

Establishment as a separate Article 28 D&TC is required before the facility can apply for FQHC designation. Therefore, the facility submitted their budget based on current D&TC reimbursement rates as follows:

Current Rates: (Year 1)	Revenues Expenses Gain	\$1,519,980 <u>1,512,227</u> \$7,753
Current Rates: (Year 3)	Revenues Expenses Gain	\$1,612,547 <u>1,593,960</u> \$18,587

The FQHC sensitized budget for year 1 and year 3 based on projected FQHC payment rates is as follows:

FQHC Budget: (Year 1)	Revenues Expenses Gain	\$2,570,018 <u>2,518,057</u> \$51,961
FQHC Budget: (Year 3)	Revenues Expenses Gain	\$2,726,436 <u>2,638,638</u> \$87,798

DOH staff has reviewed the DTC budgets under both rate structures and has determined that the applicant can meet costs and maintain at least a break even operating margin under both scenarios. 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 of Health. [BFA]
2. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
4. Submission of a photocopy of the applicant's executed Bylaws, acceptable to the Department. [CSL]
5. Submission of a photocopy of an executed Certificate of Incorporation of Odyssey Community Services 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]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]

Council Action Date

February 12, 2015

Need Analysis

Project Description

Odyssey Community Services, Inc., a to-be-formed NYS not-for-profit corporation, seeks approval to establish Odyssey Community Services, Inc as the operator of a diagnostic and treatment facility located at 219 East 121st Street, 10035, New York County. This facility, on 121st Street, is currently being operated as an Article 28 diagnostic and treatment center (D&TC) extension clinic of Odyssey House of NY, Inc. (OHNY).

Background

Odyssey House of New York, Inc. is a Voluntary Not-for-Profit Corporation; it has a main facility, and three extension clinics, all in New York County. Additionally, OHNY also has an extension clinic in Bronx County. All these facilities are located as follows:

- a) Main Facility: Odyssey House of New York, Inc.: 666 Broadway Tenth Floor, NY, 10012 (NY County)
- b) Extension Clinic: OH East 121st Street: 219 East 121 Street, NY, 10035 (NY County)
- c) Extension Clinic: OH East 6th Street Clinic: 309-11 East 6th Street, NY, 10003 (NY County)
- d) Extension Clinic: OH Mabon Clinic: Mabon Bldg. #13 (600 East 125th St.), Ward's Island, 10035 (NY County)
- e) Extension Clinic-Bronx: 953 Southern Blvd.-Suite 301, Bronx, 10459 (Bronx County)

The five facilities provide a range of medical services as described below:

Licensed Services Available Currently	Odyssey House of New York	Odyssey House East 121st St.	Odyssey House East 6th St.	Odyssey House Mabon Clinic	Odyssey House Bronx
Dental O/P	Yes	Yes	Yes	Yes	No
Medical Services- Primary Care	Yes	Yes	Yes	Yes	No
Cert. Mental Health Services O/P	Yes	No	Yes	Yes	No
Chemical Dependence-Rehab O/P	Yes	No	Yes	Yes	Yes
Clinic P/T Services	Yes	No	No	No	No

Source: HFIS

The table below provides information on time and distance from the proposed project on 121st Street in New York to the OHNY main facility and also to each extension clinic including the one in Bronx.

Driving Time and Distance from the CON 142152 Project Site (219 East 121 St to Other Facilities)	Minutes By Car/By Public Transit	Miles
To: OHNY, Inc. Main Facility, 666 Broadway NY, 10012	22 min. / 34 min.	7.7 mi.
To: Extension Clinic at 309-11 East 6th Street, NY, 10003	21 min. / 38 min.	7.2 mi.
To: Extension Clinic at 600 East 125th St., Ward's Island, 10035	7 min. / 15 min.	1.9 mi.
To: Extension Clinic at 953 Southern Blvd., Bronx, 10459	12 min. / 21 min.	3.9 mi.

Analysis

The primary service area is East Harlem including zip codes 10029 and 10035. The proposed site and the surrounding extension clinics operated by Odyssey House will continue providing medical services to patients referred from Odyssey House, a social services agency, in addition to serving the communities of the primary service area.

Proposed services are as follows:

Certify:
Medical Services-Primary Care
Medical Services-Other
Dental O/P

The number of projected visits is 14,476 in Year 1 and 15,343 in Year 3. Sixty-six percent of the total visits will be primary care service visits and the remaining 34 percent will be dental care service visits. These projections are based on the current experience of OHNY, Inc.

The proposed location is in a Health Professional Shortage Area (HPSA) and also in a Medically Underserved Area/Population (MUA/P) as follows:

- HPSA for Primary Care Services: Medicaid Eligible-East Harlem
- HPSA for Dental Care Services: Medicaid Eligible-East Harlem
- MUA/P: Medicaid Eligible- East Harlem Service Area

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

The applicant reports that the existing extension clinic of the OHNY, Inc. will remain open until this CON application 142152 is approved and that the proposed D&TC is established as the new Article 28 extension clinic of Odyssey Community Services, Inc.

Conclusion

The location of the proposed new center is currently operated as an extension clinic of Odyssey House of New York, and is an existing Article 28 provider. This change of sponsorship will enable the applicant to continue to meet the needs of a vulnerable population with complex health care needs, as well as provide an existing resource for residents of the primary service area

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Program Description

Odyssey Community Services, Inc., a to-be-formed, New York State not-for-profit corporation, seeks approval to establish an existing diagnostic and treatment center (D&TC) extension clinic operated by Odyssey House of New York, Inc. as a separate Article 28 entity so it may more easily seek designation as a Federally Qualified Health Center (FQHC).

Odyssey House is a comprehensive social services agency that provides housing services and substance abuse and mental health treatment. Odyssey House's existing Article 28 D&TC, located at 219 East 121st Street in New York (New York County), provides comprehensive primary medical care services to clients of the larger social services agency. Under the new proposed operator, the clinic will be able to continue to provide medical services to patients referred from Odyssey House. Services will also be available to residents of the primary service area.

Proposed Operator	Odyssey Community Services, Inc
Site Address	219 East 121st Street, New York, NY (NY County)
Specialties	Medical Services - Primary Care Medical Services – Other Medical Specialties Dental O/P
Hours of Operation	Monday & Tuesday from 9:45 am – 5:30 pm Wednesday through Friday 9:45 am – 9:00 pm
Staffing (1st Year / 3rd Year)	14.24 FTEs / 15.09 FTEs
Medical Director(s)	David L. Foster, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Is expected to be provided by Metropolitan Hospital Center 1.7 miles and 7 minutes
On-call service	After-hours On-Call Service available 24/7/365

Character and Competence

The members of the Odyssey Community Services, Inc. are:

Name

Sunita Manjrekar
Monica Thomas
Maria White
Cynthia Smith
Alexandra Arizaga
Jeffrey Savoy
Dwain Carryl
Malcolm Stone
Cecelia Scott-Croff

Ms. Manjrekar holds dual Master's degrees in Education and Sociology. She is the Deputy Commissioner of Employment, Vocational and Community Services for the Nassau County Department of Social Services. *Ms. Thomas* holds a Master's of Social Work degree and is currently pursuing a Master's in Public Administration. She is a Licensed Social Worker (LSW) and a Certified Alcohol and Substance Abuse Counselor employed by Volunteers of America, a non-profit social services organization. In that capacity, she oversees all single adult homeless shelters for the organization, to include \$19M budget, 9 programs and 240 employees. *Ms. White* holds a business certificate and was employed as the Assistant Manager of a retail establishment until her retirement in June 2008. She is a patient of the center. *Ms. Smith* worked as a housekeeper for a national hotel chain until her retirement in February 2010. She is also a patient of the center. *Ms. Arizaga*, who holds a Bachelors of Business Administration, has been employed by the Odyssey House for over 20 years and currently serves as its Assistant Controller. *Mr. Savoy* holds a Master of Social Work degree and is a Licensed Clinical Social Worker (LCSW). He has been employed by the Odyssey House since July 2001, currently serving as its Administrator. *Mr. Carryl* holds an MBA from the Yale School of Management and works as a Sr. Vice President/Portfolio Manager for the U.S. Trust. *Mr. Stone* earned a Master's Degree in Marriage and Family Therapy and works as a Career Advisor for a non-profit organization. *Ms. Scott-Croff*, who holds dual Masters of Science in Education degrees (Early Childhood and Administration & Supervision) and numerous NY State teaching certifications, is the Executive Director of the Early Childhood Center for the City University of New York.

In addition to members of the Board, information was also submitted and reviewed for the Center's Medical Director, David Foster, MD. Dr. Foster has operated a private practice for the past 14 years and, since June 2010, he has served as Odyssey House's Medical Director.

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

Ms. Smith disclosed that she was convicted of a Class C Felony in 1975 and twelve (12) Class E Felonies between 1977 and 2004. On April 5, 2004, she was convicted of possession of a controlled substance that resulted in referral for Substance Use Disorder treatment, which she completed in July 2005.

Ms. White disclosed that she was convicted of a Class A Felony (Possession of controlled substance) in August 1990 and served 10 years in the federal prison system.

In evaluating this application, the Department needed to consider the statutory factors found in the New York State Correction Law Sections 752 and 753.

Section 752 prohibits unfair discrimination against persons previously convicted of one or more criminal offenses. Specifically, "No application for any license or employment...shall be denied or acted upon adversely by reason of the individual's having been previously convicted of one or more criminal offenses, or by reason of a finding of lack of "good moral character" when such finding is based upon the fact that the individual has previously been convicted of one or more criminal offenses, unless: (1) there is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought or held by the individual; or (2) the issuance or continuation of the license or the granting or continuation of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public."

Section 753 sets forth factors that are required to be considered in making a determination to deny licensure based on the conviction. Specifically, "(a) The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses; (b) The specific duties and responsibilities necessarily related to the license or employment sought or held by the person; (c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities; (d) The time which has elapsed since the occurrence of the criminal offense or offenses; (e) The age of the person at the time of occurrence of the criminal offense or offenses; (f) The seriousness of the offense or offenses. (g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct; (h) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

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 they will occupy, which is summarized below:

- Premises: 2,200 square feet located at 219 East 121st St., NY, NY 10035
- Lessor: Odyssey House, Inc.
- Lessee: Odyssey Community Services, Inc.
- Term: 10 years
- Rental: \$77,000 annually (\$35.00 per sq. ft.)
Rental of existing equipment is included in the base rent.
- Provisions: Utilities and maintenance services are included in the base rent.

The applicant has provided two letters indicating the rent reasonableness. The applicant has submitted an affidavit that indicates that the lease agreement will be a non-arms-length lease agreement.

Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, for the first and third years based on current DTC reimbursement rates, which is summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,519,980	\$1,612,547
Expenses:		
Operating	\$1,431,246	\$1,515,593
Capital	<u>80,981</u>	<u>78,367</u>
Total Expenses	\$1,512,227	\$1,593,960
Excess of Revenues over Expenses	\$7,753	\$18,587
Utilization: (Visits)	14,476	15,343
Cost Per Visit	\$104.46	\$103.89

Expense and utilization assumptions are based on the actual experience of Odyssey House of New York, Inc., which is the current operator of the extension clinic site. It is noted that the Odyssey House provides chemical dependency rehabilitation services and presently close to 100% of their patients are Medicaid eligible.

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	99.00%	99.00%
Commercial Fee For Service	1.00%	1.00%
Total	100.00%	100.00%

Sensitized Budget

The applicant has provided a sensitized budget for the first and third years of operation, in 2015 dollars, based on FQHC reimbursement rates, as summarized below:

<u>Sensitized FQHC Rates</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$2,570,018	\$2,726,436
Expenses:		
Operating	\$2,437,076	\$2,560,271
Capital	<u>80,981</u>	<u>78,367</u>
Total Expenses	\$2,518,057	\$2,638,638
Excess of Revenues over Expenses	\$51,961	\$87,798
Visits	14,476	15,343
Cost Per Visit	\$173.95	\$171.98

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

	<u>Year One</u>	<u>Year Three</u>
Commercial Fee For Service	1.01%	1.00%
Medicaid Managed Care	87.07%	87.07%
Charity Care	11.92%	11.93%

Budget differences resulting from the use of sensitized FQHC rate assumptions are due to the following:

- The HRSA Section 330 Grant revenues have been included for FQHC status.
- Outreach and case management administrative staff expenses have been included for FQHC status.

Capability and Feasibility

There are no total project costs and no asset purchase agreement associated with this application.

Working capital requirements are estimated at \$265,660, which is equivalent to two months of third year expenses. The applicant will finance \$132,830 via a bank loan from Odyssey Foundation of New York, Inc. at an interest rate of 3% for a three year term. The remaining \$132,830 will be provided in the form of equity to be provided by Odyssey Foundation of New York, Inc. BFA Attachment A is the June 30, 2013 certified financial statements and the June 30, 2014 internal financial statements of Odyssey Foundation of New York, Inc., which indicates the availability of sufficient funds for the equity contribution to meet the working capital requirement. BFA Attachment B is the pro forma balance sheet of Odyssey Community Services, Inc. as of the first day of operation, which indicates a positive net asset position of \$132,830.

The submitted budget using current DTC reimbursement rates indicates an excess of revenues over expenses of \$7,753 and \$18,587 during the first and third years, respectively. Revenues are based on current reimbursement rates of the current facility, which are based on the Ambulatory Patient Group (APG) payment rate methodology.

The submitted sensitized FQHC status based budgets indicates an excess of revenues over expenses of \$51,961 and \$87,798 in Year 1 and Year 3. FQHC revenues are based on the current cost based reimbursement methodology applicable for FQHC designated facilities. The sensitized budget appears reasonable.

As shown on BFA Attachment A, Odyssey Foundation of New York, Inc. had an average positive working capital position and an average positive net asset position from July 1, 2012 through June 30, 2014. Also, the Foundation achieved an average increase in unrestricted net asset of \$44,068 from July 1, 2012 through June 30, 2014.

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
BFA Attachment B

Financial Summary- Odyssey Foundation of New York, Inc.
Pro Forma Balance Sheet



Public Health and Health Planning Council

Project # 142195-B

Delhi Rehabilitation & Nursing Center

Program: Residential Health Care Facility **County:** Delaware
Purpose: Establishment and Construction **Acknowledged:** November 10, 2014

Executive Summary

Description

DRNC Operating, LLC d/b/a Delhi Rehabilitation & Nursing Center, a New York State limited liability company, seeks approval to be established as the operator of a to-be-constructed 176-bed residential health care facility (RHCF) at the former site of the Countryside Care Center, a 160-bed RHCF which closed in October 2012. The new facility will be located on a 58.73 acre parcel at 41861 State Route 10, Delhi (Delaware County).

On May 2, 2014, Personal Healthcare, LLC entered into an Agreement of Sale with Leatherstocking Realty for the acquisition of the property at 41861 State Route 10, Delhi. The members of Personal Healthcare, LLC will assign its acquisition of the land to DRNC Realty, LLC for \$10 and other valuable consideration received in hand. DRNC Operating, LLC, as tenant, will enter into a proposed construction and lease agreement with DRNC Realty, LLC, as landlord, for site control of the facility. DRNC Realty, LLC will construct the 176-bed RHCF in accordance with plans approved by the tenant and will lease the facility to the tenant.

DRNC Realty, LLC will fund the cost of the property purchase, the demolition of existing buildings and the construction of a new, 176-bed RHCF at a total cost of \$30,846,346. The proposed financing plan is as follows: a loan from M&T Bank in the amount of \$23,134,760, with the remaining \$7,711,586 to be paid from the individual members' personal equity.

There is a non-arm's length arrangement between the entity purchasing the real property, Personal Healthcare, LLC, the entity performing the construction and building on the real property, DRNC Realty, LLC, and the proposed operating entity, DRNC Operating,

LLC. There is common ownership among the above mentioned entities as follows:

	Personal Healthcare, LLC	DRNC Realty, LLC	DRNC Operating, LLC
Members:	% Ownership	% Ownership	% Ownership
Ephraim Zagelbaum	50.0%	48.0%	48.0%
Alexander Barth	25.0%	23.0%	23.0%
Yehudah J. Walden	25.0%	23.0%	23.0%
Pincus Zagelbaum	-----	2.0%	2.0%
Yechiel Zagelbaum	-----	2.0%	2.0%
Yoel Zagelbaum	-----	2.0%	2.0%

All of the members of DRNC Operating, LLC have ownership interest in Highland Rehabilitation and Nursing Center, a 98-bed RHCF located in Middletown, which was given final approval under CON #121103 effective February 1, 2013.

Members Ephraim Zagelbaum, Alexander Barth, Pincus Zagelbaum, Yachiel Zagelbaum, and Yoel Zagelbaum have ownership interest in the following 3 RHCFs:

- Tarrytown Hall Care Center , a 120-bed RHCF located in Tarrytown;
- Alpine Rehabilitation and Nursing Center, an 80-bed RHCF located in Little Falls; and

- Norwich Rehabilitation and Nursing Center, an 80-bed RHCF located in Norwich.

Members Ephraim Zagelbaum, Alexander Barth, Yehuda Walden, Yachiel Zagelbaum, and Yoel Zagelbaum also have ownership interest in Utica Rehabilitation & Nursing Center, a 120-bed RHCF located in Utica, which was given final approval under CON #132357 effective November 6, 2014.

DOH Recommendation

Contingent Approval

Need Summary

Countryside Care Center’s utilization was 95.4% in 2009, 93.7% in 2010, and 82.6% in 2011. The county’s overall utilization for 2012 and 2013 was 96.7% and 98.5%, respectively. This proposed application will provide a much needed resource in the community.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants identified as new members. The proposed design will create a modern resident-centered facility

that will help meet the need for long term care beds in the area.

Financial Summary

The total project cost of \$30,846,346 will be met with members’ equity of \$7,711,586 and a bank loan of \$23,134,760 at 5.5% with a 10 year term and 25 year amortization. Each member of DRNC Operating, LLC has submitted an affidavit stating that they will personally contribute resources to fund the balloon payment should acceptable financing not be available at the time the loan comes due after the 10 year term.

Budget :	Revenues:	\$16,166,695
	Expenses:	<u>14,547,030</u>
	Gain:	\$ 1,619,665

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 a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
3. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; 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]
4. 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]

The DOH reserves the right to require continued reporting beyond the two year period.
5. Submission and programmatic review and approval of the final floor plans. [LTC]
6. Submission of a commitment for a permanent mortgage for the project to be provided from a recognized lending institution at a prevailing rate of interest, acceptable to the Department of Health. This is to be provided within 120 days of approval of state hospital code drawings and before the start of construction. Included with the submitted permanent mortgage commitment must be a sources and uses statement and a debt amortization schedule, for both new and refinanced debt. [BFA]
7. Submission of an executed building lease acceptable to the Department of Health. [BFA]
8. Submission of an executed working capital loan commitment acceptable to the Department of Health. [BFA]

9. Submission of an executed assignment of agreement of sale acceptable to the Department of Health. [BFA]
10. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-05, prior to the applicant's request for, and Department's granting approval for the start of construction. [AER]
11. Submission of an amended Articles of Organization of DNRC Operating, LLC, acceptable to the Department. [CSL]
12. Submission of an amended Operating Agreement of DNRC Operating, LLC, acceptable to the Department. [CSL]
13. Submission of an amended Agreement of Lease between DNRC Realty, LLC and DNRC Operating, LLC, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within five years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The applicant shall complete construction by February 1, 2017. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date
February 12, 2015

Need Analysis

Project Description

DRNC Operating, LLC dba Delhi Rehabilitation & Nursing Center seeks approval to become the established operator of a new 176-bed residential health care facility (RHCF) at the site of the former Countryside Care Center, located at 41861 State Route 10, Delhi, 13753, in Delaware County, which closed in 2012.

Analysis

There is currently a need for 309 beds in Delaware County as indicated in Table 1 below. The overall occupancy for Delaware County is 96.7% for 2012 and 98.5% for 2013, as indicated in Table 2.

Table 1: RHCF Need – Delaware County

2016 Projected Need	511
Current Beds	202
Beds Under Construction	0
Total Resources	202
Unmet Need	309

Table 2: Countryside Care Center/Delaware County

Facility/County	% Occupancy 2009	% Occupancy 2010	% Occupancy 2011	% Occupancy 2012	% Occupancy 2013
Countryside Care Ctr	95.4%	93.7%	82.6%	(Closed)	(Closed)
Delaware County	94.0%	92.7%	88.9%	96.7%	98.5%

Countryside Care Center's utilization was 95.4% in 2009, 93.7% in 2010, and 82.6% in 2011. As of December 22, 2014, county occupancy was 94.6%, with 11 vacant beds. Although the county's utilization currently falls below 97%, there is a documented need for additional beds in this county. There are only two RHCFs remaining in Delaware County and none in the neighboring county of Schoharie. Residents of Schoharie County are utilizing the resources within Delaware County. Patients requiring nursing home care end up going to facilities outside of Delaware County, and many times out of state, thereby causing an undue burden for both patient and family. The addition of a replacement facility will not only serve the elderly, but will contribute to the overall well-being of all residents within both Delaware and Schoharie Counties.

Proposed changes to the county if this application is approved:

Facility Name	Current Beds	Proposed Beds	Upon Completion
Countryside Care Center	0	0	0
Delhi Rehabilitation Center	0	+176	176
Mountainside Residential Care Center	82	0	82
Robinson Terrace	120	0	120
Total Beds	202	+176	378
Unmet Need	309	(176)	133

This application will result in new beds and services.

Since the closure of Countryside Care Center, two nursing homes remain in the county, with a combined total of 11 beds currently available. With such limited beds available for new patients, wait lists have been established and, according to one hospital provider, patients needing nursing home care are put in facilities that may be far from home (over 180 miles away), as well as placed out of state. This places an extreme hardship on the patient's families, especially in the winter months when the roads can become too dangerous to traverse.

Letters and a memorandum of support were filed with this application noting a strong desire for additional nursing home beds within this county. Delaware Valley Hospital, the Critical Access Hospital in the county, said that of all the hospital discharges needing nursing home care, 80% would have chosen Countryside Care Center as their first choice had it remained open. This proposed project will be able to keep county residents closer to their communities and families.

The closure of Countryside Care Center had a negative impact on the county as the facility was one of its largest employers. The facility also provided placement for nursing students from SUNY Delhi's School of Nursing Program. The proposed new facility is prepared to discuss the reinstatement of this program.

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.

Prior to its closure, Countryside Care Center's Medicaid admissions for 2010 and 2011 45.6% and 59.6%, respectively. This facility exceeded Delaware County 75% rates in 2010 and 2011 of 31.1% and 29.6%, respectively.

Conclusion

Approval of this application will result in the provision of a much-needed resource for the residents in Delaware County and contiguous counties.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	N/A	Delhi Rehabilitation and Nursing Center
Address	(site of former Countryside Care Center)	41861 State Highway 10 Delhi, NY 13753
RHCF Capacity	N/A	176
ADHC Program Capacity	N/A	None
Type of Operator	N/A	Limited Liability Company
Class of Operator	N/A	Proprietary
Operator	N/A	DRNC Operating, LLC d/b/a Delhi Rehabilitation & Nursing Center Members: Ephraim Zagelbaum 48.0% Alexander Barth 23.0% Yahudah Walden 23.0% Yeziel Zagelbaum 2.0% Yoel Zagelbaum 2.0% Pinchus Zagelbaum 2.0%

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Tarrytown Hall Care Center	04/2008 to present
Alpine Rehabilitation and Nursing Center	07/2009 to present
Norwich Rehabilitation and Nursing Center	01/2011 to present
Highland Rehabilitation and Nursing Center	02/2013 to present

Massachusetts Nursing Homes

Cambridge Rehabilitation and Nursing Center	09/2010 to present
Medford Rehabilitation and Nursing Center	04/2012 to present
Rehabilitation and Nursing Center at Everett	01/2013 to present

Individual Background Review

Ephraim Zagelbaum is a licensed New York State Nursing Home Administrator with license in good standing. Mr. Zagelbaum currently is the President/Chief Executive Officer at Personal Healthcare Management LLC which is located in Tarrytown, NY. He was previously employed as Administrator at Windsor Park Nursing from 2004 to 2012. Mr. Zagelbaum discloses the following health facility ownership interests:

Alpine Rehabilitation and Nursing Center	07/2009 to present
Cambridge Rehabilitation and Nursing Center (MA)	09/2010 to present
Norwich Rehabilitation and Nursing Center	01/2011 to present
Tarrytown Hall Care Center	04/2008 to present
Medford Rehabilitation and Nursing Center (MA)	04/2012 to present
Rehabilitation and Nursing Center at Everett (MA)	01/2013 to present
Highland Rehabilitation and Nursing Center	02/2013 to present

Alexander Barth is a licensed New York State Nursing Home Administrator with license in good standing. Mr. Barth also holds a current EMT license. Mr. Barth is a Managing Partner at Personal Healthcare Management LLC since January 2013. Previous to this he was employed as Administrator at Tarrytown Hall Care Center from 2007 to 2012. Mr. Barth discloses the following health facility ownership interests:

Alpine Rehabilitation and Nursing Center	07/2009 to present
Cambridge Rehabilitation and Nursing Center (MA)	09/2010 to present
Norwich Rehabilitation and Nursing Center	01/2011 to present
Tarrytown Hall Care Center	01/2010 to present Medford
Rehabilitation & Nursing Center (MA)	04/2012 to present
Rehab & Nursing Center at Everett (MA)	01/2013 to present
Highland Rehabilitation & Nursing Center	02/2013 to present

Yehudah Walden is a managing member at Personal Healthcare since 2010. Mr. Walden discloses the following health facility ownership interests:

Cambridge Rehabilitation and Nursing Center (MA)	09/2010 to present
Medford Rehabilitation & Nursing Center (MA)	04/2012 to present
Rehab & Nursing Center at Everett (MA)	01/2013 to present
Highland Rehabilitation & Nursing Center	02/2013 to present

Yecheil Zagelbaum has been a pediatrician in private practice in Brooklyn, NY since 2002. Dr. Zagelbaum is a New York State Physician with license in good standing; and current certification in general pediatrics. Mr. Zagelbaum discloses the following health facility ownership interests:

Alpine Rehabilitation and Nursing Center	07/2009 to present
Cambridge Rehabilitation and Nursing Center (MA)	09/2010 to present
Norwich Rehabilitation and Nursing Center	01/2011 to present
Tarrytown Hall Care Center	04/2008 to present
Medford Rehabilitation & Nursing Center (MA)	04/2012 to present
Rehab & Nursing Center at Everett (MA)	01/2013 to present
Highland Rehabilitation & Nursing Center	02/2013 to present

Yoel Zagelbaum is an attorney in good standing who serves as the President of Riverside Abstract, LLC, a title insurance company, located in Brooklyn, NY. Mr. Zagelbaum is a U.S. patent attorney in good standing. Mr. Zagelbaum discloses the following health facility ownership interests:

Alpine Rehabilitation and Nursing Center	07/2009 to present
Cambridge Rehabilitation and Nursing Center (MA)	09/2010 to present
Norwich Rehabilitation and Nursing Center	01/2011 to present
Tarrytown Hall Care Center	04/2008 to present
Medford Rehabilitation & Nursing Center (MA)	04/2012 to present
Rehab & Nursing Center at Everett (MA)	01/2013 to present
Highland Rehabilitation & Nursing Center	02/2013 to present

Pincus Zagelbaum is currently employed as Chief Financial Officer at Personal Healthcare Management LLC since 2012. Previously Mr. Zagelbaum served as the Vice-President/CEO of St. Mary's Healthcare System for Children, a specialty nursing home located in Bayside, Queens. Mr. Zagelbaum discloses the following health facility ownership interests:

Alpine Rehabilitation and Nursing Center	7/29/2009 to present
Cambridge Rehabilitation and Nursing Center (MA)	9/23/2010 to present
Norwich Rehabilitation and Nursing Center	1/1/2011 to present
Tarrytown Hall Care Center	4/1/2008 to present
Medford Rehabilitation & Nursing Center (MA)	04/2012 to present
Highland Rehabilitation & Nursing Center	02/2013 to present

Character and Competence - Analysis

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

A review of operations for Alpine Rehabilitation and Nursing Center, Norwich Rehabilitation and Nursing Center, Tarrytown Hall Care Center and Highland Rehab & Nursing Center results in a conclusion of substantially consistent high level of care since there were no enforcements. A review of the affidavits submitted by the applicant for Cambridge Rehabilitation and Nursing Center (MA), Rehab & Nursing Center at Everett (MA), and Medford Rehabilitation & Nursing Center (MA) for the periods identified above results in a conclusion of substantially consistent high level of care since there were no enforcements disclosed.

Project Review

Program Review

DRNC Operating, LLC d/b/a Delhi Rehabilitation and Nursing Center (Delhi), a proposed limited liability company, requests approval to establish and construct a 176-bed nursing home. The new facility will be located on the site of Countryside Care Center, a 160-bed nursing home that closed in October, 2010. The proposal will involve the demolition of the 1972 building applicant and the recycling of the existing 1963 building to be converted to a 56 bed short-term rehabilitation unit. A new 120 bed wing will be constructed and attached to the remaining building, with a new entryway joining the two buildings.

Physical Environment

The proposed Delhi nursing facility will be located on a large site totaling 66.2 acres, directly off Route 10. The remaining 1963 building totals 46,389 square feet, and the new addition will encompass 79,992 square feet. The new building will more than double the residential space contained in the to-be-demolished 1972 addition. The 1963 building consists of a one story structure with two linear nursing units in the general shape of a "4", surrounding a central courtyard. Service and activity space is located on the north side of the courtyard. The new addition will be located on the west end of the existing building, and will consist of a two story structure with two nursing units framing a pentagonal shaped interior courtyard. A new entrance with drop-off and covered patio will be constructed in a connector between the new and old buildings. The central connector will also include a new enlarged therapy suite serving the entire nursing home.

The new building will be constructed with two mirror image floors divided into three neighborhoods of 14, 20 and 28 beds respectively. Each floor will feature 30 single- bedded and 15 double- bedded rooms, for a total of 60 beds. The doubles will be designed as enhanced doubles with a partition separating the beds on opposite walls. Two dining rooms with country kitchens will be located adjacent to the interior courtyard, opening onto the entrance area on the first level. Each neighborhood will offer ample activity space, or parlors, generally situated in the center of the neighborhood allowing light to stream through windows located on the outside wall. Additional parlors are located next to the dining room, and on the opposite side of the courtyard in the corridor connecting the two residential clusters. Each neighborhood will include a central bathing area, two of which will include tub and shower.

In order to avoid an unfavorable comparison with the contemporary building, the single story 1963 building will be renovated to serve residents requiring short term rehabilitation. All of the existing resident rooms will be converted to single occupancy bedrooms, with each room fully ADA compliant. The unit will be re-designed to form 21 and 25 bed neighborhoods. The unit will be comprised of 14 enhanced doubles, 32 single bedrooms sharing a common toilet room, 6 conventional singles, 1 single with tub, and 3 singles with shower. Most of the rooms will face the existing or new entrance areas, with some new rooms created with view of the interior courtyard. The lounge area at the south finger will remain and new parlors/activity areas will be created in the corner of the eastern finger and adjacent to the interior courtyard.

The nursing unit will retain the existing dining room, appropriately sized for the number of residents, with a new area created for family dining. The private dining room will also open into the existing entry parlor, which will provide exclusive access into the short term rehabilitation unit. A multi-use auditorium lies opposite the dining room, providing large activity space for the entire nursing home.

Industrial and service functions are located on the north side of the 1963 building, including the boilers, laundry and kitchen. This space will undergo minor renovation, re-allocating space to create efficiencies. The staff dining room and medical office and records room will be relocated within this area. A new personal care area will be created adjacent to the central therapy suite, sized to serve the entire nursing home.

Conclusion

No negative information has been received concerning the character and competence of the proposed operators. The design reflects a sensitivity to residents’ needs, and successfully integrates an outdated nursing home building with a contemporary residential structure, culminating in a unified residential health care facility.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Agreement of Sale

Personal Healthcare, LLC entered into an Agreement of Sale with Leatherstocking Realty on May 2, 2014, for the acquisition of the property as shown below. A MAI appraisal was submitted by the applicant substantiating the purchase price.

Date:	May 2, 2014
Seller:	Leatherstocking Realty, of 321 N. Bellinger Street, Herkimer NY 13350
Buyer:	Personal Healthcare LLC, of 20 Wood Court, Tarrytown NY 10591
Purchased:	Parcel of real property and improvements constructed thereon known as 41861 State Highway 10, Delhi, NY
Purchase Price:	\$2,780,000
Payment of Purchase Price:	\$25,000 paid by Buyer prior to the execution of this agreement. \$2,755,000 put in escrow account until legal closing.

Assignment of Agreement of Sale

Personal Healthcare, LLC entered into an Assignment of Agreement of Sale with DRNC Realty, LLC on September 26, 2014, for assignment of the property as follows:

Date:	September 16, 2014
Assignor:	Personal Healthcare, LLC
Assignee:	DRNC Realty, LLC
Assignment:	The Agreement of Sale for property known as 41861 State Highway 10, Delhi, New York 13753
Price:	For \$10 dollars and other valuable consideration received in hand

Lease Agreement

DRNC Realty, LLC will construct the 176-bed RHCF in accordance with plans approved by the tenant and will lease the facility to the tenant, DRNC Operating, LLC. The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and the operating entity. Facility occupancy is subject to a lease agreement, the terms of which are summarized as follows:

Premises:	A 176-bed RHCF located at 41861 State Highway 10, Delhi, NY
Landlord:	DRNC Realty, LLC
Tenant:	DRNC Operating, LLC
Terms:	10 years commencing on the execution of the lease with an additional 20 year renewal, year to year.
Rental:	Annual rent is \$1,774,812 equal to the debt service on the initial permanent financing, insurance and real estate taxes.
Provisions:	Triple Net Lease. Tenant is responsible for taxes, general liability insurance, utilities and maintenance.

Total Project Cost and Financing

Total project cost for land acquisition, new construction and movable equipment is estimated at \$30,846,346, broken down as follows:

Land acquisition	\$2,780,000
New Construction	15,406,348
Renovation and Demolition	4,168,293
Site Development	968,159
Asbestos Abatement or Removal	46,800
Design Contingency	1,090,080
Construction Contingency	1,090,080
Architect/Engineering Fees	1,138,644
Other Fees	192,400
Movable Equipment	1,751,256
Financing Costs	347,021
Interim Interest	1,696,549
CON Application Fee	2,000
CON Additional Processing Fees	168,716
Total Project Cost	\$30,846,346

DRNC Realty, LLC will fund the total cost of \$30,846,346 for the land purchase, demolition of existing buildings, and construction of a new 176-bed RHCF. The financing plan for the project is as follows:

Members' Equity	\$ 7,711,586
Mortgage (5.5%, 10 year term, with a 25 year amortization)	23,134,760

Total project cost is based on a start date of December 1, 2015, with a 14 month construction period. The Bureau of Architectural and Engineering Facility Planning has determined that the reimbursable cost per bed of \$174,293 (excluding CON fees) is acceptable.

Operating Budget

The applicant has provided an operating budget, in 2015 dollars, for the first and third years subsequent to project completion, summarized as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Medicaid	\$8,578,849	\$8,742,881
Medicare	3,890,535	3,972,441
Private/Other	<u>3,380,892</u>	<u>3,451,373</u>
Total Revenues	\$15,850,276	\$16,166,695
Expenses:		
Operating	\$12,352,177	\$12,483,914
Interest	60,613	38,125
Depreciation and Rent	<u>2,024,991</u>	<u>2,024,991</u>
Total Expenses	\$14,437,781	\$14,547,030
Net Income	\$1,412,495	\$1,619,665
Total Patient Days	61,028	62,313
Occupancy %	95.0%	97.0%

Review of the budget reveals the following:

- Medicare and private pay revenues reflect historical payment rates of the members affiliated RHCs.
- The facility's Medicaid rate is based on Medicaid Regional Pricing methodology per Part 86-2 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York.
- Overall utilization is based on 2009 from the former Countryside Care Center RHC.
- Overall Occupancy is projected at 95.0% and 97.0% for the first and third years, respectively.
- Utilization by payer source for years one and three, based on historical experience, is expected as follows:

Medicaid	70.0%
Medicare	15.0%
Private	10.0%
All Other	5.0%
- Breakeven utilization is projected at 86.5% and 87.3% for year one and year three, respectively.

Capability and Feasibility

The total project cost of \$30,846,836 will be met with members' equity of \$7,711,586 and a bank loan of \$23,134,760 at terms stated previously. A letter of interest has been provided for mortgage financing from M&T Bank. BFA Attachment B is a summary of the net worth of the members of DRNC Operating, LLC, which indicates the availability of sufficient funds for project cost. It is noted that the members of DRNC Operating, LLC have different equity contributions than their ownership percentages as follows:

<u>Members</u>	<u>% Ownership</u>	<u>% Equity Contribution</u>
Ephraim Zagelbaum	48.0%	20.0%
Alexander Barth	23.0%	5.0%
Yehudah J. Walden	23.0%	5.0%
Pincus Zagelbaum	2.0%	0.0%
Yechiel Zagelbaum	2.0%	50.0%
Yoel Zagelbaum	2.0%	20.0%

Each member of DRNC Operating, LLC has submitted an affidavit stating that they will personally contribute resources to fund the balloon payment should acceptable financing not be available at the time the loan comes due after the 10 year term.

Working capital requirements are estimated at \$2,424,505 based on two months of the third year budgeted expenses and will be met with a bank loan of \$1,212,252 at 5% over 5 years with the remaining \$1,212,253 from members' equity. A letter of interest has been submitted from M&T Bank for the working capital. Affidavits from Yoel Zaglebaum and Yechiel Zaglebaum have been submitted to the Department of Health which state that they are willing to contribute resources disproportionate to their ownership percentages for working capital requirements. BFA Attachment B is a summary of the net worth of the members of DRNC Operating, LLC, which indicates the availability of sufficient funds for working capital. BFA Attachment C, the pro-forma balance sheet of DRNC Operating, LLC d/b/a Delhi Rehabilitation & Nursing Care as the first day of operation, indicates positive members' equity of \$1,212,253.

The submitted budget indicates a net profit of \$1,412,495 and \$1,619,665 for Years 1 and 3, respectively. Annual rental expense is sufficient to cover the landlord's financing requirements. The budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Effective February 1, 2015, all eligible beneficiaries in NYC age 21 and over, in need of long term placement in a nursing facility, will be required to join a Medicaid Managed Care Plan (MMCP) or a Managed Long Term Care Plan (MLTCP). On April 1, 2015, the counties of Nassau, Suffolk, and Westchester will be phased in, and the rest of the State is scheduled to transition beginning July 1, 2015, for both dual and non-dual eligible populations. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with the NH providers. In order to mitigate the financial impact to NH providers during the transition to managed care, a department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided further guidance requiring MCOs to pay the benchmark Medicaid 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 January 31, 2018 (NYC), March 31, 2018 (Nassau, Suffolk and Westchester), and June 30, 2018 (upstate), respectively.

BFA Attachment D is a 2011 through 2013 financial summary of the operations for the members affiliated RHCs, which shows the following:

- Alpine Rehabilitation & Nursing Center had an average negative working capital position and an average positive net asset position from 2011 through 2013. The reason for the negative working capital position is due to Medicaid rate adjustment liabilities. Also, the entity achieved an average operating net income of \$86,002 for the period.
- Norwich Rehabilitation & Nursing Center had an average negative working capital position and an average negative net asset position from 2011 through 2013. Also, the entity achieved an average net operating loss of \$32,300 for the period. The facility was newly acquired effective January 1, 2011, and the current owners are attempting to turn the operation around from the previous owners.
- Tarrytown Hall Care Center had an average negative working capital position and an average positive net asset position from 2011 through 2013. Also, the entity achieved an average net operating loss of \$70,092 for the period. The negative working capital was largely due to the facility categorizing a \$2.8 million Medicaid base year rate adjustment in 2011 as an expense rather than as revenue.
- Highland Rehabilitation & Nursing Center, which was acquired on February 1, 2013, ended the year 2013 with a negative working capital position, a negative net asset position, and a net operating loss \$89,978. The facility was still in transition from the previous owners.

BFA Attachment E is a 2011 through 10/1/2014 financial summary of the combined operations of each nursing facility and its related realty company for the members affiliated RHCs, which shows the following:

- Alpine Rehabilitation & Nursing Center and Tarrytown Hall Center had an average negative working capital position and an average positive net asset position from 2011 through 2013. Also, the entities achieved an average operating net income of \$532,380 and 1,718,496 respectively for the period.
- Norwich Rehabilitation & Nursing Center had an average negative working capital position and an average negative net asset position from 2011 through 2013. Also, the entity achieved an average net operating income of \$462,241 for the period.
- Highland Rehabilitation & Nursing Center, which was acquired on February 1, 2013, ended the year 2013 with a negative working capital position, a positive net asset position, and a net operating income of \$967,521.

A review of the 2014 internal financial statements presented as of 10/31/2014 for the combined operations indicates that all of the nursing homes demonstrated a positive net asset and working capital position. In addition, the aggregate net operating income of the combined operations of each nursing facility and its related realty company, for the periods 2011, 2012, and 2013, and year to date 10/31/2014, showed positive operating net income of \$1,533,342, \$2,507,236, \$5,066,193, and \$4,698,302 respectively.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Organizational Chart
BFA Attachment B	Net Worth Statement of the Members of DRNC Operating, LLC
BFA Attachment C	Pro Forma for Delhi Rehabilitation & Nursing Care
BFA Attachment D	Financial Summary-Affiliated Residential Health Care Facilities
BFA Attachment E	Financial Summary-Combined Affiliated Facilities' Operating and related Realty
BNHLC Attachment A	Quality Measures and Inspection Reports



Public Health and Health Planning Council

Project # 142193-E Kindred Healthcare

Program: Certified Home Health Agency
Purpose: Establishment

County: Saratoga
Acknowledged: November 5, 2014

Executive Summary

Description

Kindred Healthcare, Inc. (Kindred) and Kindred Healthcare Operating, Inc. (Kindred Operating) are seeking approval to become the new controlling persons of QC-Medi New York, Inc., a wholly-owned subsidiary of Gentiva Health Services, Inc. (Gentiva). QC-Medi New York, Inc. presently operates five Gentiva Certified Home Health Agencies (CHHA) which are as follows:

<u>Address</u>	<u>Counties Served</u>
200 Elwood Davis Rd., Liverpool	Cayuga, Onondaga, Oswego
865 Merrick Ave., 3 rd floor, Westbury	Nassau
888 Veterans Memorial Hwy, Hauppauge	Suffolk
11849 East Corning Rd., Corning	Chemung, Steuben
100 Saratoga Village Blvd., Ballston Spa	Montgomery, Saratoga

Kindred and Gentiva are nationwide providers of health care services whose stock are publically traded on the New York Stock Exchange and the NASDAQ, respectively.

Kindred is also seeking approval, under separate application, as controlling persons of Quality Care-USA, Inc., Gentiva's other wholly-owned New York subsidiary, which presently operates four Gentiva Licensed Home Care Service Agencies (LHCSA).

On October 9, 2014, Kindred entered into and executed an Agreement and Plan of Merger with Gentiva whereby Kindred Operating will acquire 100% of the shares of Gentiva common stock by the merger into Gentiva, the surviving entity of Kindred Healthcare Development 2, Inc., and a wholly-owned subsidiary of Kindred Operating. Under the terms of the agreement, Gentiva shareholders will receive

\$14.50 per share in cash and \$5.00 of Kindred common stock, which equates to 0.257 shares of Kindred common stock. The total purchase price in cash, stock and assumption of debt will be approximately \$1.8 billion. The portion of the aggregate purchase price allocated to the Gentiva assets in New York is \$38,086,770.

Gentiva, incorporated in Delaware and qualified to do business in New York, is the sole stockholder of Gentiva Health Services Holding Corp., the sole stockholder of QC-Medi New York, Inc. and Quality Care-USA, Inc., both of which are New York corporations. Therefore, the affiliation will create a "change in controlling person" for each of the Article 36 Entities due to their new relationships with Kindred and Kindred Operating. BFA Attachment A is the organizational chart for Kindred and Kindred Operating.

DOH Recommendation

Contingent Approval

Need Summary

This project is a change of ownership and is not expected to have an impact on services provided by the facility or the utilization of those services.

Program Summary

Five (5) Article 36 Certified Home Health Agencies (CHHAs) in New York State are currently operated by QC-Medi New York, Inc. d/b/a Gentiva Health Services, a proprietary business corporation. In addition, four (4) Article 36 Licensed Home Care Services Agencies (LCHSAs) in New York State are currently operated by Quality Care - USA, Inc. d/b/a

Gentiva Health Services, a proprietary business corporation. The parent corporation and 100% stockholder of both QC-Medi New York, Inc. d/b/a Gentiva Health Services and Quality Care - USA, Inc. d/b/a Gentiva Health Services, is Gentiva Health Services Holding Corporation, a proprietary business corporation. The parent corporation and 100% stockholder of Gentiva Health Services Holding Corporation is Gentiva Health Services, Inc., a publicly-traded proprietary business corporation. This proposal seeks approval for Kindred Healthcare Operating, Inc., a proprietary business corporation, to become the new parent corporation and new 100% sole stockholder of Gentiva Health Services, Inc. Since the parent corporation and 100% sole stockholder of Kindred Healthcare Operating, Inc. is Kindred Healthcare, Inc., a publicly-traded proprietary business corporation, this proposal also seeks approval for Kindred Healthcare, Inc., to become the new grandparent corporation and ultimate controlling entity and stockholder of Gentiva Health Services, Inc. This CHHA CON application # 142193-E applies only to the five (5) QC-Medi New York, Inc. d/b/a Gentiva Health Services CHHAs, which are located in Ballston Spa, Liverpool (with branch offices in Auburn and Oswego), Corning, Westbury, and Hauppauge (with a sub-unit in Riverhead). A separate LHCSA application has been submitted for the four (4) Quality Care - USA, Inc. d/b/a Gentiva Health Services LHCSAs, which is also being presented on this agenda as LHCSA application # 2556-L.

The direct corporate operator of the five (5) CHHAs will remain QC-Medi New York, Inc. d/b/a Gentiva Health

Services. The direct corporate operator of the four (4) LHCSAs will remain Quality Care - USA, Inc. d/b/a Gentiva Health Services. The parent corporation of both will remain Gentiva Health Services Holding Corporation, and the grandparent corporation of both will remain Gentiva Health Services, Inc., as previously approved by both the State Hospital Review and Planning Council and the Public Health Council. However, the new incoming great-grandparent corporation and controlling entity will now be Kindred Healthcare Operating, Inc., and the new incoming great-great-grandparent corporation and ultimate controlling entity will now be Kindred Healthcare, Inc. Programmatic Attachment A is the before and after organizational chart.

Financial Summary

There are no project costs associated with this application. The portion of the \$1.8 billion purchase price allocated to the Gentiva assets in New York, comprised of the CHHAs and LHCSA, is \$38,086,770 of which \$37,917,489 is attributable to the CHHAs.

Budget:	Revenues:	\$39,300,747
	Expenses:	<u>30,931,126</u>
	Gain:	\$8,369,621

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 the executed Amended and Restated Certificate of Incorporation of Gentiva Health Services, Inc., acceptable to the Department. [CSL]
2. Submission of the executed Certificate of Merger of Kindred Healthcare Development 2, Inc. with and into Gentiva Health Services, 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

February 12, 2015

Need Analysis

Background

Kindred Healthcare, Inc. a nationwide healthcare services company, is seeking to establish Kindred Healthcare, Inc. and Kindred Healthcare Operating, Inc., its subsidiary, as controlling persons of QC–Medi New York Inc., a New York corporation which operates five Certified Home Health Agencies in the state.

The five CHHAs owned and operated by Gentiva Health Services in New York State are listed in the following table:

FacID	Name	Address	City	Zip	County
3852	Gentiva Health Services	888 Veterans Memorial Hwy	Hauppauge	11788	Suffolk
4718	Gentiva Health Services	865 Merrick Avenue, 3rd Fl	Westbury	11590	Nassau
3972	Gentiva Health Services	200 Elwood Davis Road	Liverpool	13088	Onondaga
5554	Gentiva Health Services	100 Saratoga Village Blvd	Ballston Spa	12020	Saratoga
4945	Gentiva Health Services	11849 East Corning Road	Corning	14830	Steuben

Conclusion

This project will have no effect on the need for or utilization of services in the counties affected. Certified Home Health Agencies play an important role in reducing long-term care residents and reducing hospitalizations. This change in ownership should allow these facilities to continue to operate and gain access to more resources to support their work.

Recommendation

Because this transaction involves no change in services, the Bureau of Public Need Review has no recommendation regarding this proposal.

Program Analysis

Program Description

Five (5) Article 36 Certified Home Health Agencies (CHHAs) in New York State are currently operated by QC-Medi New York, Inc. d/b/a Gentiva Health Services, a proprietary business corporation. In addition, four (4) Article 36 Licensed Home Care Services Agencies (LHCSAs) in New York State are currently operated by Quality Care - USA, Inc. d/b/a Gentiva Health Services, a proprietary business corporation. The parent corporation and 100% stockholder of both QC-Medi New York, Inc. d/b/a Gentiva Health Services and Quality Care - USA, Inc. d/b/a Gentiva Health Services, is Gentiva Health Services Holding Corporation, a proprietary business corporation. The parent corporation and 100% stockholder of Gentiva Health Services Holding Corporation is Gentiva Health Services, Inc., a publicly-traded proprietary business corporation. This proposal seeks approval for Kindred Healthcare Operating, Inc., a proprietary business corporation, to become the new parent corporation and new 100% sole stockholder of Gentiva Health Services, Inc. Since the parent corporation and 100% sole stockholder of Kindred Healthcare Operating, Inc. is Kindred Healthcare, Inc., a publicly-traded proprietary business corporation, this proposal also seeks approval for Kindred Healthcare, Inc., to become the new grandparent corporation and ultimate controlling entity and stockholder of Gentiva Health Services, Inc. This CHHA CON application # 142193-E applies only to the five (5) QC-Medi New York, Inc. d/b/a Gentiva Health Services CHHAs, which are located in Ballston Spa, Liverpool (with branch offices in Auburn and Oswego), Corning, Westbury, and Hauppauge (with a sub-unit in Riverhead). A separate LHCSA application has been submitted for the four (4) Quality Care - USA, Inc. d/b/a Gentiva Health Services LHCSAs, which is also being presented on this agenda as LHCSA application # 2556-L.

The direct corporate operator of the five (5) CHHAs will remain QC-Medi New York, Inc. d/b/a Gentiva Health Services. The direct corporate operator of the four (4) LHCSAs will remain Quality Care - USA, Inc. d/b/a Gentiva Health Services. The parent corporation of both will remain Gentiva Health Services Holding Corporation, and the grandparent corporation of both will remain Gentiva Health Services, Inc., as previously approved by both the State Hospital Review and Planning Council and the Public Health Council. However, the new incoming great-grandparent corporation and controlling entity will now be Kindred Healthcare Operating, Inc., and the new incoming great-great-grandparent corporation and ultimate controlling entity will now be Kindred Healthcare, Inc. Programmatic Attachment A is the before and after organizational chart.

Kindred Healthcare Operating, Inc., a proprietary business corporation, is a wholly owned subsidiary of Kindred Healthcare, Inc. Kindred Healthcare, Inc. owns 100% of the stock of Kindred Healthcare Operating, Inc. Kindred Healthcare, Inc., a publicly-traded proprietary business corporation, is authorized to issue 176,000,000 shares of capital stock, consisting of 175,000,000 shares of common stock and 1,000,000 shares of preferred stock, both with par value of \$0.25 per share. The applicant confirms in writing that no stockholder (either natural person or business entity) owns 10% or more of the stock of Kindred Healthcare, Inc.

Kindred Healthcare, Inc., operates over 360 health care facilities and providers in 38 states. The complete list of affiliated health care facilities and providers, by provider type and by state, has been included in the application and a copy is attached (see Programmatic Attachment B – Kindred Providers / Facilities). All facilities and providers listed are therefore affiliated with each board member, and each officer, named below. Since there are no stockholders owning 10% or more of the publicly traded stock of Kindred Healthcare, Inc., there are no principal stockholders to disclose below.

The governing body of Kindred Healthcare, Inc., consists of the following members of the Board of Directors:

<p>Phyllis Yale, Chairperson Advisory Partner, Bain and Company, Inc. (Management Consulting) Additional Affiliations: National Surgical Healthcare, Inc. (see Programmatic Attachment C - Ms. Yale Affiliations for list of ambulatory surgical center providers); Blue Cross and Blue Shield of Massachusetts (Health Benefits Provider)</p>	<p>Thomas Cooper, MD (AL, AZ, FL, IN, LA, MN, MO, NY, OK, OR, TX, VA, WA, WI), Vice-Chairperson Retired Founder and Vice Chairman, Vericare Management, Inc. (RHCF Management Contractor)</p>
<p>Joel Ackerman Chief Executive Officer, Champions Oncology, Inc. (Oncology Drug Development and Services)</p>	<p>Jonathan Blum Senior Vice President / Chief Public Affairs Officer / Chief Global Nutrition Officer, Yum! Brands, Inc. (Restaurants)</p>
<p>Paul Diaz Chief Executive Officer, Kindred Healthcare, Inc. Additional Affiliations: DaVita Healthcare Partners, Inc. (ESRD providers located both in NYS and out of state - see Programmatic Attachment D – Mr. Diaz Affiliations for list of NYS ESRD Centers operated by Liberty RC, Inc., and Knickerbocker Dialysis, Inc. both of which DaVita Healthcare Partners, Inc., is the 100% sole stockholder)</p>	<p>Heyward Donigan President / Chief Executive Officer, ValueOptions, Inc. (Health Care Benefits Administrator)</p>

Richard Goodman, PhD Retired Executive Vice President – Global Operations / Chief Financial Officer, PepsiCo, Inc.	Christopher Hjelm Senior Vice President / Chief Information Officer, The Kroger Company (Retail Grocery, Department, Convenience, Jewelry, and Pharmacy Stores)
Frederick Kleisner, Gaming Licensure granted in IN, LA, MO, NJ, OH, Ontario, Canada, and Ak-Chin Tribe AZ; pending in AZ, CA, NY, PA, Cherokee Tribe NC, National Indian Gaming Commission DC, and Rincon Tribe CA. Retired Chief Executive Officer, Morgan’s Hotel Group (Luxury Hotels)	John Short, PhD Retired Executive Board Chairman, Vericare Management, Inc. (RHCF Management Contractor) Additional Affiliations: Seton Family of Health Care Facilities / Providers in Texas (see Programmatic Attachment E – Mr. Short Affiliations for list of Seton providers); Wellpoint, Inc. (Health Care Benefits Company) Adjunct Faculty, SUNY College at Oswego

Additional officers of Kindred Healthcare, Inc., who are not members of the Board of Directors listed above, are as follows:

William Altman, Esq. (DC) Executive Vice President – Strategy, Policy, and Integrated Care, Kindred Healthcare, Inc.	Michael Beal, LNHA (ME and NH) President - Nursing Center Division, Kindred Healthcare, Inc.
Benjamin Breier President / Chief Operating Officer, Kindred Healthcare, Inc.	Stephen Farber Executive Vice President / Chief Financial Officer, Kindred Healthcare, Inc.
Stephen Cunanan Chief People Officer, Kindred Healthcare, Inc.	Patricia Henry, Speech Language Pathologist (TX) Executive Vice President / President of RehabCare Division, Kindred Healthcare, Inc.
Joseph Landenwich, Esq. (KY), CPA (KY), Corporate Secretary Co-General Counsel, Kindred Healthcare, Inc.	Steven Monaghan President – Hospital Division, Kindred Healthcare, Inc. Adjunct Faculty, SUNY College at Oswego
Mary Suzanne Riedman, Esq. (CA) General Counsel / Chief Diversity Officer, Kindred Healthcare, Inc.	Jon Rousseau President – Care Management Division, Kindred Healthcare, Inc.

The governing bodies of Kindred Healthcare Operating, Inc., and of Gentiva Health Services, Inc., are identical, and consist of the following members of the Board of Directors:

Douglas Cornutte, CPA (KY) Senior Vice President – Corporate Development, Kindred Healthcare, Inc.	Stephen Cunanan Chief People Officer, Kindred Healthcare, Inc. (Disclosed above)
Joseph Landenwich, Esq. (KY), CPA (KY), Corporate Secretary Co-General Counsel, Kindred Healthcare, Inc. (Disclosed above)	.

Additional officers of both Kindred Healthcare Operating, Inc., and of Gentiva Health Services, Inc., who are not members of the Board of Directors listed above, are also identical as follows:

<p>William Altman, Esq. (DC) Executive Vice President – Strategy, Policy, and Integrated Care, Kindred Healthcare, Inc. (Disclosed above)</p>	<p>Benjamin Breier President / Chief Operating Officer, Kindred Healthcare, Inc. (Disclosed above)</p>
<p>Mary Suzanne Riedman, Esq. (CA) General Counsel / Chief Diversity Officer, Kindred Healthcare, Inc. (Disclosed above)</p>	<p>Jon Rousseau President – Care Management Division, Kindred Healthcare, Inc. (Disclosed above)</p>

A search of all of the above named board members, employers, and affiliations revealed no matches on either the NYS Medicaid Disqualified Provider List or the federal Office of the Inspector General’s Provider Exclusion List.

The Bar Associations of the State of Kentucky, State of California, and the District of Columbia all report that the attorneys listed above are all licensed in good standing with no disciplinary actions taken. In addition, the NYS Education Department’s Office of the Professions, NYSDOH Office of Professional Medical Conduct, NYSDOH Physician Profile, Ohio Casino Control Commission, Maine Nursing Home Administrator Licensing Board, New Hampshire Nursing Home Administrator Licensing Board, Wisconsin Department of Safety and Professional Services, Washington State Department of Health, Kentucky Board of Accountancy, Texas Department of State Health Services, Arizona Medical Board, Indiana Medical Licensing Board, Louisiana Board of Medical Examiners, Minnesota Board of Medical Practice, Missouri Division of Professional Registration, Oklahoma Board of Medical Licensure, Oregon Medical Board, Alabama State Medical Board, and Texas Medical Board all indicate there are no issues with the licensure of the health professionals and other licensed professionals associated with this application.

The Virginia Department of Health Professions Board of Medicine reports that in 2002, Thomas Cooper, MD, failed to respond to a state requirement to file certain information with the Department of Health Professions within the mandated time frame. Dr. Cooper did not update his physician profile as required until January 7, 2005. As such, the Virginia Department of Health Professions Board of Medicine imposed a \$1000 monetary penalty upon Dr. Cooper in February 2005. In addition, the Florida Department of Health Board of Medicine reports that Dr. Cooper violated Florida Statute section 458.331(1)(b), in that his medical license to practice in another jurisdiction (Virginia) was disciplined as described above, and Florida Statute section 458.331(1)(kk), in that he failed to report in writing within 30 days to the Florida Department of Health Board of Medicine that the above described disciplinary action was imposed by the Virginia Department of Health Professions Board of Medicine. As such, the Florida Department of Health Board of Medicine imposed a \$5000 monetary penalty for the statute violations, plus \$1000 for the Board’s administrative costs, upon Dr. Cooper in October 2006.

The applicant has provided the attached list of legal actions taken against Kindred Healthcare, Inc., its predecessor Vencor, Inc., and its affiliate RehabCare Group, Inc., which is now the RehabCare Division of Kindred Healthcare, Inc. (see Programmatic Attachment F – Kindred Legal Actions).

The NYSDOH Division of Hospital Certification and Surveillance reviewed the compliance history of all End Stage Renal Dialysis (ESRD) centers located in New York State that are operated by Liberty RC, Inc., and Knickerbocker Dialysis, Inc., both of which DaVita Healthcare Partners, Inc., is the 100% sole stockholder (see Programmatic Attachment D – Mr. Diaz Affiliations). For the time period 2007 through 2014, these ESRD centers affiliated with DaVita Healthcare Partners, Inc. have all remained in substantial compliance with no history of enforcement action taken.

The NYSDOH Division of Home and Community Based Services reviewed the compliance history of all the affiliated Gentiva Health Services certified home health agencies (CHHAs) and licensed home care service agencies (LHCSAs) located in New York State, for the time period 2007 to 2014.

An enforcement action was taken in 2008 against QC-Medi New York, Inc. d/b/a Gentiva Health Services, a CHHA located in Liverpool, based on December 2006, February 2007, and March 2007 complaint surveys, citing two violations in Policies and Procedures of Service Delivery, two violations in Patient Assessment and Plan of Care, and two violations in Governing Authority. This action was resolved with a \$12,000 civil penalty.

Another enforcement action was taken in 2010 against QC-Medi New York, Inc. d/b/a Gentiva Health Services, a CHHA located in Liverpool, based on an April 2009 survey, citing one violation in Policies and Procedures of Service Delivery, three violations in Patient Assessment and Plan of Care, and two violations in Governing Authority. This action was resolved with a \$13,500 civil penalty.

It has been determined that the certified home health agencies and licensed home care service agencies have exercised sufficient supervisory responsibility to protect the health, safety, and welfare of patients and to prevent the recurrence of code violations. When code violations did occur, it was determined that the operators investigated the circumstances surrounding the violation, and took steps appropriate to the gravity of the violation that a reasonably prudent operator would take to promptly correct and prevent the recurrence of the violation.

To date, the following states have responded to requests for out-of-state compliance status and enforcement history for each of the affiliated out-of-state health care providers listed on the attachments: Alabama, Arkansas, Arizona, Connecticut, Colorado, Florida, Georgia, Kansas, Kentucky, Idaho, Illinois, Indiana, Louisiana, Maine, Michigan, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, and Wyoming. Out-of state enforcement actions that were reported by the states are as follows:

Florida reported that Kindred Hospital South Florida – Fort Lauderdale was fined \$350 based on a May 2010 application late fee; Kindred Hospital South Florida – Coral Gables was fined \$250 based on a May 2008 application late fee; Kindred Hospital - The Palm Beaches was fined \$500 based on a July 2010 application late fee, and \$4000 based on a October 2011 survey; Kindred Hospital Bay Area – St. Petersburg was fined \$1000 based on a November 2010 survey; Kindred Hospital Bay Area – Tampa was fined \$1000 based on a September 2008 survey, \$1000 based on a December 2010 survey, \$1000 based on a January 2011 survey, \$1000 based on a July 2011 survey, \$1000 based on a March 2012 survey, \$6000 based on a June 2012 survey, and \$2000 based on an August 2012 survey; and Kindred Hospital – Central Tampa was fined \$1000 based on a June 2010 survey, \$1000 based on a November 2010 survey, \$1000 based on a January 2011 survey, and \$1000 based on a July 2011 survey.

Georgia reported that Kindred Transitional Care, a nursing home in Fayetteville, was assessed a federal Civil Monetary Penalty (CMP) of \$11,570 based on a September 2012 survey, a federal Civil Monetary Penalty (CMP) of \$24,245 based on a January 2012 survey, and a federal Civil Monetary Penalty (CMP) of \$975 based on a September 2008 survey.

Indiana reported enforcements for the following facilities: Kindred Transitional Care and Rehabilitation – Wildwood had a federal Civil Monetary Penalty (CMP) imposed of \$250 per day from 05/22/2012 – 06/19/2012; Kindred Transitional Care and Rehabilitation – Southwood was fined \$2000 in June 2014; Kindred Transitional Care and Rehabilitation – Sellersburg was fined \$6000 in August 2012; Kindred Transitional Care and Rehabilitation – Rolling Hills was fined \$3000 in October 2014, and had a federal Civil Monetary Penalty (CMP) imposed of \$600 per day from 08/22/2014 – 09/20/2014; Kindred Transitional Care and Rehabilitation – Kokomo had federal Civil Monetary Penalties (CMPs) imposed of

\$3600 per day and \$100 per day from 02/02/2012 – 02/28/2012; Kindred Transitional Care and Rehabilitation – Greenwood had a federal Civil Monetary Penalty (CMP) imposed of \$100 per day from 11/01/2012 – 12/07/2012; Kindred Transitional Care and Rehabilitation – Greenfield was fined \$1500 in December 2011; Kindred Transitional Care and Rehabilitation – Columbus was fined \$3000 in June 2012, had a federal Civil Monetary Penalty (CMP) imposed of \$100 per day from 07/26/2012 – 07/26/2012, and had federal Civil Monetary Penalties (CMPs) imposed of \$5950 per day and \$350 per day from 07/10/2014 – 07/14/2014; Kindred Transitional Care and Rehabilitation – Allison Pointe was fined \$3000 in August 2009, and had federal Civil Monetary Penalties (CMPs) imposed of \$100 per day and \$150 per day from 08/16/2012 – 09/21/2012; and Kindred Nursing and Rehabilitation – Valley View Nursing Home had a federal Civil Monetary Penalty (CMP) imposed of \$100 per day from 09/27/2012 – 10/26/2012.

Nevada reported that Kindred Hospital Las Vegas (Sahara Campus) was fined \$400 based on a June 2010 survey; Kindred Hospital Las Vegas (Flamingo Campus) was fined \$300 based on a December 2012 survey; and Torrey Pines Post-Acute and Rehabilitation Hospital was fined \$1500 based on a January 2014 survey, and \$400 based on a June 2012 survey.

North Carolina reported that Kindred Transitional Care and Rehabilitation – Rose Manor, a nursing home in Durham, was assessed a federal Civil Monetary Penalty (CMP) of \$1950 based on an August 2012 survey, and a federal Civil Monetary Penalty (CMP) of \$29,120 based on a January 2007 survey citing Immediate Jeopardy; and Kindred Transitional Care and Rehabilitation – Elizabeth City, a nursing home in Elizabeth City, was assessed a federal Civil Monetary Penalty (CMP) of \$1885 based on a May, 2008 survey.

Texas reported that Kindred Hospital San Antonio was fined \$22,750 based on a February 2008 survey; Kindred Hospital Town and Country was fined \$6550 based on a January 2013 survey; Kindred Hospital Dallas Central was fined \$9000 based on a May 2011 survey, and \$4400 based on a February 2012 survey; and Kindred Rehabilitation Hospital Northeast Houston was fined \$7150 based on a December 2013 survey.

Utah reported that Kindred Nursing and Rehabilitation, a nursing home in St. George, had an enforcement action resolved in September, 2012. The state did not report the survey date or if any monetary fine was imposed.

Wyoming reported that Kindred Transitional Care and Rehabilitation, a nursing home in Cheyenne, had a federal Denial of Payment for New Admissions (DoPNA) imposed for a two week period based on a June, 2008 survey, which was resolved in 2008. The state did not report if any monetary fine was imposed.

A review of all personal qualifying information indicates there is nothing in the background of the board members and officers of both Kindred Healthcare, Inc., and Kindred Healthcare Operating, Inc., to adversely affect their positions on the boards or as officers. 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

Operating Budget

The applicant has submitted operating budgets for the first and third years, in 2015 dollars, which is summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Medicaid Managed Care	\$1,258,786	\$ 1,322,512
Medicare Managed Care	31,751,500	33,228,739
Commercial Managed Care	1,382,871	1,452,879
Commercial Fee-for-Service	3,093,065	3,249,651
Private Pay	<u>44,702</u>	<u>46,965</u>
Total Operating Revenues	\$37,530,924	\$39,300,747
Total Expenses	<u>29,156,444</u>	<u>30,931,126</u>
Net Gain(Loss)	\$8,374,480	\$8,369,621
Visits	215,568	228,033

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

<u>Payor</u>	<u>Year One and Year Three</u>
Commercial Managed Care	3.6%
Commercial Fee-for-Service	11.4 %
Medicare Managed Care	79.6%
Medicaid Managed Care	3.3%
Private Pay	0.1%
Charity Care	2.0%

Expense and utilization assumptions are based on the existing CHHA Program's historical experience. Revenues are reflective of current payment rates as well as the Medicaid Episodic Payment system. The operating costs include all expenditures incurred and to be incurred for management of the 8 QC-Medi New York, Inc. CHHA locations. Kindred Healthcare, Inc. does not anticipate that either legal or consulting services will be required in the ongoing operation of QC-Medi New York, Inc. Should any such services be necessary, they will be furnished by Kindred, with no allocation to QC-Medi New York of the cost of those services. Outside counsel may be retained in the event additional legal services are needed in the development stage of any new or purchased CHHA in New York. Any such engagement would be by Kindred and legal fees incurred would be a Kindred development expense and not a QC-Medi New York, Inc. operating expense.

Capability and Feasibility

There are no project costs associated with this application. The purchase price allocated to the New York entities is \$38,086,770 of which \$37,917,489 is attributable to the CHHAs which is comprised of \$2,085,462 cash, \$8,076,425 stocks and \$27,755,602 assumption of debt. There is no change in program or utilization, but a change in governance.

Working capital requirements for all five CHHAs will be provided from current operations. Any additional working capital will be provided from Kindred Healthcare Inc. BFA Attachment B is the financial summary of Kindred Healthcare Inc. showing sufficient funds.

On October 9, 2014, Kindred issued a press release stating that with the merger of the two companies it would create a Pro Forma with annual revenues of \$7.1 billion and operating income of \$1 billion, and will create earnings and operating cash flows, exclusive of transaction and integration costs. Kindred expects the acquisition to be approximately \$0.40 to \$0.60 accretive to pro forma earnings, and pro forma operating cash flows of \$350 million to \$400 million (before capital expenditures, dividends and changes in working capital), both on a run rate basis, once Gentiva is fully integrated and expected synergies are fully realized in the second full year following the closing. On this same basis, following the combined company's expected annual maintenance capital expenditures of \$120 million to \$130 million, Kindred expects pro forma cash flows (before growth capital expenditures, dividends and changes in working capital) of \$230 million to \$270 million.

The submitted budget projects a net profit of \$8,374,480 and \$8,369,621 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.

BFA Attachment B is the 2013 certified statements of Kindred Healthcare, Inc. The entity has maintained positive working capital and net assets positions and has experienced a \$36,136,000 net loss from operations. The net operating loss is due to corporate expenses and do not reflect Kindred's ability to maintain operating divisions on a profitable basis going forward.

BFA Attachment C is the 2013 certified statements of Gentiva Health Services, Inc. The entity has maintained positive working capital and net assets positions and has experienced a \$598,507,000 net loss from operations. However, as of June 30, 2014, Gentiva Health Services, Inc. is showing a \$10,497,000 net gain from operations. The 2013 loss was due to one-time asset impairments of more than \$610,000,000 due to corporate expenses rather than direct operating expenses.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

Programmatic Attachment A	Before and After Gentiva Organizational Charts
Programmatic Attachment B	Kindred Providers / Facilities
Programmatic Attachment C	Ms. Yale Affiliations
Programmatic Attachment D	Mr. Diaz Affiliations
Programmatic Attachment E	Mr. Short Affiliations
Programmatic Attachment F	Kindred Legal Actions
BFA Attachment A	Organizational Chart for Kindred and Kindred Operating
BFA Attachment B	Financial Summary of Kindred Healthcare, Inc. - 2013
BFA Attachment C	Financial Summary of Gentiva Health Services, Inc. - 2013 and unaudited June 30, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: 1st Class Care Services, Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 2276-L

Description of Project:

1st Class Care Services, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares, which are owned solely by Monique Merivil.

The Board of Directors of 1st Class Care Services, Inc. comprises the following individual:

Monique Merivil, President/CEO
Registered/Licensed Occupational Therapist
The Curtis Estabrook School, New York City Department of Education

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 proposes to serve the residents of the following counties from an office located at 2016 Ralph Avenue, Brooklyn, New York 11234:

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	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: December 2, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Angels of Mercy Counseling Center, Inc.
Address: West Babylon
County: Suffolk
Structure: Not-For-Profit Corporation
Application Number: 2292-L

Description of Project:

Angels of Mercy Counseling Center, 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 Angels of Mercy Counseling Center, Inc. is comprised of the following individuals:

Michele Butler, HHA – Director
Retired

Steven Butler – Director
Stock Clerk, Amityville USFD

Tanisha Wilson – Program Coordinator
Telemarketing & Sales, Pro-Quality

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A search of the individual named above on the New York State Home Care Registry revealed that the individual is certified as a HHA, and has no convictions or findings.

The applicant proposes to serve the residents of the following counties from an office located at 505 Lakeway Drive, West Babylon, New York:

Nassau Suffolk Queens Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Nutrition	Homemaker
Housekeeper	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Audiology	Medical Social Services

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: January 14, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: A Plus Homecare Agency, Inc.
Address: Woodside
County: Queens
Structure: For-Profit Corporation
Application Number: 2272-L

Description of Project:

A Plus 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 Fei Guo.

The Board of Directors of A Plus Homecare Agency, Inc. is comprised of the following individual:

Fei Guo – President
Marketing Director, Asian Senior Adult Day Care 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 49-03 69th Street, Woodside, New York 11377:

Queens Bronx New York Kings Richmond Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Respiratory Therapy	Occupational Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

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: December 9, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Bright Home Care, Inc.
 Address: New York
 County: New York
 Structure: Proprietary Corporation
 Application Number: 2037L

Description of Project:

Bright Home Care, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Bright Home Care, Inc. has authorized and issued 200 shares of stock to Yong Jun Kim, MD as the sole shareholder.

The Board of Directors is comprised of the following individuals:

Yong Jun Kim, MD, CEO/Chairman Medical Director/Physician, Yong Jun Kim, MD, PC Medical Director/Physician, Penn Prime Care	Yong Suk Kim, Vice Chairman Business Development, GENY
Kyung Uk Kung, Secretary Assistant Manager: International Healthcare Manager, Yong Jun Kim, MD, P.C.	Emily Shim, Treasurer Manager/Biller, Seoul Pain Clinic
Kyoungmee Kim, RN, FNP, Administrative FNP, Penn Prime Clinic ER/ASU, Flushing Hospital Medical Center	Vasati Sankar-Deonarine, RN, Director of Patient Services RN, Prime Staffing RN, Promed Advanced Medical Staffing Company

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 indicates no issues with the licenses of the medical professionals associated with this application.

The applicant 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 concluded that proceeding with the proposal is appropriate

The applicant proposes to serve the residents of the following counties from an office located at 33-37 Farrington Street, Suite #3, Flushing, New York 11354.

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	Medical Social Services
Speech-Language Pathology	Nutrition	Homemaker
Housekeeper		

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date:

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Central Westchester Home Health Services, LLC
Address: Port Chester
County: Westchester
Structure: Limited Liability Company
Application Number: 2266-L

Description of Project:

Central Westchester Home Health Services, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The proposed membership of Central Westchester Home Health Services comprises the following individuals:

Yemisi Akintola-Okunoye, RN – 50%
Chief Executive Manager
Registered Nurse, Montefiore Medical Center

Segun Okunoye – 50%
Assistant Manager
Management Analyst, Westchester County Department of Health

A search of the individuals named above reveal no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of Professions of the State Education Department indicates no issues with the licenses of the healthcare professional associated with this application.

The applicant proposes to serve the residents of the following county from an office located at 15 Nella Lane, Port Chester, New York 10573:

Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: January 6, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Chinatown Home Health Care, Inc.
Address: New York
County: New York
Structure: For-Profit Corporation
Application Number: 2268-L

Description of Project:

Chinatown Home Health Care, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned as follows: Jie Li owns 100 shares and Yue Lam owns 100 shares.

The Board of Directors of Chinatown Home Health Care, Inc. is comprised of the following individuals:

Jie Li, Chief Executive Officer
Administration-Wellcare Health Plan

Yue Lam, Vice President
Administrator-Chinatown Senior Service, Inc.
Coordinator-Home Family 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 90 Ludlow Street, 2nd Floor, New York, New York 10002:

New York Bronx Kings Queens Richmond Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Respiratory Therapy	Occupational Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

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: January 9, 2015

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: December 15, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Comprehensive Elder Care, LLC
Address: Flushing
County: Queens
Structure: Limited Liability Company
Application Number: 2218-L

Description of Project:

Comprehensive Elder 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 Comprehensive Elder Care, LLC is:

Brian Rosenman, MBA – 100%
Real Estate Broker
Asset Manager, Woodman Enterprise, LLC

Affiliations:

Operator, Sutton Gardens Senior Living (2010 – Present)
Receiver, Kelly's Home for Adults (2011 – Present)
Receiver, Birchwood Rest Home (2014 – Present)

A search of the individual 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 Brian Rosenman, holds a Real Estate Broker license in good standing and disciplinary action has never been taken against this individual or his license.

The applicant proposes to serve the residents of the following counties from an office located at 147-02 34th Avenue, Flushing, New York 11354:

Bronx	Kings	Queens
Richmond	New York	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Medical Social Services
Nutrition	Homemaker	Housekeeper

A 7 year review of the operations of the following adult care facilities was performed as part of this review. The Adult Care Facility Policy and Surveillance unit has indicated the following:

Sutton Gardens Senior Living 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 18 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 18 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, 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.

Kelly's Home for Adults was fined one thousand five hundred dollars (\$1,500.00) pursuant to stipulation and order dated October 22, 2014 for surveillance findings of October 10, 2013 and March 4, 2014. Deficiencies were found under 18 NYCRR 487.11(f)(10) Environmental Standards, 487.11(i)(11-12) Environmental Standards and 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: December 9, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Elite Home and Community Care Service, Inc.
Address: New City
County: Rockland
Structure: For-Profit Corporation
Application Number: 2285-L

Description of Project:

Elite Home and Community Care Service, 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 Gharyea Wegee.

The Board of Directors of Elite Home and Community Care Service, Inc. is comprised of the following individuals:

Gharyea Wegee, RN – President/Secretary
Administrator/Supervisor – Elite Home Care Services, Inc.
Registered Nurse – Montefiore Medical Center Long Term Home Health Agency

Steve Karpeh, LPN – Vice-President/Treasurer
Licensed Practical Nurse – Pine Valley Rehab and Nursing Center

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the licenses of the healthcare professionals associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 6 Zabela Drive, New City, New York 10956:

Rockland Putnam Westchester Orange Bronx

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Respiratory Therapy	Occupational Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: January 7, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Ellison Home Care Companion Agency, Inc.
Address: Brentwood
County: Suffolk
Structure: For-Profit Corporation
Application Number: 2254-L

Description of Project:

Ellison Home Care Companion 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, which are owned as follows: Shirley Ellison owns 60 shares. Cedric Ellison owns 40 shares. The remaining 100 shares are unissued.

The Board of Directors of Ellison Home Care Companion Agency, Inc. comprises the following individuals:

Shirley Ellison, President
Executive Director, Ellison Home Care Companion Agency, Inc.

Cedric Ellison, Secretary/Treasurer
Director, MTA Transit

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 West Orange Street, Brentwood, New York 11717:

Nassau Westchester Rockland Queens Suffolk

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: December 18, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Grupp II, Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 2247-L

Description of Project:

Grupp II, 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, which are owned solely by Aleksandr Vaysblat.

The Board of Directors of Grupp II, Inc. comprises the following individuals:

Aleksandr Vaysblat, President
President, Grupp II, Inc.
Director of Operations, Light 101, Inc.

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 1954 78th Street, Brooklyn, New York 11214:

Bronx	New York	Kings
Richmond	Queens	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: November 3, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Guiding Angels Home Care, LLC
Address: Jamaica
County: Queens
Structure: Limited Liability Company
Application Number: 2152-L

Description of Project:

Guiding Angels 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 Guiding Angels Home Care, LLC is:

Yolanda Vitulli, RN, 100%
President, Guiding Angels Home Care, LLC
Founder/CEO, Tender Care Human Services, Inc.

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the healthcare professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 92-21 165th Street, Jamaica, New York 11433:

Bronx	New York	Queens
Kings	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	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 31, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Home at Last Home Care Services, LLC
Address: Brooklyn
County: Kings
Structure: Limited Liability Company
Application Number: 2138-L

Description of Project:

Home at Last Home Care Services, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The sole member of Home at Last Home Care Services, LLC is as follows:

Cynthia V. Simpson, 100%
HHA, Blue Bird Home Care
HHA, All City Care

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 418 Bleecker Street, #3L, Brooklyn, New York 11237:

Kings	Queens	New York
Bronx	Richmond	

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Medical Social Services
Speech Language Pathology	Homemaker	Housekeeper
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: November 4, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Human First Community Health Care, LLC
Address: Lynbrook
County: Nassau
Structure: Limited Liability Company
Application Number: 2175-L

Description of Project:

Human First Community 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.

The sole member of Human First Community Health Care, LLC is Human First, Inc., a not-for-profit corporation.

The Board of Directors of Human First, Inc. comprises the following individuals:

Sharon Jones, RN, President
Sr. Physician Referral Service Nurse, NYU Langone Medical Center

Fadia Zahrieh, Treasurer
Homemaker/Care Provider for an Autistic Child

Audrey Jackman-Wesson, Secretary
Permit Manager, NYC Department of Transportation

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 128 Atlantic Avenue, Lynbrook, New York 11563:

Nassau	Suffolk	Queens
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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 31, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: La'Dorch Homecare, Inc.
Address: Staten Island
County: Richmond
Structure: For-Profit Corporation
Application Number: 2215-L

Description of Project:

La'Dorch Homecare, 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, which are owned solely by Ruslan Braginskiy.

The members of the Board of Directors of La'Dorch Homecare, Inc. comprises the following individual:

Ruslan Braginskiy, HHA, President
Financial Associate, Blackrock, Inc. (2004 – 2012)
Administrator, Sincere Care Agency (2007 – 2010)

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The New York State Home Care Registry indicates no issues with the certification of the Home Health Aide associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 87 Alan Loop, Staten Island, New York 10304:

Bronx	Kings	Queens
Richmond	New York	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
Medical Equipment, Supplies 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: November 25, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Marabi Homecare Agency, Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 2261-L

Description of Project:

Marabi 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, which are owned solely by Marina Rabinovich.

The Board of Directors of Marabi Homecare Agency, Inc. comprises the following individual:

Marina Rabinovich – President
Attorney/President, Law Offices of Marina Rabinovich

Affiliations:

MR Homecare Agency of NY, Inc. (2012 – Present)

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 2698 East 66th Street, Brooklyn, New York 11234:

New York	Kings	Queens
Richmond	Bronx	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, Equipment and Appliances		

The information provided by the Division of Home and Community Based Services has indicated that MR Homecare Agency of NY, Inc. has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

A Certificate of Good Standing has been received for the attorney associated with this application.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: November 28, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Masih Home Care Incorporated
Address: South Richmond Hill
County: Queens
Structure: For-Profit Corporation
Application Number: 2274-L

Description of Project:

Masih Home Care Incorporation, 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 Mana Masih.

The Board of Directors of Masih Home Care Incorporated is comprised of the following individuals:

Mana Masih, RN – President RN, Good Shepherd Hospice	Yasmin Masih - Treasurer Unemployed
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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 Office of the Professions of the State Education Department indicates no issues with the license of the healthcare professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 94-36 114th Street, South Richmond Hill, New York 11419:

Queens	Kings	Richmond	New York	Bronx	Nassau
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The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Nutrition
Speech-Language Pathology	Housekeeper	Medical Social Services
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: November 12, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: MY Care Health Services, Inc.
Address: Fresh Meadows
County: Queens
Structure: For-Profit Corporation
Application Number: 2202-L

Description of Project:

MY Care Health Services, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock, which are owned solely by Vandana Behl-Malhotra.

The members of the Board of Directors of MY Care Health Services, Inc. comprises the following individual:

Vandana Behl-Malhotra, RN
Hospice Nurse, Hospice Care Network
Patient Service Coordinator, Cold Spring Hills Center for Nursing and Rehabilitation

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 proposes to serve the residents of the following counties from an office located at 192-20C 67th Avenue, Apt. 1A, Fresh Meadows, New York 11365:

Queens	Bronx	Kings
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	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 31, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: New Hope Services, Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 2244-L

Description of Project:

New Hope 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, which are owned solely by Natalya Epshteyn.

The Board of Directors of New Hope Services, Inc. comprises the following individual:

Natalya Epshteyn, HHA
President, New Hope Services, Inc.

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The New York State Home Care Registry indicates no issues with the certification of the healthcare professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 175 Ardsley Loop, Apt. 4A, Brooklyn, New York 11239:

Bronx	New York	Kings
Richmond	Queens	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: November 5, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: NMC Homecare Agency of NY, Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 2259-L

Description of Project:

NMC Homecare Agency 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, which are owned solely by Natalya Chornaya.

The Board of Directors of NMC Homecare Agency of NY, Inc. comprises the following individual:

Natalya Chornaya, RN, President
RN, Mount Sinai Beth Israel

Affiliations:

NC Homecare Agency of NY, Inc. (2011 – Present)
Unihelp Homecare, Inc. (2008 – 2009)

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 proposes to serve the residents of the following counties from an office located at 155 Oceana Drive, Apartment 2C, Brooklyn, New York 11235:

New York	Kings	Queens
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	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper
Medical Supplies, Equipment and Appliances		

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: November 19, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Augusta Osinowo
d/b/a Nightingale Care Services
Address: Brooklyn
County: Kings
Structure: Sole Proprietor
Application Number: 2176-L

Description of Project:

Augusta Osinowo, d/b/a Nightingale Care Services, a sole proprietorship, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The sole proprietor of Augusta Osinowo d/b/a Nightingale Care Services is the following individual:

Augusta Osinowo, RN, Sole Owner/Operator
RN Field Supervisor, Best Care, Inc.

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 at 17 Paerdegat 7th Street, Brooklyn, New York 11236:

Bronx	New York	Kings
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	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: December 1, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Passion for Seniors of NY, Inc.
Address: Kew Gardens
County: Queens
Structure: For-Profit Corporation
Application Number: 2157-L

Description of Project:

Passion for Seniors 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 owned as follows: Bipin Nirola owns 100 Shares and Reema Nirola owns 100 Shares.

The Board of Directors of Passion for Seniors of NY, Inc. comprises the following individuals:

Bipin Nirola, President
Owner/President, Passion for Seniors, LLC d/b/a Seniors Helping Seniors (2007 - Present)

Reema Nirola, CNA, Vice President
Nursing Assistant
Owner/Vice President, Passion for Seniors, LLC d/b/a Seniors Helping Seniors (2007 - 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 119-40 Metropolitan Avenue, CU2, Suite 107, Kew Gardens, New York 11415:

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	Audiology	Medical Social Services
Nutrition	Medical Equipment and Supplies	

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: January 7, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Premium Home Services LLC
Address: Rockaway Park
County: Queens
Structure: Limited Liability Company
Application Number: 2299-L

Description of Project:

Premium Home Services LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The proposed membership of Premium Home Services LLC comprises the following individuals:

Manana Zaft, HHA – 50%
Case Manager/Coordinator – Scharome Cares
President – M&T Consulting NY, Inc.

Tamari Chikvaidze – 50%
Marketing Manager/Coordinator-Signature Care
Vice-President – M&T Consulting NY, Inc.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A search of the New York State Home Care Registry revealed that the Home Health Aid (HHA) is certified as a HHA with no convictions or findings.

The applicant proposes to serve the residents of the following counties from an office located at 103-00 Shore Front Parkway #7H, Rockaway Park, New York: 11694:

Queens	Bronx	Richmond
Kings	New York	Nassau

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: January 9, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Scope Healthcare Services, Inc.
Address: Melville
County: Suffolk
Structure: For-Profit Corporation
Application Number: 2279-L

Description of Project:

Scope Healthcare 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, which are owned as follows: Deren Karakaplan owns 160 shares. The remaining 40 shares are unissued.

The Board of Directors of Scope Healthcare Services, Inc. comprises the following individuals:

Deren Karakaplan, President/Chairman
Executive Director, Guiding Pathways, Inc.

Rachel R. Silverberg, RN, Vice President/Secretary
Certified Legal Nurse Consultant
Director of Resident Services, The Bristol at East Northport (2011 – 2012)

Ajaz U. Siddiqui, Treasurer
Senior Accountant/Accounting Officer, Bank Hapoalim (2000 – 2013)

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 Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 68 South Service Road, Suite 100, Melville, New York 11747:

Suffolk Nassau Queens

The applicant proposes to provide the following health care services:

Nursing Personal Care

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: December 4, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: VIPrivate, LLC
Address: Kew Gardens
County: Queens
Structure: Limited Liability Company
Application Number: 2163-L

Description of Project:

VIPrivate, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The members of VIPrivate, LLC are as follows:

Terence Kerrigan – 50%
Owner/Trainer, Terry Kerrigan Performance, LLC

Tiffany C. Italiano, RN, BSN – 50%
Private Duty Nurse, Private Duty, LLC

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The State of New York 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 State of New Jersey Department of Law and Public Safety, Division of Consumer Affairs indicates no issues with the license of the health care professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 119-40 Metropolitan Avenue, Suite 111, Kew Gardens, New York 11415:

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	Audiology	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: November 18, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Alice Hyde Medical Center
Address: Malone
County: Franklin
Structure: Not-For-Profit
Application Number: 2461L

Description of Project:

Alice Hyde Medical Center, 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 application amends and supersedes application number 1755L which was approved by the Public Health and Health Planning Council at July 2009 meeting. This LHCSA will be associated with Alice Hyde Medical Center Assisted Living Program.

The Board of Directors of Alice Hyde Medical Center is comprised of the following individuals:

Daniel E. Clark – Chair
President/Owner, King-Clark Co., Inc.
Co-Owner, Broker, North Country Realty
Co-Owner, Adirondack Quarry
Co-Owner, Rainbow Quarries, Inc.

Brian J. Monette – Vice Chair
Vice President, Adirondack Energy Products, Inc.

Dean F. Johnston, CPA – Treasurer
Chief Operating Officer, Citizen Advocates, Inc.

Craig E. LaVigne – Secretary
Owner/Operator, Craig, Inc. (tax preparation)

Anjni Bhagat, M.D. – Member
Private Practice, Main Street Medical Group
Affiliations:

Rev. William J. Bond – Member
Pastor, Upper New York Conference, Centenary
United Methodist Church

- Member, Alice Hyde Nursing Home

Wayne R. Duso – Member
Management Consultant, Elbow Street Consulting,
Inc.

Jerry E. Griffin – Member
Superintendent, Malone Central School District

Bryan J. Hughes, Esq. – Member
Senior Partner, Bryan J. Hughes, P.C./

Benson J. Kelly, M.D. – Member
Physician, St. Regis Mohawk Health Services

Paul F. Koehler, Registered Pharmacist – Member
Registered Pharmacist, Kinney Drugs, Inc.

Sharon O. Noreault – Member
Retired

The Office of the Professions of the State Education Department, the New York State Physician Profile and the Office of Professional Medical Conduct, where appropriate, indicate no issues with the licensure of the health professionals associated with this application.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant has confirmed that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate.

The applicant proposes to serve the residents of the Franklin County from an office located at 133 Park Street, Malone, New York 12953.

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Occupational Therapy
Audiology	Physical Therapy	Respiratory Therapy	Speech Language Pathology
Housekeeper	Homemaker	Nutrition	Medical Social Services

A 7 year review of the operations of the following facilities was performed as part of this review (unless otherwise noted):

- Alice Hyde Medical Center
- Alice Hyde Nursing Home

The information provided by the Division of Hospitals and Diagnostic & Treatment Centers 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 facilities reviewed have 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: December 31, 2014

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: January 12, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Acare HHC, Inc. d/b/a Four Seasons Home Care
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 2319-L

Description of Project:

Acare HHC, Inc. d/b/a Four Seasons Home Care, 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.

Acare HHC, Inc. was previously approved as a home care services agency by the Public Health Council at its May 2, 2008 meeting and subsequently licensed as 1635L001.

Acare Acquisition, LLC acquired a nine and nine-tenths percent (9.9%) interest in Acare HHC, Inc. effective as of April 1, 2013. The purpose of this proposal is for Acare Acquisition, LLC to acquire the remaining ninety and one-tenth percent (90.1%) interest in Acare HHC, Inc.

Acare Acquisition, LLC proposes to become the sole stockholder of Acare HHC, Inc. d/b/a Four Seasons Home Care and will own all 200 shares of authorized stock.

The Board of Directors of Acare HHC, Inc. d/b/a Four Seasons Home Care is comprised of the following individuals:

Rachel Friedman – Vice President/Director
Unemployed

Caroline L. Rich, NHA – Secretary/Treasurer/Director
Chief Operating Officer, Four Seasons Nursing and
Rehabilitation Center

Affiliations:

- Renaissance Home Health Care

Barry Friedman – President/Director
Chief Executive Officer, Parkshore Health Care LLC d/b/a Four Seasons Nursing & Rehabilitation Center
Chief Executive Officer, Four Seasons Dialysis LLC d/b/a Gateway Dialysis Center
Chief Executive Officer, Parkshore Home Health Care, LLC d/b/a Renaissance Home Health Care

Affiliations:

- Parkshore Health Care LLC d/b/a Four Seasons Nursing & Rehabilitation Center
- Four Seasons Dialysis LLC d/b/a Gateway Dialysis Center
- Parkshore Home Health Care, LLC d/b/a Renaissance Home Health Care

The sole member of Acare Acquisition, LLC is:

Barry Friedman – Member
(Previously Disclosed)

Caroline Rich, NHA License # 04996 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.

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:

- Four Seasons Dialysis LLC d/b/a Gateway Dialysis Center
- Parkshore Health Care LLC d/b/a Four Seasons Nursing and Rehabilitation Center
- Parkshore Home Health Care, LLC d/b/a Renaissance Home Health Care

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 Division of Hospitals and Diagnostic & Treatment Centers 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 facilities reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The applicant proposes to continue to serve the residents of the following counties from an office located at 1222 East 96th Street, Brooklyn, New York 11236:

Bronx	Kings	Nassau	New York
Queens	Richmond		

The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Medical Social Services	Personal Care
Occupational Therapy	Physical Therapy	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: December 23, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Anchor Home Care LLC
Address: Buffalo
County: Erie
Structure: Limited Liability Company
Application Number: #2281-L

Anchor Home Care LLC, a limited liability company, requests approval for a change of ownership of a licensed home care services agency (LHCSA) under Article 36 of the Public Health Law.

Anchor Home Care LLC requests approval for the acquisition of Liken Health Care, Inc. Liken Health Care, Inc. was previously approved as a licensed home care services agency by the Public Health Council at its January 19, 2007 meeting and subsequently licensed as 1473L001.

The sole member of Anchor Home Care LLC comprise of the following individual:

Kenneth Rosenberg – 100%
CEO/Bronx Center for Rehabilitation & Health Care
Administrator/Williamsburg Manor
Assistant Administrator/Bruckner Nursing Home

Affiliations:

Alpine Home Health Care (2008-present)
Amazing Home Care (2006-present)
Boro Park Center for Rehabilitation & Healthcare (2011-present)
Brooklyn Center for Rehabilitation & Residential Health Care(2004-present)
Bushwick Center for Rehabilitation & Health Care (2011-present)
Centers Plan for Healthy Living (2013-present)
Chittenango Center for Rehabilitation & Health Care (2011-present)
Dutchess Center For Rehabilitation & Healthcare (2004-present)
Fulton Center for Rehabilitation and Healthcare (2012-present)
Holliswood Center for Rehabilitation & Healthcare (2010-present)
Queens Center for Rehabilitation & Residential Health Care(2004-present)
Richmond Center for Rehabilitation and Specialty Healthcare (2012-present)
Rome Center for Rehabilitation & Health Care (2011-present)
Stonehedge Health & Rehabilitation Center (2008-2011)
University Nursing Home (2000-present)
Waterfront Center for Rehabilitation & Healthcare (2013-present)
Receiver/Wartburg Lutheran Home for the Aging (2008-2011)
Receiver/Waterfront Health Care Center (2011-2012)

The applicant proposes to serve the residents of the following counties from an office located at 200 Seventh Street, Buffalo, NY:

Allegany	Cattaraugus	Chautauqua
Erie	Genesee	Niagara
Orleans	Wyoming	

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
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A search of the individual 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 Kenneth Rosenberg, a Nursing Home Administrator (NHA) license #04036, is in good standing. The Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or his license.

The Bureau of The New York State Department of Health's Bureau of Professional Credentialing and Bureau of Emergency Medical Services has indicated that Kenneth Rosenberg, NYS Paramedic license #082942, is in good standing. Mr. Rozenberg was assessed a civil penalty of \$350 for being one month late in renewing his nursing home administrator registration for the period January 1 – February 1, 2002.

A 7 year review of the operations of the following agencies was performed as part of this review (unless otherwise noted):

- Alpine Home Health Care (CHHA) (2008-present)
- Amazing Home Care (LHCSA)
- Boro Park Center for Rehabilitation & Healthcare (Nursing Home) (2011-present)
- Bronx Center for Rehabilitation & Health Care (Nursing Home)
- Brooklyn Center for Rehabilitation & Residential Health Care (Nursing Home)
- Bushwick Center for Rehabilitation & Health Care (Nursing Home) (2011-present)
- Centers Plan for Healthy Living (MLTCP) (2013-present)
- Chittenango Center for Rehabilitation & Health Care (Nursing Home) (2011-present)
- Dutchess Center for Rehabilitation & Healthcare(Nursing Home)
- Fulton Center for Rehabilitation and Healthcare (Nursing Home) (2012-present)
- Holliswood Center for Rehabilitation & Healthcare (Nursing Home) (2010-present)
- Queens Center for Rehabilitation & Residential Health Care (Nursing Home)
- Richmond Center for Rehabilitation and Specialty Healthcare (Nursing Home) (2012-present)
- Rome Center for Rehabilitation & Health Care (Nursing Home) (2011-present)
- Stonehedge Health & Rehabilitation Center (Nursing Home) (2008-2011)
- University Nursing Home (Nursing Home)
- Waterfront Center for Rehabilitation & Healthcare (Nursing Home) (2013-present)
- Waterfront Health Care Center (2011-2012)
- Wartburg Lutheran Home for the Aging (2008-2011)

Bronx Center for Rehabilitation & Health Care was fined four thousand dollars (\$4,000.00) pursuant to a stipulation and order dated August 25, 2011 for surveillance findings of April 16, 2010. Deficiencies were found under 10 NYCRR Sections 415.12(h)(2) Quality of Care: Accidents and Supervision; and for 415.26 Administration.

Chittenango Center for Rehabilitation and Health Care 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 10 NYCRR Sections 415.12(c)(1)(2) Quality of Care: Pressure Sores; and for 415.12(d)(1) Quality of Care: Catheters.

Chittenango Center for Rehabilitation and Health Care was also fined for four thousand (\$4,000.00) pursuant to a stipulation and order dated November 15, 2010) pursuant to a stipulation and order dated October 22, 2009. Deficiencies were found under 10 NYCRR Sections 415.12(h)(1,2) Quality of Care: Accidents and Supervision; and for 415.12 (b)(3)(4) Governing Body.

Wartburg Lutheran Home for the Aging was fined two thousand dollars (\$2,000.00) pursuant to a stipulation and order dated April 21, 2009 for surveillance findings of May 8, 2008. Deficiencies were found under 10 NYCRR Sections 415.12(h)(1) & (2) Quality of Care: Accidents.

Fulton Center for Rehabilitation and Healthcare was fined ten thousand dollars (\$10,000.00) pursuant to a stipulation and order dated September 17, 2012 for surveillance findings of July 25, 2011. Deficiencies were found under 10 NYCRR Sections 415.12 (c)(1)(2) Quality of Care: Pressure Sores.

Waterfront Health Care Center was fined two thousand dollars (\$2,000) pursuant to a stipulation and order dated April 24, 2013 for surveillance findings of September 27, 2011. Deficiencies were found under 10 NYCRR Section 415.12(h)(1)(2) Quality of Care Accidents and Supervision.

The Information provided by the Bureau of Quality and Surveillance 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 Bureau of Hospital and Primary Care 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 Bureau of Emergency Medical Services reviewed the compliance history of the affiliated ambulance company for the time period specified as the affiliation. It has been determined that the affiliated ambulance company has operated in substantial compliance with all applicable codes, rules and regulations.

The information provided by the Office of Managed Care has indicated that the Centers Plan for Healthy Living, a Managed Long Term Care Program, is too new to provide sufficient compliance information concerning supervision to prevent harm to the health, safety and welfare of patients 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: January 6, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Crown of Life Care NY, LLC
Address: Brooklyn
County: Kings
Structure: Limited Liability Company
Application Number: 2389-L

Description of Project:

Crown of Life Care NY, LLC, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Crown of Life Care, Inc. was previously approved as a home care services agency by the Public Health Council at its May 16, 2003 meeting and subsequently licensed 1180L001. At that time it was owned as follows: Gussie Halyard – 70 Shares, Edward Blocker – 15 Shares and Bunny Lower – 15 Shares.

The proposed members of Crown of Life Care NY, LLC comprise the following individuals:

Toby Kahan, Owner – 95% Homemaker	Caroline Nonan, RN, Owner – 5% VP of Clinical Operations, Gemini Quality Care, Inc.
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The Office of the Professions of the State Education Department indicate no issues with the licensure of the health professional associated with this application.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to continue to serve the residents of the following counties from an office located at 5308 13th Avenue, Suite 236, Brooklyn, New York 11219.

Bronx	Kings	Nassau	New York
Queens	Richmond		

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Social Services
Occupational Therapy	Respiratory Therapy	Audiology	Speech-Language Pathology
Physical Therapy	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 31, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Elite HHC, LLC
Address: Brooklyn
County: Kings
Structure: Limited Liability Company
Application Number: 2342-L

Description of Project:

Elite HHC LLC, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Elite Home Services, LLC was previously approved as a home care services agency by the Public Health and Health Planning Council at its August 4, 2011 meeting and subsequently licensed 1806L001. At that time it was owned as follows: Diane Schottenstein – sole member.

The sole member of Elite HHC, LLC is:

Gershon Strasser , NHA – Managing Member/President
Director of Operations, Dry Harbor HRF, Inc.

A search of the individual 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 Gershon Strasser NHA license #05524 holds a NHA license in good standing and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or his license.

The applicant proposes to serve the residents of the following counties from an office located at 2050 57th Street, Brooklyn, New York 11204:

Bronx	Kings	New York	Queens
Richmond	Westchester		

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Social Services
Occupational Therapy	Respiratory Therapy	Audiology	Speech-Language Pathology
Physical Therapy	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: December 17, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Prestige LHCSA Management, Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 2401-L

Description of Project:

Prestige LHCSA Management, 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.

AZA Home Health Care, LLC d/b/a Hand in Hand Together Homecare was previously approved as a home care services agency by the Public Health and Health Planning Council at its August 4, 2011 meeting and subsequently licensed 1722L001. At that time it was owned as follows: Amy Monroe – 100% Membership. Through a Purchase Agreement, Amy Monroe will sell the company and will no longer be affiliated with the LHCSA.

The applicant has authorized 200 shares of stock which are owned as follows:

David Modnyy – 100 Shares

Diana Nabitovsky – 100 Shares

The proposed Board of Directors of Prestige LHCSA Management, Inc. comprises the following individuals:

David Modnyy – Chairman/Treasurer
Administrator, Hand in Hand Together Home Care

Diana Nabitovsky – Vice Chairman/Secretary
Assistant Administrator and Human Resources
Director, Hand in Hand Together Home Care

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

AZA Home Health Care, LLC has entered into a management agreement with Prestige LHCSA Management, Inc. which was approved by the Department of Health on November 17, 2014.

The applicant proposes to continue to serve the residents of the following counties from an office located at 672 Britton Avenue, Staten Island, New York 10304.

Bronx Kings New York Queens
Richmond Westchester

The applicant proposes to provide the following health care services:

Nursing Home Health Aide Personal Care Medical Social Services
Occupational Therapy Respiratory Therapy Audiology Speech-Language Pathology
Physical Therapy 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: December 3, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Quality Care – USA, Inc.
d/b/a Gentiva Health Services
Address: Merrick
County: Nassau
Structure: For-Profit Corporation
Application Number: 2556-L

Description of Project:

Quality Care – USA, Inc. d/b/a Gentiva Health Services, a business corporation with a corporate office in Merrick, NY, requests approval for a change in ownership of four (4) licensed home care services agencies under Article 36 of the Public Health Law.

Quality Care – USA, Inc. d/b/a Gentiva Health Services was previously approved as a home care services agency by the Public Health Council at its March 18, 1994 meeting and subsequently licensed as 9511L040, 9511L001, 9511L022 and 9511L027.

A separate CHHA CON application has been submitted as 142193-E for the five (5) QC-Medi New York, Inc., d/b/a Gentiva Health Services CHHAs, which are located in Ballston Spa, Liverpool (with branch offices in Auburn and Oswego), Corning, Westbury, and Hauppauge (with a sub-unit in Riverhead).

The direct corporate operator of the four (4) LHCSAs will remain Quality Care - USA, Inc., d/b/a Gentiva Health Services, the parent corporation will remain Gentiva Health Services Holding Corporation, the grandparent corporation will remain Gentiva Health Services, Inc., as was previously approved by both the Public Health Council. However, the new incoming great-grandparent corporation and controlling entity will now be Kindred Healthcare Operating, Inc., and the new incoming great-great-grandparent corporation and ultimate controlling entity will now be Kindred Healthcare, Inc. **(See Programmatic Attachment A – Before and After Organizational Charts)**

Kindred Healthcare Operating, Inc., a proprietary business corporation, is a wholly owned subsidiary of Kindred Healthcare, Inc. Kindred Healthcare, Inc. owns 100% of the stock of Kindred Healthcare Operating, Inc. Kindred Healthcare, Inc., a publicly-traded proprietary business corporation, is authorized to issue 176,000,000 shares of capital stock, consisting of 175,000,000 shares of common stock and 1,000,000 shares of preferred stock, both with par value of \$0.25 per share. The applicant confirms in writing that no stockholder (either natural person or business entity) owns 10% or more of the stock of Kindred Healthcare, Inc.

Kindred Healthcare, Inc., operates over 360 health care facilities and providers in 38 states. The complete list of affiliated health care facilities and providers, by provider type and by state, has been included in the application and a copy is attached (**see Programmatic Attachment B – Kindred Providers / Facilities**). All facilities and providers listed are therefore affiliated with each board member, and each officer, named below. Since there are no stockholders owning 10% or more of the publicly traded stock of Kindred Healthcare, Inc., there are no principal stockholders to disclose below.

The Board of Directors of Kindred Healthcare, Inc. comprises the following individuals:

<p>Phyllis Yale, Chairperson Advisory Partner, Bain and Company, Inc. (Management Consulting) Additional Affiliations: National Surgical Healthcare, Inc. (see Programmatic Attachment C - Ms. Yale Affiliations for list of ambulatory surgical center providers); Blue Cross and Blue Shield of Massachusetts (Health Benefits Provider)</p>	<p>Thomas Cooper, MD (AL, AZ, FL, IN, LA, MN, MO, NY, OK, OR, TX, VA, WA, WI), Vice-Chairperson Retired Founder and Vice Chairman, Vericare Management, Inc. (RHCF Management Contractor)</p>
<p>Joel Ackerman Chief Executive Officer, Champions Oncology, Inc. (Oncology Drug Development and Services)</p>	<p>Jonathan Blum Senior Vice President / Chief Public Affairs Officer / Chief Global Nutrition Officer, Yum! Brands, Inc. (Restaurants)</p>
<p>Paul Diaz Chief Executive Officer, Kindred Healthcare, Inc. Additional Affiliations: DaVita Healthcare Partners, Inc. (ESRD providers located both in NYS and out of state - see Programmatic Attachment D – Mr. Diaz Affiliations for list of NYS ESRD Centers operated by Liberty RC, Inc., and Knickerbocker Dialysis, Inc. both of which DaVita Healthcare Partners, Inc., is the 100% sole stockholder)</p>	<p>Heyward Donigan President / Chief Executive Officer, ValueOptions, Inc. (Health Care Benefits Administrator)</p>
<p>Richard Goodman, PhD Retired Executive Vice President – Global Operations / Chief Financial Officer, PepsiCo, Inc.</p>	<p>Christopher Hjelm Senior Vice President / Chief Information Officer, The Kroger Company (Retail Grocery, Department, Convenience, Jewelry, and Pharmacy Stores)</p>
<p>Frederick Kleisner, Gaming Licensure granted in IN, LA, MO, NJ, OH, Ontario, Canada, and Ak- Chin Tribe AZ; pending in AZ, CA, NY, PA, Cherokee Tribe NC, National Indian Gaming Commission DC, and Rincon Tribe CA. Retired Chief Executive Officer, Morgan’s Hotel Group (Luxury Hotels)</p>	<p>John Short, PhD Retired Executive Board Chairman, Vericare Management, Inc. (RHCF Management Contractor) Additional Affiliations: Seton Family of Health Care Facilities / Providers in Texas (see Programmatic Attachment E – Mr. Short Affiliations for list of Seton providers); Wellpoint, Inc. (Health Care Benefits Company)</p>

Additional officers of Kindred Healthcare, Inc., who are not members of the Board of Directors listed above, are as follows:

<p>William Altman, Esq. (DC) Executive Vice President – Strategy, Policy, and Integrated Care, Kindred Healthcare, Inc.</p>	<p>Michael Beal, LNHA (ME and NH) President - Nursing Center Division, Kindred Healthcare, Inc.</p>
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Benjamin Breier President / Chief Operating Officer, Kindred Healthcare, Inc.	Stephen Farber Executive Vice President / Chief Financial Officer, Kindred Healthcare, Inc.
Stephen Cunanan Chief People Officer, Kindred Healthcare, Inc.	Patricia Henry, Speech Language Pathologist (TX) Executive Vice President / President of RehabCare Division, Kindred Healthcare, Inc.
Joseph Landenwich, Esq. (KY), CPA (KY), Corporate Secretary Co-General Counsel, Kindred Healthcare, Inc.	Steven Monaghan President – Hospital Division, Kindred Healthcare, Inc.
Mary Suzanne Riedman, Esq. (CA) General Counsel / Chief Diversity Officer, Kindred Healthcare, Inc.	Jon Rousseau President – Care Management Division, Kindred Healthcare, Inc.

The governing bodies of Kindred Healthcare Operating, Inc., and of Gentiva Health Services, Inc., are identical, and consist of the following members of the Board of Directors:

Douglas Cornutte, CPA (KY) Senior Vice President – Corporate Development, Kindred Healthcare, Inc.	Stephen Cunanan Chief People Officer, Kindred Healthcare, Inc. (Disclosed above)
Joseph Landenwich, Esq. (KY), CPA (KY), Corporate Secretary Co-General Counsel, Kindred Healthcare, Inc. (Disclosed above)	.

Additional officers of both Kindred Healthcare Operating, Inc., and of Gentiva Health Services, Inc., who are not members of the Board of Directors listed above, are also identical as follows:

William Altman, Esq. (DC) Executive Vice President – Strategy, Policy, and Integrated Care, Kindred Healthcare, Inc. (Disclosed above)	Benjamin Breier President / Chief Operating Officer, Kindred Healthcare, Inc. (Disclosed above)
Mary Suzanne Riedman, Esq. (CA) General Counsel / Chief Diversity Officer, Kindred Healthcare, Inc. (Disclosed above)	Jon Rousseau President – Care Management Division, Kindred Healthcare, Inc. (Disclosed above)

The applicant proposes to serve the residents of the following counties from offices located at:

425 Grant Avenue, Suite 2, Auburn, New York 13021:

Cayuga	Onondaga		
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Malta Commons Business Park, 100 Saratoga Village Boulevard, Suite 5, Ballston Spa, New York 12020

Albany	Montgomery	Warren	Essex
Rensselaer	Washington	Fulton	Saratoga
Hamilton	Schenectady	Herkimer	Schoharie

200 Elwood Davis Road, Liverpool, New York 13088

Cayuga	Onondaga	Cortland	Oswego
Jefferson	Seneca	Lewis	Madison

19 4th Avenue, Oswego, New York 13126

Cayuga	Jefferson	Lewis	Onondaga
Oswego			

The applicant proposes to provide the following health care services from the indicated office locations:

Auburn, New York

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech-Language Pathology
Medical Social Services	Nutrition	Homemaker

Ballston Spa, New York

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech-Language Pathology
Medical Social Services	Nutrition	Medical Supplies and Equipment

Liverpool, New York

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech-Language Pathology
Medical Social Services	Medical Supplies and Equipment	

Oswego, New York

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech-Language Pathology
Medical Social Services	Nutrition	Medical Supplies and Equipment

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 OIG Exclusion List.

The Bar Associations of the State of Kentucky, State of California, and the District of Columbia all report that the attorneys listed above are all licensed in good standing with no disciplinary actions taken. In addition, the NYS Education Department's Office of the Professions, NYSDOH Office of Professional Medical Conduct, NYSDOH Physician Profile, Ohio Casino Control Commission, Maine Nursing Home Administrator Licensing Board, New Hampshire Nursing Home Administrator Licensing Board, Wisconsin Department of Safety and Professional Services, Washington State Department of Health, Kentucky Board of Accountancy, Texas Department of

State Health Services, Arizona Medical Board, Indiana Medical Licensing Board, Louisiana Board of Medical Examiners, Minnesota Board of Medical Practice, Missouri Division of Professional Registration, Oklahoma Board of Medical Licensure, Oregon Medical Board, Alabama State Medical Board, and Texas Medical Board all indicate there are no issues with the licensure of the health professionals and other licensed professionals associated with this application. The Virginia Department of Health Professions Board of Medicine reports that in 2002, Thomas Cooper, MD, failed to respond to a state requirement to file certain information with the Department of Health Professions within the mandated time frame. Dr. Cooper did not update his physician profile as required until January 7, 2005. As such, the Virginia Department of Health Professions Board of Medicine imposed a \$1000 monetary penalty upon Dr. Cooper in February 2005. In addition, the Florida Department of Health Board of Medicine reports that Dr. Cooper violated Florida Statute section 458.331(1)(b), in that his medical license to practice in another jurisdiction (Virginia) was disciplined as described above, and Florida Statute section 458.331(1)(kk), in that he failed to report in writing within 30 days to the Florida Department of Health Board of Medicine that the above described disciplinary action was imposed by the Virginia Department of Health Professions Board of Medicine. As such, the Florida Department of Health Board of Medicine imposed a \$5000 monetary penalty for the statute violations, plus \$1000 for the Board's administrative costs, upon Dr. Cooper in October 2006.

The applicant has provided the attached list of legal actions taken against Kindred Healthcare, Inc., its predecessor Vencor, Inc., and its affiliate RehabCare Group, Inc., which is now the RehabCare Division of Kindred Healthcare, Inc. **(See Programmatic Attachment F – Kindred Legal Actions)**

The NYSDOH Division of Hospital Certification and Surveillance reviewed the compliance history of all End Stage Renal Dialysis (ESRD) centers located in New York State that are operated by Liberty RC, Inc., and Knickerbocker Dialysis, Inc., both of which DaVita Healthcare Partners, Inc., is the 100% sole stockholder **(see Programmatic Attachment D – Mr. Diaz Affiliations)**. For the time period 2007 through 2014, these ESRD centers affiliated with DaVita Healthcare Partners, Inc., have all remained in substantial compliance with no history of enforcement action taken.

The NYSDOH Division of Home and Community Based Services reviewed the compliance history of all the affiliated Gentiva Health Services certified home health agencies (CHHAs) and licensed home care service agencies (LHCSAs) located in New York State, for the time period 2007 to 2014.

An enforcement action was taken in 2008 against QC-Medi New York, Inc., d/b/a Gentiva Health Services, a CHHA located in Liverpool, based on December 2006, February 2007, and March 2007 complaint surveys, citing two violations in Policies and Procedures of Service Delivery, two violations in Patient Assessment and Plan of Care, and two violations in Governing Authority. This action was resolved with a \$12,000 civil penalty.

Another enforcement action was taken in 2010 against QC-Medi New York, Inc., d/b/a Gentiva Health Services, a CHHA located in Liverpool, based on an April 2009 survey, citing one violation in Policies and Procedures of Service Delivery, three violations in Patient Assessment and Plan of Care, and two violations in Governing Authority. This action was resolved with a \$13,500 civil penalty.

It has been determined that the certified home health agencies and licensed home care service agencies have exercised sufficient supervisory responsibility to protect the health, safety, and welfare of patients and to prevent the recurrence of code violations. When code violations did occur, it was determined that the operators investigated the circumstances surrounding the violation, and took steps appropriate to the gravity of the violation that a reasonably prudent operator would take to promptly correct and prevent the recurrence of the violation.

To date, the following states have responded to requests for out-of-state compliance status and enforcement history for each of the affiliated out-of-state health care providers listed on the attachments: Alabama, Arkansas, Arizona, Connecticut, Colorado, Florida, Georgia, Kansas, Kentucky, Idaho, Illinois, Indiana, Louisiana, Maine, Michigan, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, and Wyoming. Out-of state enforcement actions that were reported by the states are as follows:

Florida reported that Kindred Hospital South Florida – Fort Lauderdale was fined \$350 based on a May 2010 application late fee; Kindred Hospital South Florida – Coral Gables was fined \$250 based on a May 2008 application late fee; Kindred Hospital - The Palm Beaches was fined \$500 based on a July 2010 application late fee, and \$4000 based on a October 2011 survey; Kindred Hospital Bay Area – St. Petersburg was fined \$1000 based on a November 2010 survey; Kindred Hospital Bay Area – Tampa was fined \$1000 based on a September 2008 survey, \$1000 based on a December 2010 survey, \$1000 based on a January 2011 survey, \$1000 based on a July 2011 survey, \$1000 based on a March 2012 survey, \$6000 based on a June 2012 survey, and \$2000 based on an August 2012 survey; and Kindred Hospital – Central Tampa was fined \$1000 based on a June 2010 survey, \$1000 based on a November 2010 survey, \$1000 based on a January 2011 survey, and \$1000 based on a July 2011 survey.

Georgia reported that Kindred Transitional Care, a nursing home in Fayetteville, was assessed a federal Civil Monetary Penalty (CMP) of \$11,570 based on a September 2012 survey, a federal Civil Monetary Penalty (CMP) of \$24,245 based on a January 2012 survey, and a federal Civil Monetary Penalty (CMP) of \$975 based on a September 2008 survey.

Indiana reported enforcements for the following facilities: Kindred Transitional Care and Rehabilitation – Wildwood had a federal Civil Monetary Penalty (CMP) imposed of \$250 per day from 05/22/2012 – 06/19/2012; Kindred Transitional Care and Rehabilitation – Southwood was fined \$2000 in June 2014; Kindred Transitional Care and Rehabilitation – Sellersburg was fined \$6000 in August 2012; Kindred Transitional Care and Rehabilitation – Rolling Hills was fined \$3000 in October 2014, and had a federal Civil Monetary Penalty (CMP) imposed of \$600 per day from 08/22/2014 – 09/20/2014; Kindred Transitional Care and Rehabilitation – Kokomo had federal Civil Monetary Penalties (CMPs) imposed of \$3600 per day and \$100 per day from 02/02/2012 – 02/28/2012; Kindred Transitional Care and Rehabilitation – Greenwood had a federal Civil Monetary Penalty (CMP) imposed of \$100 per day from 11/01/2012 – 12/07/2012; Kindred Transitional Care and Rehabilitation – Greenfield was fined \$1500 in December 2011; Kindred Transitional Care and Rehabilitation – Columbus was fined \$3000 in June 2012, had a federal Civil Monetary Penalty (CMP) imposed of \$100 per day from 07/26/2012 – 07/26/2012, and had federal Civil Monetary Penalties (CMPs) imposed of \$5950 per day and \$350 per day from 07/10/2014 – 07/14/2014; Kindred Transitional Care and Rehabilitation – Allison Pointe was fined \$3000 in August 2009, and had federal Civil Monetary Penalties (CMPs) imposed of \$100 per day and \$150 per day from 08/16/2012 – 09/21/2012; and Kindred Nursing and Rehabilitation – Valley View Nursing Home had a federal Civil Monetary Penalty (CMP) imposed of \$100 per day from 09/27/2012 – 10/26/2012.

Nevada reported that Kindred Hospital Las Vegas (Sahara Campus) was fined \$400 based on a June 2010 survey; Kindred Hospital Las Vegas (Flamingo Campus) was fined \$300 based on a December 2012 survey; and Torrey Pines Post-Acute and Rehabilitation Hospital was fined \$1500 based on a January 2014 survey, and \$400 based on a June 2012 survey.

North Carolina reported that Kindred Transitional Care and Rehabilitation – Rose Manor, a nursing home in Durham, was assessed a federal Civil Monetary Penalty (CMP) of \$1950 based on an August 2012 survey, and a federal Civil Monetary Penalty (CMP) of \$29,120 based on a January 2007 survey citing Immediate Jeopardy; and Kindred Transitional Care and Rehabilitation – Elizabeth City, a nursing home in Elizabeth City, was assessed a federal Civil Monetary Penalty (CMP) of \$1885 based on a May, 2008 survey.

Texas reported that Kindred Hospital San Antonio was fined \$22,750 based on a February 2008 survey; Kindred Hospital Town and Country was fined \$6550 based on a January 2013 survey; Kindred Hospital Dallas Central was fined \$9000 based on a May 2011 survey, and \$4400 based on a February 2012 survey; and Kindred Rehabilitation Hospital Northeast Houston was fined \$7150 based on a December 2013 survey.

Utah reported that Kindred Nursing and Rehabilitation, a nursing home in St. George, had an enforcement action resolved in September, 2012. The state did not report the survey date or if any monetary fine was imposed.

Wyoming reported that Kindred Transitional Care and Rehabilitation, a nursing home in Cheyenne, had a federal Denial of Payment for New Admissions (DoPNA) imposed for a two week period based on a June, 2008 survey, which was resolved in 2008. The state did not report if any monetary fine was imposed.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

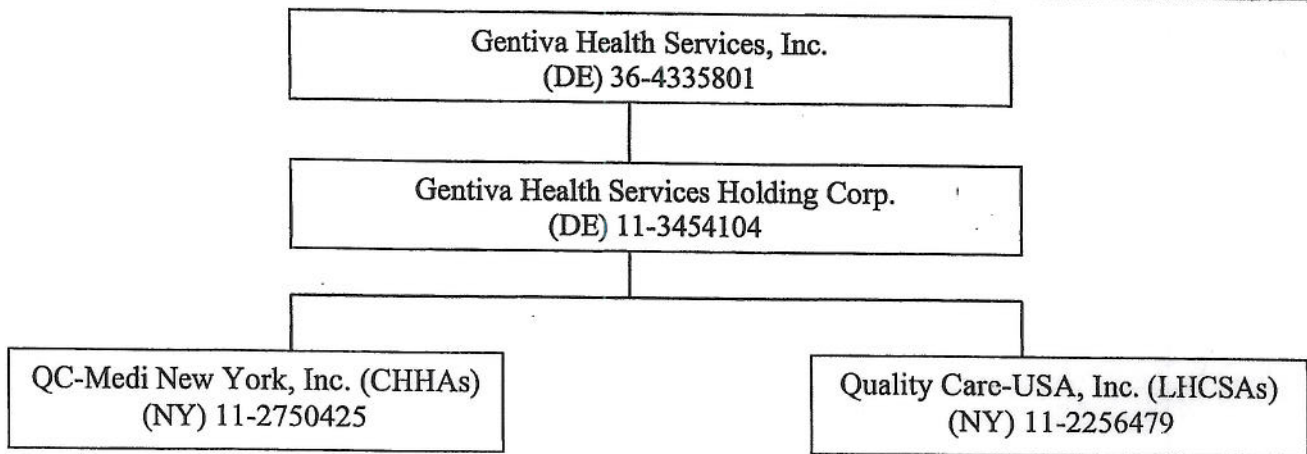
ATTACHMENTS

Programmatic Attachment A	Before and After Gentiva Organizational Charts
Programmatic Attachment B	Kindred Providers / Facilities
Programmatic Attachment C	Ms. Yale Affiliations
Programmatic Attachment D	Mr. Diaz Affiliations
Programmatic Attachment E	Mr. Short Affiliations
Programmatic Attachment F	Kindred Legal Actions

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: January 14, 2015



**KINDRED HEALTHCARE, INC.
KINDRED HEALTHCARE OPERATING, INC.
ORGANIZATIONAL SCHEMATIC
AFTER STOCK TRANSFER**



=Provider Entity

Kindred Healthcare: Long-Term Care Hospitals

State	Facility Name
AZ	Kindred Hospital Arizona - Northwest Phoenix
AZ	Kindred Hospital - Arizona - Phoenix
AZ	Kindred Hospital - Tucson
CA	Kindred Hospital Baldwin Park
CA	Kindred Hospital Riverside
CA	Kindred Hospital South Bay
CA	Kindred Hospital South Bay - Tri-City Campus
CA	Kindred Hospital Rancho
CA	Kindred Hospital - Brea
CA	Kindred Hospital - Ontario
CA	Kindred Hospital - San Francisco Bay Area
CA	Kindred Hospital - La Mirada
CA	Kindred Hospital - San Gabriel Valley
CA	Kindred Hospital - Santa Ana
CA	Kindred Hospital - Westminster
CA	Kindred Hospital - San Diego
CA	Kindred Hospital - Los Angeles
CO	Kindred Hospital - Denver
CO	Kindred Hospital Aurora
FL	Kindred Hospital Ocala
FL	Kindred Hospital The Palm Beaches
FL	Kindred Hospital - South Florida - Coral Gables
FL	Kindred Hospital - Bay Area St. Petersburg
FL	Kindred Hospital - Bay Area - Tampa
FL	Kindred Hospital - South Florida Ft. Lauderdale
FL	Kindred Hospital - North Florida
FL	Kindred Hospital - Central Tampa
FL	Kindred Hospital Melbourne
FL	Kindred Hospital - South Florida - Hollywood
GA	Kindred Hospital - Atlanta
GA	Kindred Hospital Rome

State	Facility Name
IL	Kindred Hospital - Chicago (Northlake Campus)
IL	Kindred Hospital - Chicago (North Campus)
IL	Kindred Hospital - Sycamore
IL	Kindred - Chicago - Central Hospital
IL	Kindred Hospital Peoria
IL	Kindred - Chicago - Lakeshore
IN	Kindred Hospital - Indianapolis
IN	Kindred Hospital - Indianapolis South
IN	Kindred Hospital Northwest Indiana
IN	Kindred Hospital Northern Indiana
KY	Kindred Hospital - Louisville
KY	Kindred Hospital - Louisville at Jewish Hospital
LA	Kindred Hospital - New Orleans
MA	Kindred Hospital - Boston
MA	Kindred Hospital - Boston North Shore
MA	Kindred Hospital Northeast - Natick
MA	Kindred Hospital Northeast - Stoughton
MI	Kindred Hospital Detroit
MO	Kindred Hospital - Kansas City
MO	Kindred Hospital - St. Louis
MO	Kindred Hospital - St. Louis - St. Anthony's
MO	Kindred Hospital Northland
MO	Kindred Hospital - St. Louis at Mercy
NJ	Kindred Hospital New Jersey - Morris County
NJ	Kindred Hospital New Jersey - Rahway
NJ	Kindred Hospital New Jersey - Wayne
NM	Kindred Hospital - Albuquerque
NV	Kindred Hospital - Las Vegas (Sahara Campus)
NV	Kindred Hospital Las Vegas - Flamingo Campus
NV	Kindred Hospital - Las Vegas at St. Rose Dominican Hospitals - Rose de Lima Campus
NC	Kindred Hospital - Greensboro

Kindred Healthcare: Long-Term Care Hospitals

State	Facility Name
OH	Kindred Hospital - Dayton
OH	Kindred Hospital - Cleveland
OH	Kindred Hospital - Cleveland - Gateway
OH	Kindred Hospital Central Ohio
OH	Kindred Hospital Lima
OK	Kindred Hospital - Oklahoma City - South
OK	Kindred Hospital - Oklahoma City
PA	Kindred Hospital Philadelphia - Havertown
PA	Kindred Hospital - Philadelphia
PA	Kindred Hospital - Pittsburgh
PA	Kindred Hospital at Heritage Valley
PA	Kindred Hospital South Philadelphia
TN	Kindred Hospital - Chattanooga
TN	Kindred Hospital - Nashville
TX	Kindred Hospital - Dallas
TX	Kindred Hospital - San Antonio
TX	Kindred Hospital - Tarrant County (Arlington Campus)
TX	Kindred Hospital - Tarrant County (Fort Worth Southwest Campus)

State	Facility Name
TX	Kindred Hospital (Houston NW)
TX	Kindred Hospital (Bay Area)
TX	Kindred Hospital - Mansfield
TX	Kindred Hospital - Fort Worth
TX	Kindred Hospital Houston Medical Center
TX	Kindred Hospital - White Rock
TX	Kindred Hospital Town & Country
TX	Kindred Hospital Sugar Land
TX	Kindred Hospital Dallas Central
TX	Kindred Hospital El Paso
TX	Kindred Hospital Spring
TX	Kindred Hospital Tomball
TX	Kindred Hospital The Heights
TX	Kindred Hospital Baytown
TX	Kindred Hospital Clear Lake
WA	Kindred Hospital Seattle - Northgate
WA	Kindred Hospital Seattle - First Hill

Kindred Healthcare: Rehabilitation Hospitals	
State	Facility Name
MO	St. Luke's Rehabilitation Hospital
TX	Kindred Rehabilitation Hospital Northeast Houston
TX	Kindred Rehabilitation Hospital Arlington
TX	Kindred Rehabilitation Hospital Clear Lake
TX	Central Texas Rehabilitation Hospital

Hospital Based Subacute Units	
State	Facility Name
CA	Kindred Hospital - Brea
KY	Kindred Hospital - Louisville
NC	Kindred Hospital - Greensboro
NV	Kindred Hospital Las Vegas - Flamingo Campus
OH	Kindred Hospital - Cleveland
TX	Kindred Hospital - Dallas
WA	Kindred Seattle - Northgate
WA	Kindred Seattle - First Hill

Kindred Healthcare: Nursing Centers

State	Facility Name
AZ	Kindred Nursing and Rehabilitation-Hacienda
CA	Kindred Transitional Care and Rehabilitation-Village Square
CA	Kindred Transitional Care and Rehabilitation-Tunnell Center
CA	Kindred Nursing and Rehabilitation-Nineteenth Avenue
CA	Kindred Transitional Care and Rehabilitation-Canyonwood
CA	Kindred Nursing and Healthcare - Livermore
CA	Kindred Transitional Care and Rehabilitation-Lawton
CA	Kindred Transitional Care and Rehabilitation - Valley Gardens
CA	Kindred Nursing and Transitional Care - Santa Cruz
CA	Kindred Transitional Care and Rehabilitation - Walnut Creek
CA	Kindred Nursing and Healthcare-Bayberry
CA	Kindred Nursing and Transitional Care-South Marin
CA	Kindred Nursing and Rehabilitation - Medical Hill
CA	Kindred Nursing and Transitional Care - Pacific Coast
CA	Kindred Transitional Care and Rehabilitation-Smith Ranch
CA	Kindred Nursing and Rehabilitation - Ygnacio Valley
CA	Kindred Transitional Care and Rehabilitation-Siena
CA	Kindred Nursing and Rehabilitation-Golden Gate
CA	Kindred Nursing and Healthcare - Victorian
CA	Kindred Transitional Care and Rehabilitation-Foothill
CO	Kindred Nursing and Rehabilitation - Aurora
CT	Kindred Nursing and Rehabilitation-Crossings West
CT	Kindred Transitional Care and Rehabilitation-Windsor
CT	Kindred Nursing and Rehabilitation-Crossings East
CT	Kindred Transitional Care and Rehabilitation-Parkway Pavilion
GA	Kindred Transitional Care and Rehabilitation-Lafayette
ID	Kindred Nursing and Rehabilitation - Caldwell
ID	Kindred Nursing and Rehabilitation - Canyon West

State	Facility Name
ID	Kindred Transitional Care and Rehabilitation-Lewiston
ID	Kindred Nursing and Rehabilitation - Nampa
ID	Kindred Nursing and Rehabilitation - Weiser
ID	Kindred Nursing and Rehabilitation - Aspen Park
ID	Kindred Nursing and Rehabilitation - Mountain Valley
IN	Kindred Transitional Care and Rehabilitation-Bridgewater
IN	Kindred Transitional Care and Rehabilitation-SouthPointe
IN	Kindred Transitional Care and Rehabilitation-Eagle Creek
IN	Kindred Transitional Care and Rehabilitation-Alison Pointe
IN	Kindred Transitional Care and Rehabilitation-Dyer
IN	Kindred Transitional Care and Rehabilitation-Greenwood
IN	Kindred Transitional Care and Rehabilitation-Greenfield
IN	Kindred Transitional Care and Rehabilitation-Sellersburg
IN	Kindred Transitional Care and Rehabilitation-Indian Creek
IN	Kindred Nursing and Rehabilitation-Valley View
IN	Kindred Transitional Care and Rehabilitation-Dyer
IN	Kindred Transitional Care and Rehabilitation-Greenwood
IN	Kindred Transitional Care and Rehabilitation-Greenfield
IN	Kindred Transitional Care and Rehabilitation-Sellersburg
IN	Kindred Transitional Care and Rehabilitation-Sellersburg
IN	Kindred Transitional Care and Rehabilitation-Indian Creek
IN	Kindred Transitional Care and Rehabilitation-Kokomo
IN	Kindred Transitional Care and Rehabilitation-Wildwood
IN	Kindred Transitional Care and Rehabilitation-Southwood
IN	Kindred Transitional Care and Rehabilitation-Columbus
IN	Kindred Transitional Care and Rehabilitation-Wedgewood
IN	Kindred Transitional Care and Rehabilitation-Harrison
IN	Kindred Transitional Care and Rehabilitation-Rolling Hills

Kindred Healthcare: Nursing Centers

State	Facility Name
KY	Heritage Manor Healthcare Center
KY	Kindred Nursing and Rehabilitation-Maple
KY	Kindred Nursing and Rehabilitation-Bashford
MA	Kindred Transitional Care and Rehabilitation-Harrington
MA	Kindred Nursing and Rehabilitation-Hallmark
MA	Kindred Nursing and Rehabilitation-Timberlyn Heights
MA	Kindred Transitional Care and Rehabilitation-Westborough
MA	Kindred Transitional Care and Rehabilitation-Eagle Pond
MA	Kindred Nursing and Rehabilitation-Great Barrington
MA	Kindred Transitional Care and Rehabilitation-Country Estates
MA	Kindred Transitional Care and Rehabilitation-Highgate
MA	Kindred Transitional Care and Rehabilitation-Avery
MA	Kindred Nursing and Rehabilitation-Tower Hill
MA	Kindred Nursing and Rehabilitation-Harborlights
MA	Kindred Nursing and Rehabilitation-Braintree
MA	Kindred Transitional Care and Rehabilitation-Forestview
MA	Kindred Transitional Care and Rehabilitation-Highlander
MA	Kindred Nursing and Rehabilitation-Laurel Lake
MA	Ledgewood Rehabilitation and Skilled Nursing Center
MA	Seacoast Nursing and Rehabilitation Center
MA	Clark House Nursing Center at Fox Hill Village
MT	Kindred Transitional Care and Rehabilitation-Park Place
MT	Kindred Nursing and Rehabilitation - Parkview
NH	Kindred Transitional Care and Rehabilitation-Greenbriar
NC	Kindred Transitional Care and Rehabilitation-Rose Manor
NC	Kindred Nursing and Rehabilitation-Henderson
NC	Kindred Transitional Care and Rehabilitation-Elizabeth City
OH	Kindred Transitional Care and Rehabilitation-Newark

State	Facility Name
OH	Kindred Transitional Care and Rehabilitation-The Greens
OH	Kindred Nursing and Rehabilitation-Community
OH	Kindred Transitional Care and Rehabilitation-Stratford
OH	Kindred Transitional Care and Rehabilitation-LakeMed
TN	Kindred Nursing and Rehabilitation - Loudon
TN	Kindred Transitional Care and Rehabilitation-Maryville
TN	Kindred Nursing and Rehabilitation - Fairpark
TN	Kindred Nursing and Rehabilitation - Smith County
TN	Kindred Nursing and Rehabilitation - Northhaven
TX	Kindred Transitional Care and Rehabilitation-Ridgmar
TX	Kindred Transitional Care and Rehabilitation-Mansfield Plaza
TX	Kindred Transitional Care and Rehabilitation-Grapevine
UT	Kindred Nursing and Rehabilitation - Wasatch Care
UT	Kindred Nursing and Rehabilitation - St. George
VT	Kindred Transitional Care and Rehabilitation-Birchwood Terrace
VT	Starr Farm Nursing Center
VA	Kindred Transitional Care and Rehabilitation-Nansemond Pointe
VA	Kindred Nursing and Rehabilitation-River Pointe
VA	Kindred Transitional Care and Rehabilitation-Bay Pointe
WA	Kindred Nursing and Rehabilitation-Arden
WA	Kindred Transitional Care and Rehabilitation-Lakewood
WA	Kindred Transitional Care and Rehabilitation-Vancouver
WY	Kindred Transitional Care and Rehabilitation - Cheyenne
WY	Kindred Nursing and Rehabilitation - Rawlins
WY	Kindred Nursing and Rehabilitation - Wind River

Assisted Living Facilities: Independently Licensed	
State	Facility Name
ME	Kindred Assisted Living-Village Crossings
ME	Kindred Assisted Living-The Monarch Center of Saco
ME	Kindred Assisted Living-Senior Day Program (Part of The Monarch Center of Saco)
MA	Kindred Assisted Living-Avery Crossings
MA	Kindred Assisted Living - Laurel Lake
MA	Foxhill Village Rehab Center
OH	Kindred Assisted Living-Fountains
OH	Kindred Assisted Living-Stratford Commons
VA	Hillcrest Retirement Center

Hospice	
State	Facility Name
AZ	Granite Mountain Hospice
AZ	Granite Mountain Home Care & Hospice Anthem
AZ	Kindred at Home-Hospice-Glendale
CA	Professional Healthcare at Home
CA	Professional Healthcare at Home
CO	Kindred at Home-Hospice-Denver
IN	Kindred at Home-Hospice-Indianapolis
IN	Bridgepoint Supportive Care
MA	Kindred at Home-Boston
MA	Peoplefirst HomeCare & Hospice
NV	Virgin Valley Hospice
OH	Acclaim Hospice and Palliative Care
TX	IntegraCare Hospice of Abilene, LLC
TX	IntegraCare of West Texas Hospice, LLC
TX	IntegraCare of Athens Hospice, LLC
TX	IntegraCare Hospice
TX	IntegraCare Hospice of Decatur
TX	Kindred at Home-Hospice-South Houston
TX	Kindred at Home-Hospice-West Houston
TX	IntegraCare Home Health and Hospice
UT	BridgePoint Palliative Care
UT	Kindred at Home - Hospice - Murray
UT	BridgePoint Palliative Care
UT	Southern Utah Hospice

Home Care Agencies

State	Facility Name
AZ	Granite Mountain Home Care
AZ	Kindred at Home-Home Health-Glendale
CA	Professional Healthcare at Home
CA	Kindred at Home (San Diego)
CA	Kindred at Home (Garden Grove)
CA	Professional Healthcare at Home
CA	Kindred at Home-Torrance
CA	Community Home Health
CO	Kindred at Home-Home Health-Denver
CO	PeopleFirst Homecare (Ft. Collins)
FL	Senior Home Care (Boynton Beach)
FL	Senior Home Care (Miami Lakes)
FL	Senior Home Care (Port Saint Lucie)
FL	Senior Home Care (Sunrise)
FL	Senior Home Care, Inc. (Clearwater)
FL	Senior Home Care, Inc. (Fort Myers)
FL	Senior Home Care, Inc. (Ocala)
FL	Senior Home Care, Inc. (Jacksonville)
FL	Senior Home Care, Inc. (Maitland)
FL	Bodymax Physical Therapy
FL	Senior Home Care, Inc. (Pensacola)
FL	Senior Home Care, Inc. (Spring Hill)
FL	Senior Home Care, Inc. (Tampa)
IL	Kindred at Home - Chicago Home Health
IN	Kindred at Home-Home Health-Indianapolis
LA	Synergy Home Care-Acadiana Region, Inc.
LA	Synergy Home Care-Capitol Region, Inc.
LA	Synergy Home Care-Central Region, Inc.
LA	Synergy Home Care-Northeastern Region, Inc.
LA	Synergy Home Care-Northshore Region, Inc.
LA	Synergy Home Care-Northwestern Region, Inc.

State	Facility Name
LA	Synergy Home Care-Southeastern Region, Inc.
MA	Kindred at Home-Marlborough
NV	Kindred at Home-Home Health-Las Vegas
OH	Kindred at Home-Home Health-Akron
OH	Kindred at Home-Home Health-Columbus
OH	Kindred at Home-Home Health-Findlay
OH	Western Reserve Senior Care
TX	IntegraCare of Abilene, LLC
TX	IntegraCare of Albany, LLC
TX	IntegraCare of West Texas Home Health, LLC
TX	IntegraCare of Athens Home Health, LLC
TX	IntegraCare of South Central Texas
TX	IntegraCare Home Health Services
TX	IntegraCare Home Health of Big Spring
TX	IntegraCare of Olney
TX	IntegraCare of Texas, LLC
TX	IntegraCare of Cleburne
TX	IntegraCare Home Health of Colorado City
TX	IntegraCare of El Paso
TX	IntegraCare of Granbury, LLC
TX	Kindred at Home-Home Health-South Houston
TX	Kindred at Home-Home Health-West Houston
TX	IntegraCare of Littlefield, LLC
TX	IntegraCare of North West Texas
TX	IntegraCare Home Health and Hospice
TX	IntegraCare of North East Texas
TX	IntegraCare Home Health-Permian Basin
TX	IntegraCare of the Panhandle
TX	IntegraCare of North Texas
TX	IntegraCare of South West Texas
TX	IntegraCare of Seymour

Home Care Agencies

State	Facility Name
TX	IntegraCare of North Central Texas
TX	IntegraCare of Waco-Home Health
TX	IntegraCare of Wichita Falls, LLC

State	Facility Name
UT	Kindred at Home - Home Health - Murray
UT	Southern Utah Home Care
VA	All Heart Home Health and Hospice

Rehab Care Agencies

State	Facility Name
AL	RehabCare Agency AL
AR	Arkansas Agency
CA	RehabCare Agency S CA (Laguana Hills)
CA	RehabCare Agency N CA (Pleasant Hill)
CO	Atria Inn at Lakewood
CO	Balfour Retirement
CO	RehabCare, LLC - Colorado
CO	Springbrooke
FL	RehabCare Agency FL
FL	RehabCare/Barrington Terrace
IL	RehabCare Agency IL
IL	Cedarhurst at Shiloh
IN	Atria Eastlake Terrace
IN	Atria Tangelwood Trace
IN	First Steps KINDRED (special Medicaid program in IN)
IN	Kindred Rehab Service, Inc., d/b/a Bedford Outpatient Therapy Specialists
IN	RehabCare Agency IN
KS	RehabCare Agency KS
LA	The Therapy Group, Inc.
MD	Mercy Ridge Retirement Community (formerly Villa Assumpta/Maria Hlth)
MI	Atria Shorehaven
MI	RehabCare Agency MI

State	Facility Name
MN	RehabCare Agency MN / TCK Coon Rapids (#5514) **PEDS
MO	Autumn View Gardens Ellisville
MO	Crab Apple Village Senior Estates
MO	Little Sisters of the Poor
MO	Mother of Good Counsel
MO	RehabCare Agency MO
NC	Brooks Howell Home
NC	RehabCare Agency NC
NV	Emeritus at Spring Valley (Kindred Nevada LLC dba Torrey Pines Care Center)
NV	Emeritus at Sun Mountain (Kindred Nevada LLC dba Torrey Pines Care Center)
NV	Emeritus of Las Vegas (Kindred Nevada LLC dba Torrey Pines Care Center)
OH	RehabCare Agency OH
OK	RehabCare Agency OK
PA	RehabCare Agency at Davidville Care Center
SC	RehabCare Agency SC
TN	RehabCare Agency TN
TX	Isle at Watermere
TX	RehabCare Agency TX
VA	Peoplefirst Virginia, LLC, d/b/a Peoplefirst Rehabilitation Services (Envoy of Staunton)*
VA	Peoplefirst Virginia, LLC, d/b/a Peoplefirst Rehabilitation Services (Envoy of Winchester)*
WI	RehabCare Agency WI

National Surgical Healthcare, Inc. - Locations	
State	Name
Arizona	Arizona Spine and Joint Hospital
Arizona	Canyon Ambulatory Surgery Center
California	Aspen Surgery Center
California	Brentwood Surgery Center
California	Sequoia Surgical Pavilion
California	Skyway Surgery Center
California	Sutter Surgical Hospital - North Valley
Connecticut	Fairfield Surgery Center
Idaho	Northwest Specialty Hospital
Illinois	NSH Corporate Offices
Louisiana	Lafayette Surgical Specialty Hospital
North Carolina	North Carolina Specialty Hospital
North Carolina	Triangle Orthopaedics Surgery Center
Michigan	Lakes Surgery Center
Michigan	Michigan Surgical Hospital
Texas	El Paso Specialty Hospital
Texas	South Texas Spine & Surgical Hospital
Texas	South Texas Surgical Hospital
Texas	The Physicians Centre Hospital
Utah	Cache Valley Specialty Hospital
Wisconsin	OakLeaf Surgical Hospital
Wyoming	Mountain View Regional Hospitals

DaVita Healthcare Partners, Inc. New York State Affiliates

Operator: Liberty RC, Inc.

Type	Name	City
Diagnostic and Treatment Center	Cleve Hill Dialysis Center	Buffalo
Diagnostic and Treatment Center Extension Clinic	Bedford Park Dialysis Center	Bronx
Diagnostic and Treatment Center Extension Clinic	Celia Dill Dialysis Center	Carmel
Diagnostic and Treatment Center Extension Clinic	Dyker Heights Dialysis Center	Brooklyn
Diagnostic and Treatment Center Extension Clinic	Eastchester Road Dialysis Center	Bronx
Diagnostic and Treatment Center Extension Clinic	Hudson Vally Dialysis Center	Tarrytown
Diagnostic and Treatment Center Extension Clinic	Lowville Dialysis Center	Lowville
Diagnostic and Treatment Center Extension Clinic	Niagara Falls Kidney Care Center	Niagara Falls
Diagnostic and Treatment Center Extension Clinic	Port Chester Dialysis & Renal Center	Port Chester
Diagnostic and Treatment Center Extension Clinic	Renal Care of Buffalo	West Seneca
Diagnostic and Treatment Center Extension Clinic	South Brooklyn Nephrology Center	Brooklyn
Diagnostic and Treatment Center Extension Clinic	Southtowns Dialysis Center	Hamburg
Diagnostic and Treatment Center Extension Clinic	White Plains Dialysis Center	White Plains
Diagnostic and Treatment Center Extension Clinic	Yonkers East Dialysis Center	Yonkers

DaVita Healthcare Partners, Inc. New York State Affiliates		
Operator: Knickerbocker Dialysis, Inc.		
Type	Name	City
Diagnostic and Treatment Center	Bronx Dialysis Center	Bronx
Diagnostic and Treatment Center Extension Clinic	Boston Post Road Dialysis Center	Bronx
Diagnostic and Treatment Center Extension Clinic	Catskill Dialysis Center	Monticello
Diagnostic and Treatment Center Extension Clinic	Central New York Dialysis Center	Syracuse
Diagnostic and Treatment Center Extension Clinic	Garden City Dialysis Center	Garden City
Diagnostic and Treatment Center Extension Clinic	Jamestown Dialysis Center	Jamestown
Diagnostic and Treatment Center Extension Clinic	Long Island Renal Care	Amityville
Diagnostic and Treatment Center and Extension Clinic	Lynbrook Dialysis Center	Lynbrook
Diagnostic and Treatment Center Extension Clinic	Northtowns Dialysis Center	Tonawanda
Diagnostic and Treatment Center Extension Clinic	Orange Dialysis Center	Middletown
Diagnostic and Treatment Center Extension Clinic	Orchard Park Dialysis Center	Orchard Park
Diagnostic and Treatment Center Extension Clinic	Peekskill Cortland Dialysis Center	Cortlandt Manor
Diagnostic and Treatment Center Extension Clinic	Port Washington Dialysis Center	Port Washington
Diagnostic and Treatment Center Extension Clinic	Queens Dialysis Center	Jamaica
Diagnostic and Treatment Center Extension Clinic	Queens Village Dialysis Center	Queens Village
Diagnostic and Treatment Center Extension Clinic	Richmond Kidney Center	Staten Island
Diagnostic and Treatment Center Extension Clinic	Riverdale Dialysis Center	Bronx
Diagnostic and Treatment Center Extension Clinic	Sheepshead Bay Renal Care Center	Brooklyn
Diagnostic and Treatment Center Extension Clinic	Soundview Dialysis Center	Bronx
Diagnostic and Treatment Center Extension Clinic	South Bronx Dialysis Center	Bronx
Diagnostic and Treatment Center Extension Clinic	Staten Island Dialysis Center	Staten Island
Diagnostic and Treatment Center Extension Clinic	Suburban Dialysis Center	Williamsville
Diagnostic and Treatment Center Extension Clinic	Waters Place Dialysis Center	Bronx
Diagnostic and Treatment Center Extension Clinic	Yonkers Dialysis Center	Yonkers

Seton Family Facilities - Texas
Seton Edgar B Davis Hospital
Seton Highland Lakes Home Health - Texas Department of Aging and Disability Services
Seton Highland Lakes Hospice - Texas Department of Aging and Disability Services
Seton Highland Lakes Hospital
Seton Lampasas Healthcare Center
Seton Lockhart Family Health Center
Seton Marble Falls Healthcare Center
Seton Medical Center Hays
Seton Medical Center Williamson
Seton Northwest Hospital
Seton Riverbend Home Health - Texas Department of Aging and Disability Services
Seton Shoal Creek Hospital
Seton Smithville Regional Hospital
Seton Southwest Hospital
SHL Care-A-Van
SHL Professional Support Services
Towers Nursing Home - Texas Department of Aging and Disability Services
Dell Children's Medical Center
Emergency Medical Center
SEBD Care-A-Van
SEBD Professional Support Services
Seton Bertram Healthcare Center
Seton Burnet Healthcare Center
Seton Community Health Centers
University Medical Center at Brackenridge

Schedule 2A Responses

ITEM 6.11(a)

Vencor, Inc. filed voluntary petitions for protection under the Bankruptcy Code on September 13, 1999, primarily as a result of decreased Medicare and Medicaid reimbursement rates introduced by the Balanced Budget Act of 1997, which led to the company being unable to meet its then existing financial obligations, including rent payable to its principal landlord, Ventas, Inc. ("Ventas"), and debt service obligations under existing indebtedness. On March 1, 2001, the Bankruptcy Court approved the Vencor, Inc. Plan of Reorganization. From September 13, 1999 until the company emerged from bankruptcy on April 20, 2001, the company operated as a debtor-in-possession subject to the jurisdiction of the Bankruptcy Court.

Pursuant to the Plan of Reorganization, the company issued creditors (in exchange for their claims) secured notes, common stock and two series of warrants, entered into a new credit agreement as well as new master lease agreements with Ventas, and cancelled all existing senior debt and equity. The company also appointed a new board of directors including representatives of principal security holders, adopted fresh-start accounting pursuant to applicable accounting rules and changed its name to Kindred Healthcare, Inc.

ITEM 6.11(c)

1. *OIG Investigation into SNF RUGs Coding.* In October and November of 2009 the Department of Health and Human Services Office of the Inspector General ("OIG") served various administrative subpoenas for documents on nine Kindred skilled nursing facilities located in seven different states, the corporate office and Kindred Rehab Services, Inc. The subpoenas sought numerous documents related to the billing of rehab therapy services to Medicare Part A and Part B from January 1, 2004 to the present. The OIG confirmed to us that this is an active industry-wide investigation involving skilled nursing providers in addition to Kindred, and that there is no whistleblower or "qui tam" lawsuit pending against Kindred. The federal government has not made any demand for money on the Company.

2. *Boston DOJ Investigation into RehabCare.* In September 2012 the Company received a subpoena from the United States Attorney's Office in Boston, Massachusetts ("USAO") which sought extensive information about RehabCare's business customers and employees and various records concerning RehabCare's provision of rehab therapy services to long term care facilities including skilled nursing facilities in Massachusetts from January 1, 2007 to December 31, 2011. The Company has continued to receive document requests including subpoenas seeking various records of RehabCare concerning its rehab therapy services and billings to skilled nursing facilities nationwide, and we have produced these records to the USAO. The Company's attorneys met with USAO and other Government employees in Boston on July 22, 2014, and August 26, 2014, to discuss the Government's federal False Claims Act ("FCA") allegations against RehabCare and our defense response. The USAO has not made any demand for money upon the Company.

3. *Whistleblower Lawsuit regarding a RehabCare Missouri Transaction in 2005-2006 Settled.* Investigation began with a subpoena dated August 29, 2008, from the St. Paul Field Office, U.S. Department of Health and Human Services, Office of Inspector General (the "Subpoena"), being served upon RehabCare Group, Inc. A whistleblower lawsuit pending "under seal" in federal court in Minnesota apparently initiated the investigation. [Kindred Healthcare, Inc. purchased RehabCare Group Inc. and its subsidiaries on June 1, 2011.] The Government intervened in the lawsuit styled United States ex rel. Health Dimensions Rehabilitation, Inc. v. RehabCare Group Inc., et al., Case No. 4:12-CV-00848AGF, by filing a new complaint and demand for jury trial in the U.S. District Court for the District of Minnesota against the defendants including RehabCare Group on December 5, 2011. The Government alleged violations of the federal Anti-Kickback Statute, the federal False Claims Act and other common law causes of action. This action was transferred to the U.S. District Court for the Eastern District of Missouri in St. Louis in May 2012. A final Settlement Agreement was executed by all parties effective January 17, 2014. RehabCare Group paid \$25 million to the United States and \$150,000 to the whistleblower's attorneys as fees and the unrelated co-defendants paid an additional \$5 million to the United States to settle the lawsuit. The court dismissed the lawsuit with prejudice on January 31, 2014.

4. *Bettencourt/Harrison (formerly Walsh) v. Kindred Healthcare, Inc., et al.* On November 30, 2010, in state court in San Francisco County, California, a discharged resident of our Golden Gate nursing facility filed a purported class action lawsuit against the Company's nursing centers in California for alleged failures to meet the statutory 3.2 hour nursing home per patient day ("NHPPD") minimum during the alleged class period, which runs from November 23, 2006 through April 15, 2013. In June 2013 the parties agreed to a settlement in principle in which the Company agreed to fund up to \$8.25 million to pay eligible class members who file timely claims pursuant to a formula. Defendants also agreed to pay up to \$200,000 for settlement administration costs, using a third-party administrator; to pay a total of \$35,000 as service payments to the seven named plaintiffs representing the class; to pay the costs of a third-party monitor to monitor the Company's compliance with a two-year forward injunction up to \$100,000; and to pay the plaintiffs class counsels' attorneys fees and expenses in the amount of \$2.6 million as approved by the court. The court has approved the settlement. This matter is insured by the Company's wholly-owned subsidiary, Cornerstone Insurance Company.

5. *Bethany Lutheran Home, Inc. v. RehabCare Group East, et al.* On September 10, 2012, the plaintiff nursing home ("Bethany"), which formerly contracted for rehab therapy services with RehabCare, filed an indemnification action against RehabCare in the U.S. District Court for the Southern District of Iowa. The complaint seeks to recover \$675,000 paid by Bethany to the U.S. Government in settlement of alleged False Claims Act violations based on RehabCare's having provided excessive therapy services to Bethany's residents for the 2005 through 2008 time period. The claims include breach of contract, negligence and fraudulent misrepresentation; and plaintiff seeks money damages and injunctive relief. Plaintiff further seeks future indemnification for false claims allegedly submitted to Medicare from 2009 to 2011. The court has denied RehabCare's motion to dismiss the complaint for failure to state a claim. Discovery is ongoing.

6. *United States of America, et al., v. Amgen, Omnicare, PharMerica and Kindred Healthcare.* On February 4, 2014, the Company was served with a Summons and Complaint in the above-styled action which has been pending under seal as Case #311CV1464JFA in the U.S. District Court for the District of South Carolina since June 2011. The lawsuit is brought by a whistleblower under the federal False Claims Act alleging violations of the federal and state Anti-Kickback Statutes. The defendants allegedly received illegal rebates and other kickbacks from Amgen for switching patients who were prescribed certain drugs from other manufacturers to Amgen's products instead. The complaint seeks damages, statutory fines and penalties, the whistleblower's attorneys' fees and an injunction prohibiting such conduct in the future. Apparently the United States and twenty-five state Attorneys General and the District of Columbia and the City of Chicago have informed the court that they are intervening in the lawsuit as against Omnicare. It also appears from the recently unsealed court docket sheet that the United States is entering into a settlement with Omnicare and is declining to intervene into the action against PharMerica and Kindred Healthcare. These actions by the Government leave the whistleblower to pursue his claims against PharMerica and Kindred Healthcare on his own. The Company has made a claim for indemnification against PharMerica as provided for in the Master Transaction Agreement related to Kindred's spinoff of its former subsidiary, Kindred Pharmacy Services, Inc., to PharMerica on July 1, 2007, which PharMerica has accepted.

ITEM 6.11(d)

Effective April 20, 2001, Kindred Healthcare, Inc. entered into a Corporate Integrity Agreement with the Office of Inspector General of the U.S. Department of Health and Human Services (the "OIG") to promote compliance with the requirements of Medicare, Medicaid and all other federal healthcare programs. Under the Corporate Integrity Agreement, the company implemented a comprehensive internal quality improvement program and a system of internal financial controls in its hospitals, nursing centers, pharmacies, rehabilitation operations, and regional and corporate offices. The Corporate Integrity Agreement expired in April 2006.

The Corporate Integrity Agreement required the Company to, among other things:

- engage the Long Term Care Institute to monitor and evaluate the company's quality improvement program and report its findings to the OIG;
- adopt and implement written standards on federal healthcare program requirements with respect to financial and quality of care issues;
- conduct training each year for all employees to promote compliance with federal healthcare requirements;
- put in place a comprehensive internal quality improvement program;
- enhance its system of internal financial controls to promote compliance with federal healthcare program requirements on billing and related financial issues, including a variety of internal audit and compliance reviews;
- notify the OIG of allegations that the company committed a crime, engaged in fraudulent activity, or discovered a potential violation of the federal fraud and abuse laws or other criminal or civil laws related to any federal healthcare program, and
- submit an implementation report to the OIG in August 2001 and an annual report each year thereafter.

SUMMARY OF EXPRESS TERMS

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

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

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

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

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

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

SUBPART 7-2

Children's Camps

(Statutory Authority: Public Health Law §§ 201, 225, 1390, 1394, 1395, 1399-a;

L. 2012, ch. 501)

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

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

- (1) supervision such that a camper is protected from any unreasonable risk to his or her health or safety, including physical or sexual abuse or any public health hazard; [and]
- (2) as a minimum, there shall exist visual or verbal communications capabilities between camper and counselor during activities and a method of accounting for the camper's whereabouts at all times[.]; and

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

Section 7-2.24 is amended to read as follows:

Variance; waiver.

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

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

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

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

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

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

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

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

(i) Reporting.

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

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

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

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

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

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

(k) Disclosure of information

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

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

(l) Incident Management.

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

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

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

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

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

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

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

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

section, “complete” shall mean that all necessary information has been obtained to determine whether and how the incident occurred, and to complete the findings referenced in paragraph (1)(2)(iv) of this subdivision.

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

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

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

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

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

Regulatory Impact Statement

Statutory Authority:

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

Legislative Objectives:

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

Needs and Benefits:

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

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

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

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

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

Compliance Costs:

Cost to Regulated Parties:

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

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

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

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

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

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

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

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

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

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

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

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

Cost to State and Local Government:

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

Cost to the Department of Health:

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

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

Local Government Mandates:

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

Paperwork:

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

Duplication:

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

Alternatives Considered:

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

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

Federal Standards:

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

Compliance Schedule:

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

Contact Person:

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Regulatory Flexibility Analysis
for Small Business and Local Government

Types and Estimated Number of Small Businesses and Local Governments:

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

Compliance Requirements:

Reporting and Recordkeeping:

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

Other Affirmative Acts:

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

Professional Services:

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

Compliance Costs:**Cost to Regulated Parties:**

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

Cost to State and Local Government:

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

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

Economic and Technological Feasibility:

There are no changes requiring the use of technology.

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

Minimizing Adverse Economic Impact:

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

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

Small Business Participation and Local Government Participation:

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

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

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

Reporting and Recordkeeping and Other Compliance Requirements:

Reporting and Recordkeeping:

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

Other Compliance Requirements:

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

Professional Services:

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

Compliance Costs:**Cost to Regulated Parties:**

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

Economic and Technological Feasibility:

There are no changes requiring the use of technology.

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

Minimizing Adverse Economic Impact on Rural Area:

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

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

Rural Area Participation:

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

Job Impact Statement

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

Emergency Justification

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

Among the facilities covered by Chapter 501 are children's camps having enrollments with 20 percent or more developmentally disabled campers. These camps are regulated by the Department and, in some cases, by local health departments, pursuant to Article 13-B of the Public Health Law and 10 NYCRR Subpart 7-2. Given the effective date of Chapter 501 and its relation to the start of the camp season, these implementing regulations must be promulgated on an emergency basis in order to assure the necessary protections for vulnerable persons at such camps. Absent emergency promulgation, such persons would be denied initial coordinated protections until the 2015 camp season. Promulgating these regulations on an emergency basis will provide such protection, while still providing a full opportunity for comment and input as part of a formal rulemaking process which will also occur

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

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

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

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.

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Regulatory Flexibility Analysis for Small Businesses and Local Governments

Effect of Rule:

Local governments will not be affected by this rule except to the extent that they 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.