

**STATE OF NEW YORK**  
**PUBLIC HEALTH AND HEALTH PLANNING COUNCIL**

**AGENDA**

*December 10, 2015*

*Immediately following the Special Establishment and Project Review Committee meeting  
(which is scheduled to immediately follow the Committee on Codes, Regulations and  
Legislation meeting scheduled to begin at 10:00 a.m.)*

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

**I. INTRODUCTION OF OBSERVERS**

Jeffrey Kraut, Chairman

**II. APPROVAL OF MINUTES**

**Exhibit #1**

October 8, 2015

**III. REPORT OF DEPARTMENT OF HEALTH ACTIVITIES**

**A. Report of the Department of Health**

Sally Dreslin, M.S., R.N., Executive Deputy Commissioner of Health

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

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

**C. Report of the Office of Quality and Patient Safety**

Patrick Roohan, Director, Office of Quality and Patient Safety

Report of the Ad Hoc Office-based Surgery Sub-Committee  
Foster Gesten, MD, Medical Director, Office of Quality and Patient Safety

**D. Report of the Office of Public Health Activities**

Sylvia Pirani, M.S.,M.P.H. Director, Office of Public Health Practice

**IV. PUBLIC HEALTH SERVICES**

**Report on the Activities of the Committee on Public Health**

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

**V. HEALTH POLICY**

**Report on the Activities of the Committee on Health Planning**

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

**VI. REGULATION**

**Report of the Committee on Codes, Regulations and Legislation**

**Exhibit #2**

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

**For Emergency Adoption**

15-14 Addition of Part 4 to Title 10 NYCRR (Protection Against Legionella)

**For Adoption**

15-12 Amendment of Section 9.1 of Title 10 NYCRR (Prohibit Additional Synthetic Cannabinoids)

**For Information**

15-13 Addition of Part 300 to Title 10 NYCRR (Statewide Health Information Network for New York (SHIN-NY))

**For Discussion**

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

**Department Update to Codes Committee**

Department Timeline and Process for Consideration Regarding Laboratory Test Result Access

**VII. PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS**

**Report of the Committee on Establishment and Project Review**

Peter Robinson, Chair of the Committee on Establishment and Project Review

**A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES**

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

**CON Applications**

**Acute Care Services– Construction**

**Exhibit #3**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	151302 C	Crouse Hospital (Onondaga County)	Contingent Approval

- 2. 152083 C University Hospital (Suffolk County) Contingent Approval

**CATEGORY 2:** Applications Recommended for Approval with the Following:

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

**CON Applications**

**Acute Care Services– Construction**

**Exhibit #4**

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 152093 C	Adirondack Medical Center – Saranac Lake Site (Franklin County) Dr. Rugge – Interest	Contingent Approval
2. 152035 C	NYU Hospitals Center (Kings County) Dr. Kalkut – Recusal	Contingent Approval

**CATEGORY 3:** Applications Recommended for Approval with the Following:

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

**NO APPLICATIONS**

**CATEGORY 4:** Applications Recommended for Approval with the Following:

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

**NO APPLICATIONS**

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

**NO APPLICATIONS**

**CATEGORY 6:** Applications for Individual Consideration/Discussion

**CON Applications**

**Residential Health Care Facility – Establish/Construct**

**Exhibit #5**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	132127 C	Four Seasons Nursing and Rehabilitation Center (Kings County) Dr. Kalkut – Recusal	Contingent Approval

**B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES**

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

**CON Applications**

**Acute Care Services – Establish/Construct**

**Exhibit #6**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	152099 E	Westfield Memorial Hospital (Chautauqua County)	Contingent Approval

**Diagnostic and Treatment Centers – Establish/Construct**

**Exhibit #7**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	152029 E	FedCare (New York County)	Contingent Approval
2.	152075 E	First Medicare Primary Care Center (Kings County)	Contingent Approval

**Dialysis Services – Establish/Construct**

**Exhibit #8**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	151070 E	USRC Pelham, LLC d/b/a U.S. Renal Care Pelham Parkway Dialysis (Bronx County)	Contingent Approval
2.	151072 E	USRC South Flushing, LLC d/b/a U.S. Renal Care South Flushing Dialysis (Queens County)	Contingent Approval

3.	152058 B	Associates of Fulton County, LLC d/b/a Gloversville Dialysis Center (Fulton County)	Contingent Approval
4.	152118 E	DSI Dutchess Dialysis, Inc. (Dutchess County)	Contingent Approval
5.	152172 E	Harriman Partners, LLC d/b/a Premier Dialysis Center (Orange County)	Contingent Approval

**Residential Health Care Facility – Establish/Construct**

**Exhibit #9**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	151046 E	Diamond Hill Operator, LLC d/b/a Diamond Hill Nursing and Rehabilitation Center (Rensselaer County)	Contingent Approval
2.	151284 E	Regeis Care Center (Bronx County)	Contingent Approval
3.	152011 E	Maximus 909 Operations, LLC d/b/a Briody Health Care Facility (Niagara County)	Contingent Approval

**HOME HEALTH AGENCY LICENSURES**

**Exhibit #10**

**New LHCSA's Associated with Assisted Living Programs (ALPs)**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
	2638 L	Brooklyn Boulevard ALP LHCSA, LLC (Kings, Bronx, New York, Queens, Richmond and Nassau Counties)	Contingent Approval
	152001 E	Brooklyn Terrace LLC d/b/a Surf Manor Home Care (Kings, Bronx, New York, Queens, Richmond and Nassau Counties)	Contingent Approval

## Changes of Ownership

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
2235 L	Human Care, LLC (Bronx, Kings, New York, Queens, Richmond and Nassau Counties)	Contingent Approval
2468 L	Your Choice Homecare Agency of NY, Inc. (Kings, Queens, Bronx, New York, Richmond and Nassau Counties)	Contingent Approval
2558 L	Infinicare, Inc. (New York, Bronx, Kings, Queens, Richmond and Nassau Counties)	Contingent Approval
2621 L	Steps In Home Care, Inc. (Westchester and Nassau Counties)	Contingent Approval
2644 L	EOM Management, LLC (Bronx, Kings, Queens, New York, Richmond and Nassau Counties)	Contingent Approval
151282 E	South Shore Home Health Services, Inc. (Nassau, Queens, Suffolk, and Westchester Counties)	Contingent Approval

## Certificate of Incorporation

**Exhibit #11**

<u>Applicant</u>	<u>E.P.R.C. Recommendation</u>
The Foundation of New York-Presbyterian/Lawrence Hospital	Approval

## Certificate of Amendment to the Restated Certificate of Incorporation

**Exhibit #12**

<u>Applicant</u>	<u>E.P.R.C. Recommendation</u>
Metropolitan Jewish Health System Foundation	Approval

**Certificate of Amendment of the Certificate of Incorporation**

**Exhibit #13**

**Applicant**

**E.P.R.C. Recommendation**

ECMC Lifeline Foundation, Inc.

Approval

The Foundation of Hudson Valley Hospital Center, Inc.

Approval

**Certificate of Dissolution**

**Exhibit #14**

**Applicant**

**E.P.R.C. Recommendation**

Baptist Health Family Medical Care, Inc.

Approval

**CATEGORY 2:** Applications Recommended for Approval with the Following:

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

**CON Applications**

**Acute Care Services – Establish/Construct**

**Exhibit #15**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	152116 E	Winifred Masterson Burke Rehabilitation Hospital (Westchester County) Mr. Fassler – Interest	Contingent Approval

**Certificate of Incorporation**

**Exhibit #16**

**Applicant**

**E.P.R.C. Recommendation**

Jones Memorial Hospital Foundation  
Ms. Hines –Recusal  
Mr. Robinson – Recusal

Approval

**Certificate of Amendment of the Certificate of Incorporation**

**Exhibit #17**

**Applicant**

**E.P.R.C. Recommendation**

North Shore-LIJ Stern Family Center for Rehabilitation  
Mr. Kraut - Recusal

Approval

North Shore-Long Island Jewish Health System  
Foundation  
Mr. Kraut – Recusal

Approval

North Shore-Long Island Jewish Health System, Inc.  
Mr. Kraut – Recusal

Approval

**CATEGORY 3:** Applications Recommended for Approval with the Following:

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

**CON Applications**

**Ambulatory Surgery Centers– Establish/Construct**

**Exhibit #18**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1. 151309 E	The Rye ASC (Westchester County)	Contingent Approval

**HOME HEALTH AGENCY LICENSURES**

**Exhibit #19**

**New LHCSA**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
2093 L	Communicare Group, Inc. (Kings, Queens, Bronx, New York and Westchester Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2337 L	CarePro of NY, Inc. (Kings, Queens, Bronx, New York, Richmond and Westchester Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2403 L	Rockland Independent Seniors, Inc. d/b/a Home Instead Senior Care (Rockland County) Ms. Hines – Abstained at EPRC	Contingent Approval
2404 L	Buffalo Home Health Care Services, Inc. (Erie, Nassau, Chautauqua, Cattaraugus, Allegany, Wyoming, Genesee, Orleans and Livingston Counties) Ms. Hines – Abstained at EPRC	Contingent Approval



2413 L	Change A Life Time Companies, Inc. (Bronx, Kings, Queens and New York Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2419 L	Home Sweet Home Care Services, Inc. (Kings, Queens, Bronx, New York and Richmond Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2427 L	Advance Elite Solution LLC (Queens, Kings, New York, Bronx, Richmond and Westchester Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2429 L	Bena Home Care Agency Inc. (Queens, Bronx, Kings, New York, Richmond and Nassau Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2460 L	Best Companion Homecare Services, Inc. (Suffolk, Nassau and Queens Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2466 L	NYJ Gentle Touch, LLC (Richmond, New York, Kings, Queens, Bronx and Nassau Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2479 L	Crocus Home Care LLC (Richmond, Bronx, New York, Kings, Queens and Nassau Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2497 L	Matthews Homecare, Inc. d/b/a Right at Home Northern Westchester (Westchester, Dutchess and Putnam Counties) Ms. Hines – Abstained at EPRC	Contingent Approval

2510 L	LJNY Home Health Agency, Inc. (Kings, Queens, Bronx, New York, Richmond and Nassau Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2514 L	Lower Manhattan In-Home Care, Inc. d/b/a Right at Home Lower Manhattan (New York County) Ms. Hines – Abstained at EPRC	Contingent Approval
2527 L	Devoted Home Care LLC (Kings, Queens, Richmond, New York, Bronx and Nassau Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2531 L	Empire Care Agency, LLC (New York, Bronx, Kings, Queens, Richmond and Westchester Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2545 L	LifeWorx, Inc. (New York, Kings, Queens, Richmond, Bronx and Westchester Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2572 L	ADC Holdings, Inc. (Kings, Bronx, Queens, New York, Richmond and Nassau Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2582 L	Allborough Personal Care Inc. (Kings, Queens, New York, Bronx and Richmond Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2583 L	Reliable Care Home Infusion Services, Inc. (Rockland, Orange, Putnam and Westchester Counties) Ms. Hines – Abstained at EPRC	Contingent Approval

2586 L	Eagle Eye FV, Inc. (Bronx, Kings, Nassau, New York, Queens and Richmond Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2587 L	Stacey Ball d/b/a Changing Seasons Home Care (Onondaga, Cayuga, Madison, Oswego, Oneida, Cortland, Tomkins and Seneca Counties) Ms. Hines – Abstained at EPRC	Contingent Approval

**CATEGORY 4:** Applications Recommended for Approval with the Following:

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

**CON Applications**

**Ambulatory Surgery Centers– Establish/Construct**

**Exhibit #20**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	151227 E	SurgiCare of Manhattan (New York County) Mr. Kraut – Recusal	Contingent Approval

**HOME HEALTH AGENCY LICENSURES**

**Exhibit #21**

**New LHCSA**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
	2291 L	Trusted Care at Home, LLC (Monroe, Ontario, Wayne and Orleans County) Ms. Hines - Interest	Contingent Approval

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

**NO APPLICATIONS**

**CATEGORY 6:** Applications for Individual Consideration/Discussion

**CON Applications**

**Ambulatory Surgery Centers– Establish/Construct**

**Exhibit #22**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1. 142216 B	NHPE, LLC d/b/a New Hyde Park Endoscopy (Nassau County)	To be presented at the Special Establishment/Project Review Committee on 12/10/15 No Recommendation
2. 151277 B	Hospital for Special Surgery Ambulatory Surgery Center of Manhattan, LLC d/b/a HSS ASC of Manhattan (New York County)	To be presented at the Special Establishment/Project Review Committee on 12/10/15 No Recommendation
3. 151008 B	Pittsford Pain Center LLC (Monroe County) Ms. Hines – Recusal Mr. Robinson – Recusal	No Recommendation

**Dialysis Services - Establish/Construct**

**Exhibit #23**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1. 152094 B	Sea Crest Acquisition II, LLC d/b/a Sea Crest Dialysis Center (Kings County)	To be presented at the Special Establishment/Project Review Committee on 12/10/15 No Recommendation
2. 152164 B	Dialyze Direct NY, LLC (Kings County)	To be presented at the Special Establishment/Project Review Committee on 12/10/15 No Recommendation

**Residential Health Care Facility– Establish/Construct**

**Exhibit #24**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1. 151108 B	MLAP Acquisition 1, LLC d/b/a Long Beach Nursing and Rehabilitation Center (Nassau County)	To be presented at the Special Establishment/Project Review Committee on 8/6/15 No Recommendation

**VIII. NEXT MEETING**

January 28, 2016 - NYC  
February 11, 2016 – NYC

**IX. ADJOURNMENT**

**State of New York**  
**Public Health and Health Planning Council**

**Minutes**  
**October 8, 2015**

The meeting of the Public Health and Health Planning Council was held on Thursday, October 8, 2015 at the New York State Department of Health Offices at 90 Church Street, 4<sup>th</sup> Floor, Rooms 4A & 4B, NYC. Jeffrey Kraut, Chair of the Council presided.

**COUNCIL MEMBERS PRESENT**

Dr. Howard Berliner	Dr. Gary Kalkut
Dr. Lawrence Brown	Mr. Jeffrey Kraut
Ms. Kathleen Carver-Cheney	Dr. John Ruge
Mr. Michael Fassler	Dr. Theodore Strange
Ms. Kim Fine	Dr. Anderson Torres
Dr. Carla Boutin-Foster	Dr. Patsy Yang
Dr. Angel Gutierrez	
Ms. Vicky Hines	
Mr. Thomas Holt	

**DEPARTMENT OF HEALTH STAFF PRESENT**

- |  |                                       |
|--|---------------------------------------|
| Mr. Charles Abel                           | Mr. George Macko                      |
| Ms. Barbara DelCogliano – Albany via video | Ms. Karen Madden – Albany via video   |
| Ms. Alejandra Diaz – Albany via video      | Ms. Lisa McMurdo – Albany via video   |
| Ms. Anna Colello – Albany via video        | Ms. Elizabeth Misa – Albany via video |
| Dr. Victoria Derbyshire – Albany via video | Mr. Brian Morris – Albany via video   |
| Ms. Sally Dreslin                          | Mr. JP O’Hare                         |
| Ms. Kathleen Ericson – Albany via video    | Mr. Justin Pfeiffer                   |
| Mr. Ken Evan – Albany via video            | Mr. Steve Ragone – Albany via video   |
| Mr. Mark Furnish                           | Ms. Linda Rush - Albany via video     |
| Dr. Nathan Graber – Albany via video       | Ms. Lisa Thomson                      |
| Ms. Karen Hagos – Albany via video         | Ms. Lisa Ullman – Albany via video    |
| Ms. Elizabeth Misa – Albany via video      | Ms. Rae Ann Augliera                  |
| Ms. Celeste Johnson                        | Mr. Richard Zahnleuter                |
| Ms. Ruth Leslie – Albany via video         |                                       |
| Ms. Yvonne Lavoie – Albany via video       |                                       |
| Ms. Colleen Leonard                        |                                       |

**INTRODUCTION**

Mr. Kraut called the meeting to order and welcomed Council members, meeting participants and observers.

## **APPROVAL OF THE MINUTES OF AUGUST 6, 2015**

Mr. Kraut asked for a motion to approve the August 6, 2015 Minutes of the Public Health and Health Planning Council meeting. Dr. Torres motioned for approval, Dr. Gutiérrez seconded the motion. The minutes were unanimously adopted. Please refer to page 2 of the attached transcript.

## **REPORT OF DEPARTMENT OF HEALTH ACTIVITIES**

Ms. Dreslin began her report by stating it was a pleasure to be in attendance and representing Dr. Zucker.

### Legionella

Ms. Dreslin noted that in late July there was an increase in numbers of people sickened with Legionnaires' disease in the Bronx. Legionnaires' disease is caused by Legionella bacteria, it exists naturally in water and moist soil as well as in the water in cooling towers and evaporative condensers but high concentrations of Legionella can be dangerous which is what happened in the Bronx this summer. Governor Cuomo sent officials and support staff to the Bronx to test for Legionella in water cooling tower systems. Members of the Council worked with Department staff to quickly adopt new regulations on cooling towers. Under the emergency health regulations that were adopted, New York State now requires that all cooling towers across the state be registered, tested, inspected and certified. The Department also wanted to ensure that local and state health departments know where all the towers are located. Emergency regulations require that all towers be inspected, tested and registered by September 16. The Department has been working hard to raise awareness of these new regulations using press releases, conference calls and stakeholder meetings. To date, there are more than 7,000 registrations that have been initiated. In addition, any owner of a building with a cooling tower must have a maintenance program in place by March 1, 2016. The plan must include a schedule for routine sampling as well as procedures for emergency testing and disinfection to control the growth of Legionella bacteria. No other state in the country have these kinds of regulations of cooling towers.

### Capital for a Day

Ms. Dreslin stated that the Department continues to participate in the Governor's new initiative Capital for a Day which is an innovative way of bringing state government into local and regional communities. Since the Council last met, there have been 2 of these events around the state, the first being in Utica and Rome in August. The most recent one in Portland, Syracuse and Homer was just last week. In Utica, the Governor's cabinet met with members and leaders in business and government to identify ways the state can partner with local communities to create more economic opportunity. In Rome, the Department announced a new collaboration with the Department of Labor. This effort will provide job seekers with information about coverage through the New York State of Health, the official health plan marketplace.

Ms. Dreslin advised that in Syracuse, the Department discussed its commitment to fighting synthetic cannabinoids which have become a public health crisis in that city and also showcased efforts to combat youth obesity which in Syracuse, affects nearly a quarter of all students.

## Flu Immunization

Ms. Dreslin noted that Dr. Zucker was joined by Ms. Crossdale, Director of the State Office of Aging at the David Harum Senior Center and both of them got their flu shots that day as a way to demonstrate the importance of getting vaccinated this fall. Dr. Zucker stressed at the event that it is especially important for adults over the age of 65 to get a flu shot. Older adults are more vulnerable to developing complications like pneumonia. Flu season also marks the time when all health care workers must wear flu masks if they have not gotten vaccinated against flu. Last year, 86% of health care workers were vaccinated and the Department is hoping to achieve similar, if not better, rates this year.

## DSRIP

Ms. Dreslin stated that the Department had their first DSRIP program learning symposium in Westchester County in mid-September. The event attracted 400 members of performing provider systems from across the state who came together to share best practices. They covered a range of topics including value-based payment, integrated delivery systems, downstream provider collaboration and managed care, among others. This gathering, along with other ongoing meetings such as the State Innovation Model Council and the Prevention Agenda Ad Hoc Committee represent the Department's commitment to reforming the health care delivery system across the continuums of care.

## Research

Next, Ms. Dreslin announced that New York continues to grow its reputation as a center for scientific research. The Governor recently announced that the state awarded \$3,000,000 in prostate cancer research funding to 20 institutions across the state. The funds will be used to explore new concepts in the detection, diagnosis and treatment of prostate cancer which remains the second most common cancer among men in New York State. In addition, the Governor announced \$17,200,000 in state awards to 26 academic medical institutions for the training of new clinical researchers working on cutting edge biomedical research. These awards come from the Empire Clinical Research Investigator Program and are important in helping the state attract new researchers. They help strengthen New York's reputation as a national biomedical research hub. Governor Cuomo also announced \$5,700,000 in awards to 9 research teams across the state for the development of treatments and cures for spinal cord injuries. Each year, approximately 1,000 New Yorkers suffer one of these injuries which often result in paralysis. New York was one of 9 states to receive funding from the Paul Coverdell National Acute Stroke Program. The 5 year 3,750,000 grant comes from the CDC and will help establish comprehensive systems of care for stroke within 5 regions of the state. In addition, New York also received \$8,000,000 in federal grants for new colorectal cancer screening initiatives. This 5 year grant also came from the CDC and will support the Department's expanded screening effort in the North Country, Syracuse, Buffalo, Rochester and New York City where many communities are under-served.

Ms. Dreslin explained that among the most notable research institutions in New York is our very own National Center for Adaptive Neurotechnologies (NCAN). NCAN is part of the Wadsworth Center and has been gaining national and international recognition for the new technologies it's developing. The Center is working to improve the lives of people with neurological diseases such as cerebral palsy, stroke and paralysis. The Center perhaps is best

known for its brain computer interface or BCI technology which enables people without speech such as those with ALS to communicate. NCAN is also developing technologies to help people with spinal cord injuries to walk better. It is devising technologies that make neurosurgery for patients with epilepsy or brain tumors better and safer and faster.

### New York State of Health

Ms. Dreslin explained that the third open enrollment period for the New York State of Health will begin on November 1 and end on January 31. New York State of Health has been a tremendous success, it has enrolled more than 2,000,000 New Yorkers. Starting January 1, the Department is offering a new plan called the Essential Plan. It is designed for New Yorkers whose incomes are too high to qualify for Medicaid but are still not making enough to easily afford private health insurance. A family of 4 with a household income of 48,500 or less, for instance, would qualify for this Essential Plan. The Essential Plan costs \$20 a month or less for each adult, provides free preventive care and has no annual deductible. For some individuals, depending on income, there will be no monthly premium, so we're sure the Essential Plan will be a welcome addition to our offerings.

Ms. Dreslin noted that the Centers for Medicare and Medicaid Services, the New York State Department of Financial Services and the New York State of Health announced that Health Republic, a co-op established under the Federal Affordable Care Act will no longer be in operation in 2016. Current enrollees will have coverage until the end of this year and persons enrolled in Health Republic through the New York State of Health marketplace will be notified on how to select a new plan that will go into effect on January 1st. There will be plan options available for current Health Republic members in every county of the state.

### Achievements

Ms. Dreslin commended two Department employees who have recently received national recognition for their achievements. Ms. Pirani the Director of the Department's Office of Public Health Practice, won the Association of State and Territorial Health Officials' 2015 State Excellence in Public Health award. Ms. Pirani was the driving force behind the Prevention Agenda and the Department's successful accreditation efforts.

Ms. Dreslin also announced that Dr. Taylor, the Director of the Wadsworth Center, was recently nominated to join in the National Library of Medicine Board of Regents. This is a very prestigious honor. The NLM Board of Regents is the advisory body to the Secretary of Health and Human Services, the Assistant Secretary for Health of HHS, the Director of the National Institutes of Health and the Director of the National Library of Medicine.

Mr. Dreslin concluded her report. Mr. Kraut thanked her and inquired if members had questions or comments. To see the complete report and comments from members, please see pages 2 through 6 of the attached transcript.



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

Mr. Kraut introduced Mr. Sheppard to give his report on the Activities of the Office of Primary Care and Health Systems Management.

Mr. Sheppard began his report by giving a status report on the integration of primary behavioral services. Mr. Sheppard highlighted two of the more recently developed approaches. The first is the department's integrated outpatient services regulations. The Council voted to adopt those regulations in December, 2014 which took effect last January. OMH and OASAS also adopted identical regulations at that time. Under the regulations, health care or behavioral health service provider that is licensed or certified by more than one state agency can add services for which it is licensed or certified at one of its other sites without having to obtain a license or certification for that additional site. Guidance on these regulations is available on the websites of all 3 agencies. To date, 9 providers have been approved under either the pilot program or the regulations to add services at 17 sites.

The second area Mr. Sheppard highlighted was that the Department of Health, Office of Mental Hygiene and OASAS released guidance several months ago for DSRIP PPS's that were interested in integrating primary care and behavioral health services. This guidance is also available on the DSRIP website. Under this model, a licensed or certified provider participating in a PPS may integrate primary care and behavioral health services under a single license or certification as long as the service being added doesn't exceed 49% of the provider's total annual visits. No applications have been received to date under this program but Department has received several inquiries recently about moving forward under this DSRIP licensure threshold model. It anticipates seeing applications in the near future. Over time, the department as well as OMH and OASAS will monitor the providers to see whether any regulatory changes are needed or if any additional changes are necessary to support the providers towards the more integrated system of care.

Mr. Sheppard next spoke about the Department's work on opportunities for physical environment waivers for small clinics and homeless shelters. Health care providers providing care to the homeless in clinics that are located in transitional housing facilities or shelters are seeking waivers from certain architectural requirements that are required as part of the CON process. The issue is the clinics in homeless shelters are typically assigned space that's pre-designated or they are unutilized rooms. Not optimal space but in the shelter. The space is often rented. It is difficult for clinic operators to make the necessary structural changes to the building to comply with traditional physical space requirements. Homeless shelters are ideal settings to locate a clinic to provide care to the populations that reside there. It makes it easier and making it easier for these clinics to open aligns well with the Department's broader objectives to increase access to primary and ambulatory care and reduce unnecessary hospitalizations. To address this issue, we formed an internal working group consisting of CON, architectural review and surveillance staff from OPCHSM as well as off the public health staff who are experts in infection control and health care facilities. While we find that current federal and state statutory and regulatory requirements present some challenges, we found that certain broad categories of waivers could be granted. These recommendations, once finalized, the Department will roll them out as homeless clinic guidelines. The Department plans also to look at similar treatment for rural and mobile clinics and over the longer term, work to address the regulatory issues that we could provide even further flexibility again without jeopardizing patient safety.

Mr. Sheppard gave a CON update. Since its implementation in December of 2010 the New York State Electronic CON or NYSE-CON system has streamlined the CON process and improved communication with applicants and improved transparency. From 2011 to 2014, median CON review times have been improved or reduced by more than 60%. Recent improvements to NYSE-CON include the implementation of a module for use by the regional office surveillance teams to facilitate and streamline the pre-opening component of the project approval process. Applicants to the departments have been using the regional office module for projects since Spring of 2015. While development of this module is ongoing, to date, applicants in the Department can use it to online identify target opening dates, propose and schedule pre-opening surveys, submit and review pre-opening documentation, create multiple phases for projects and correspond within the NYSE-CON system regarding specific project issues. The next phase of the module that we're going to roll out that's currently under development will enable the department staff to post inspect findings in applicants. This will enable more efficient response for corrective action plans and again, ultimate goal to get these facilities open and compliant as soon as possible.

Mr. Sheppard noted that under the leadership of Mr. Primeau from the Office of Health Emergency Preparedness, OPCHSM's role focuses on response capabilities that involve the coordination of health facility evacuation or decisions to shelter in place that are made necessary by events like coastal storms or other natural or manmade extreme events. Then, the repatriation of patients or residents following of the event. These activities take place in Healthcare Facility Evacuation Centers or HECs. A HEC is a physical location, a command center of sorts where department staff who have been deployed as well as liaisons from other state municipal agencies can work in close physical proximity to each other to coordinate and track evacuation activities. There is an ongoing planning to expand HECs in other regions of the state. In 2015, the Department rolled out a new IT application to support HEC operations during a response. This application allows for up-to-date viewing of the number and types of patients that are to be transferred and bed availability. This is hospitals and nursing homes and adult care facilities. It also allows for the processing and tracking of bed transfer arrangements by facility in preparation for patient movement and the tracking of transportation assistance levels required for patients and residents. Then, allows for the step by step tracking of bed transfers through all phases of the movement of patient cohorts. In August, approximately 110 department staff were trained to use this new application, culminating late in the month of August with a HEC exercise dubbed Coastal Tempest. It was a tabletop exercise to work through all the phases of preparation and evacuation repatriation during a storm. This exercise simulated of an evacuation in the flood zones 1 and 2 in New York City, the 2 most hazardous categorizations. Mock transfers are registered in the system for 39 facilities and following 36 different scenarios that the moderators threw in to these unexpected situational changes to test people's ability to respond. It was a successful event. Hurricane Joaquin provided a real world opportunity to at least partially access the department's readiness. Prior to the storm taking a very fortunate eastern track out to sea, the probability models were strong enough that it could make landfall in New York City, that we began preparations to activate the HEC and actually send a couple people down. Staff performed very well.

Lastly, Mr. Sheppard announced that Tracy Raleigh has been appointed the Director of the Center for Health Care Facility Planning, Licensure, and Finance. Ms. Raleigh joins our team from the Dormitory Authority where she served as assistant director for Public Finance and Portfolio Management for about 18 years. In this role, Ms. Raleigh developed expertise in capital finance, strategic planning, financial and operational restructuring for health care facilities as well as other facility related and finance-related responsibilities. Ms. Raleigh was responsible for the development and management and monitoring processes for systems for hospitals, nursing homes and DNTCs in DASNY's \$8,000,000 health care bond portfolio. She has been involved in most of the financial and operational restructuring for financially-challenged facilities in New York State. She has managed the health care facility restructuring loan pool program that provides low interest rate loans to health care facility in support of their business plans and developed and prepared credit analyses in support of financings of construction and renovation projects requiring CON approval. Ms. Raleigh also was providing analytical and policy development support for the Commission on Health Care for the 21st Century, the 2006 Burger commission as well as the Medicaid Redesign Team's Task Force report on Brooklyn. Mr. Sheppard also expressed the Department gratitude to Charlie Abel for guiding the center as acting director these past few months.

Mr. Sheppard concluded his report. Mr. Kraut thanked Mr. Sheppard. To see the complete report, please see pages 6 through 10 of the transcript.

### **Report of the Office of Health Insurance Programs Activities**

Next, Mr. Kraut introduced Ms. Misa who was presenting from Albany to give her report on the Activities of the Office of Health Insurance Programs.

Ms. Misa provided a brief update on 2 major initiatives underway within the Office of Health Insurance Programs. The first is the work of the delivery system. We are currently in year one of implementation. Implementation plans of the performing provider systems have been reviewed by an independent assessor and will be posted by the third week of October on the Department's website. The PPS's should be in a good position to move forward with these plans. In addition, on November 8th and 9th, the project approval and oversight panel will review these plans. The panel will also have the opportunity to hear from the performing provider systems to report in on the progress made and also hear any challenges currently experienced by PPS's. There will be room for Q&A at the panel in November. In addition to the work of DSRIP, the value based payment work group has been meeting. There is very strong participation among many stakeholders. The value-based payment workgroup has created 5 subcommittees and various Clinical Advisory Groups (CAGs). Each subcommittee is in CAGs are scheduled to meet throughout the end of the year to achieve their respective objectives. Value-based payment subcommittees play a crucial role in terms of developing the value-based payment implementation details. Each subcommittee is comprised of stakeholders who have a direct interest in or knowledge of the specific topics related to each respective subcommittee. Each subcommittee has co-chairs designated by the value based payment work group. The co-chairs really help manage the subcommittee towards the development of a final subcommittee report recommendation report.

Ms. Misa concluded the report. Mr. Kraut thanked Ms. Misa and inquired if members had questions or comments. To read the complete report please see pages 11 through 13 of the attached transcript.

Mr. Kraut introduced Ms. Pirani who was participating from Albany to update the Council on the Activities of the Office of Public Health.

### **Report of the Office of Public Health Activities**

Ms. Pirani began her report by advising that a joint meeting was held of the Public Health Committee and the Ad Hoc Committee to Lead the Prevention Agenda discussing health disparities with a presentation from Dr. Boutin-Foster and also discussed our work integrating or collaborating with supporting prevention agenda goals.

Ms. Pirani noted that the Governor and the AIDS Institute are making ambitious effort to end the AIDS epidemic. Ms. Pirani introduced Ms. Hagos a program coordinator from the AIDS Institute to provide a brief report on the Department's current activity.

Ms. Hagos stated that she is the Coordinator for the Ending the Epidemic Task Force. As we move forward with implementation of ending the epidemic or ETE is to get down from an estimated 3,000 new infections to 750 new infections annually by the end of 2020. The Department released a dashboard that you can access from the Department's website. It is the Department's version one of providing remaining transparent and providing data to anyone who would like to see it as it relates to ending the epidemic. There is information on the website about HIV prevention, incidents, testing, new diagnosis information as well as on deaths, and everything is compiled from various data sources and presented in one place. This is something that the Department has heard from the community as well as through the task force conversations that is vital to the success of this epidemic or to this initiative. There will be a second version to be released winter 2016 that will emphasize the actual ETE-related metrics.

Ms. Hagos advised that the Department has been very busy in terms of holding ETE regional listening discussions across the state. These began in August and they're ongoing through November. At these meeting various community members are able to come and receive information on data, discuss best practices and there is a call to action within each region in terms of tearing out ETE implementation at the regional level. There is 16 total regional meetings and currently there are 4 more left. The Department is also doing a webinar series that are focusing on various either sub-populations or specific topics as it relates to ending the epidemic. There is one scheduled every month for the remainder of 2015. The Department is also working on a peer-certification program for those who work with the HIV population and that's a specific recommendation that came out of the task force.

Ms. Hagos announced that on January 1, 2015 the prep assistance program launched. It provides reimbursement for primary care services for those who are eligible. Since January we have up to 158 applications for coverage. The Department is also are conducting a match between New York State HIV Medicaid data and the New York State HIV Aids Registry. It is currently underway to identify people who are out of care for the purposes of linkage and retention. There is also an Ending the Epidemic Marketing campaign as well as a Proper Pre-Exposure Prophylaxis Specific Education campaign that is underway. The Task Force

disbanded, however, there is a subcommittee of the New York State Aids Advisory Council who meets every other month. This is to assist with ongoing implementation of the blueprint, it consists of members who were past task force members. They are public meetings and there are means of a dial-in.

Ms. Pirani and Ms. Hagos concluded their report. Mr. Kraut thanked Ms. Pirani and Ms. Hagos. To read the complete report please see pages 13 through 16 of the attached transcript.

## **HEALTH POLICY**

Mr. Kraut moved to the next topic, Health Policy and introduced Dr. Ruge to give the report on the activities of the Health Planning Committee.

Dr. Ruge explained that the Health Planning Committee met in September and it began its consideration of updating the bed need methodology for nursing home beds. This is an exercise last undertaken in 2010 and new methodology is statutorily due at the end of 2016 in order to give the department enough time for implementation the Council needs to address these and resolve these issues by the first quarter of 2016. This methodology is foundational to our understanding of the capacity of the long term system and the configuration of that system. Thousands of beds have been de-commissioned and the current occupancy rate is significantly below the 97% threshold for full reimbursement of those facilities still in place. The reasons for this are basically a combination of factors. At the same time there are a whole series of new dynamics that the committee and the Council need to be considering as we look at this formula. These include substantial movement from a predominance of county-owned and voluntary facilities to a for-profit system. The imposition of the Medicaid global cap and the implications to that are profound, the establishment of population health improvement programs across the state, the availability of district funds is a transformational effort like never before. The coming of MLTCs is a new mode of financing and organizing these services and not least, a change in the mix so that nursing homes, instead of being mostly custodial and long term residential are very importantly transitional care and rehab services providing a new level of care and a new pace of change. Further implication in the event of failure in any community or region or across the state.

Dr. Ruge noted that up to now the primary attention from this Council has been on the acute care side but certainly we need to be binocular in our understanding and our vision. At the last Committee meeting, the emphasis was on making sure and not yet to find answers but to be asking the right questions such as what do we make of the demographic changes that are still to come with the aging of population, with account availing ever-increasing need. The Council will have to consider whether the 97% threshold is currently the appropriate marker for full reimbursement, given the quick turnover of those rehab and transition care patients. Those lead in turn to a series of policy questions that are broader but provide the context for all the arithmetic adjustment such as proper geography for considering bed need and long term care need. In addition, Dr. Ruge advised that he thinks there is a need to give consideration to how bed need formula are applied community by community and region by region.

Dr. Rugge expressed that there is a need to consider what the appropriate size for rural communities, the population can support only relatively small-sized facilities, but these are of a scale that are not financially supportable and yet I would view it as unconscionable to force a family to move a family member 100 miles away because there is simply no beds inside. He noted that leads to another question and up until now we have regarded the Bed Need Methodology as what is the maximum, what is the limit. Should we consider whether there's a minimum number of beds by appropriate region so we are sure that we are not indeed shipping people too far from their own communities to give human and decent health care and residential care to our most infirmed and our most vulnerable citizens. He added, how will the Council look at connecting, linking and affiliating our skilled nursing facilities and other long term care services to the PPSs and the services provided by the newly emerging integrated delivery. How can the Council provide the right incentives and the right regulatory environment to assure that those post-acute services are available. How does the Council formulate and regulate services for those most vulnerable of all of our New Yorkers.

Dr. Rugge stated that Committee is absolutely dependent not really on the wisdom of this Council and its members, but from important stakeholders, the providers of care in this service. Dr. Rugge announced that the Committee will convene on November 18, 2015.

Dr. Rugge concluded his report. Mr. Kraut thanked Dr. Rugge. To view the complete report, please see pages 16 through 18 of the attached transcript.

## **REGULATION**

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

### **Report of the Committee on Codes, Regulation and Legislation**

#### **For Emergency Adoption**

15-14 Addition of Part 4 to Title 10 NYCRR – (Protection Against Legionella)

15-12 Amendment of Section 9.1 of Title 10 NYCRR  
(Prohibit Additional Synthetic Cannabinoids)

Dr. Gutiérrez began his report by introducing Addition of Part 4 to Title 10 NYCRR – (Protection Against Legionella) and motioned for emergency adoption. The motion was seconded by Mr. Fassler. The motion carried. Please see pages 18 and 19 of the transcript.

Dr. Gutiérrez then described Amendment of Section 9.1 of Title 10 NYCRR (Prohibit Additional Synthetic Cannabinoids) and motioned for emergency adoption and motioned for adoption. Mr. Fassler seconded the motion. The motion carried. Please see page 20 of the transcript.

#### **For Adoption**

13-21 Amendment of Part 405 of Title 10 NYCRR  
(Hospital Observation Services)

12-02 Amendment of Part 757 of Title 10 NYCRR  
(Chronic Renal Dialysis Services)

14-13 Amendment of Parts 58 and 34 of Title 10 NYCRR  
(Patient Access of Laboratory Test Results)

Next, Dr. Gutiérrez described Amendment of Part 405 of Title 10 NYCRR (Hospital Observation Services) and motioned for adoption. Dr. Berliner seconded the motion, the motion carried. See page 20 of the attached transcript.

Dr. Gutiérrez introduced Amendment of Part 757 of Title 10 NYCRR (Chronic Renal Dialysis Services) and motioned for adoption. Dr. Brown seconded the motion. The motion carried. Please see page 20 of the attached transcript.

Dr. Gutiérrez moved to the Amendment of Parts 58 and 34 of Title 10 NYCRR (Patient Access of Laboratory Test Results) and motioned for adoption. Ms. Fine seconded the motion, the motion to adopt carried. Please see page 20 of the transcript.

Lastly, Dr. Gutiérrez made a second motion relating to the proposed Amendment of Parts 58 and 34 of Title 10 NYCRR (Patient Access of Laboratory Test Results). The motion was made to request the DOH staff to bring to the November meeting of the Committee and the Council a timeline and process for consideration of the concerns raised by New York State physician pathologists, namely revising or revoking the state regulation that prohibits this specialist from discussing their findings with patients. Ms. Fine seconded the motion. The motion carried. Please see page 21 of the attached transcript.

Dr. Gutierrez concluded his report.

Mr. Kraut thanked Dr. Gutiérrez and moved to the next item on the agenda and introduced Dr. Kalkut to give Report of the Project Review Recommendations and Establishment Actions.

## **PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS**

### **B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES**

**CATEGORY 6:** Applications for Individual Consideration/Discussion

#### **CON Applications**

#### **HOME HEALTH AGENCY LICENSURES**

**Exhibit #17**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
1909 L	MedPro Homecare Agency, Inc. (Queens, New York, Kings, Richmond, Bronx, and Nassau Counties) Ms. Hines Abstained Dr. Torres – Recusal	Contingent Approval

2042 L	<p>Touch of Love Homecare Agency Inc.  (Bronx, Richmond, Kings, New York, Queens, and Nassau Counties)  Ms. Hines Abstained  Dr. Torres – Recusal</p>	Contingent Approval
2059 L	<p>Victory Home Care Services, Inc.  (Suffolk and Nassau Counties)  Ms. Hines Abstained  Dr. Torres – Recusal</p>	Contingent Approval
2133 L	<p>Theresa Home Care, Inc.  (New York, Kings, Bronx, Queens, Richmond, and Nassau Counties)  Ms. Hines Abstained  Dr. Torres – Recusal</p>	Contingent Approval
2184 L	<p>Kirenaga Home Care Brooklyn, Inc.  (New York, Bronx, Kings, Richmond, Queens and Nassau Counties)  Ms. Hines Abstained  Dr. Torres – Recusal</p>	Contingent Approval
2186 L	<p>Kirenaga Home Care Queens, Inc.  (New York, Bronx, Kings, Richmond, Queens, and Nassau Counties)  Ms. Hines Abstained  Dr. Torres – Recusal</p>	Contingent Approval
2193 L	<p>Imo’s Nursing Agency, Inc.  (Queens, New York, Kings, Richmond, and Bronx Counties)  Ms. Hines Abstained  Dr. Torres – Recusal</p>	Contingent Approval
2260 L	<p>ABR Homecare of NY, Inc.  (Suffolk and Nassau Counties)  Ms. Hines Abstained  Dr. Torres – Recusal</p>	Contingent Approval



2293 L	Loyal Home Care, Inc. (Kings, Bronx, Queens, Richmond and New York Counties) Ms. Hines Abstained Dr. Torres – Recusal	Contingent Approval
2362 L	HT&T Corporation d/b/a HT&T Home Care (Queens, Kings, Brooklyn, Richmond, New York and Nassau Counties) Ms. Hines Abstained Dr. Torres – Recusal	Contingent Approval
2381 L	Sundance Home Care, Inc. (Kings, Queens, New York, Bronx, Richmond, and Nassau Counties) Ms. Hines Abstained Dr. Torres – Recusal	Contingent Approval
2405 L	Queens Home Care, Inc. d/b/a Home Instead Senior Care Franchise #765 (Queens, New York, Bronx, Richmond, Kings and Nassau Counties) Ms. Hines Abstained Dr. Torres – Recusal	Contingent Approval
2414 L	Collins Anyanwu-Mueller d/b/a Angelic Touching Home Health Care Agency (Westchester and Rockland Counties) Ms. Hines Abstained Dr. Torres – Recusal	Contingent Approval
2437 L	Artful Home Care, Inc. (Suffolk and Nassau Counties) Ms. Hines Abstained Dr. Torres – Recusal	Contingent Approval

2452 L	Companion Angels Home Care Solutions, LLC (New York, Queens, Bronx, Richmond, and Kings Counties) Ms. Hines Abstained Dr. Torres – Recusal	Contingent Approval
2459 L	Family First Home Companions of New York, Inc. (Suffolk, Nassau, and Queens Counties) Ms. Hines Abstained Dr. Torres – Recusal	Contingent Approval
2467 L	1 <sup>st</sup> Home Care of NY Corp. (Queens, New York, Bronx, Richmond, Kings and Nassau Counties) Ms. Hines Abstained Dr. Torres – Recusal	Contingent Approval
2469 L	Zenith Home Care of NY, LLC (Westchester, Putnam, and Bronx Counties) Ms. Hines Abstained Dr. Torres – Recusal	Contingent Approval
2474 L	Acute Care Experts of New York, Inc. (Nassau, Rockland, Suffolk, Sullivan, Dutchess, Ulster, Orange, Westchester, and Putnam Counties) Ms. Hines Abstained Dr. Torres – Recusal	Contingent Approval
2475 L	SR Miracle Care Agency, Inc. (Bronx, Queens, New York, Richmond, Kings, and Westchester Counties) Ms. Hines Abstained Dr. Torres – Recusal	Contingent Approval
2485 L	Qualycare Home Care (Bronx, New York, and Queens Counties) Ms. Hines Abstained Dr. Torres – Recusal	Contingent Approval

2490 L	ZaQia Chaplin, LLC d/b/a Trusting Hands Homecare Agency (Nassau, Suffolk, and Queens Counties) Ms. Hines Abstained Dr. Torres – Recusal	Contingent Approval
2492 L	Trivium of New York, LLC Queens, Bronx, Kings, Richmond, New York and Nassau Counties) Ms. Hines Abstained Dr. Torres – Recusal	Contingent Approval
2493 L	Brookside Home Care Inc. (Nassau, Suffolk and Queens Counties) Ms. Hines Abstained Dr. Torres – Recusal	Contingent Approval
2503 L	L. Woerner, Inc. d/b/a HCR/HCR Home Care (Schoharie, Otsego, and Delaware Counties) Ms. Hines Abstained Dr. Torres – Recusal	Contingent Approval
2505 L	L. Woerner, Inc. d/b/a HCR/HCR Home Care (Madison, Oswego, Onondaga, Jefferson, Cayuga and Cortland Counties) Ms. Hines Abstained Dr. Torres – Recusal	Contingent Approval
2521 L	GM Family Resources, Inc. (Richmond, New York, Kings, Bronx, Queens, and Nassau Counties) Ms. Hines Abstained Dr. Torres – Recusal	Contingent Approval
2546 L	Edira Family Home Care LLC (Queens, Bronx, Kings, Richmond, New York and Nassau Counties) Ms. Hines Abstained Dr. Torres – Recusal	Contingent Approval

2573 L	<p>Exceptional Home Care Services, Inc.  (Bronx, Richmond, Kings, New York and Queens Counties)  Ms. Hines Abstained  Dr. Torres – Recusal</p>	Contingent Approval
2300 L	<p>Albemarle Terrace, Inc. d/b/a Terrace Home Care  (Bronx, Queens, Kings, New York and Richmond Counties)  Ms. Hines Abstained  Dr. Torres – Recusal</p>	Contingent Approval
2605 L	<p>Samuel Konig d/b/a Park Inn Home Care  (Queens, New York, Bronx, Richmond, Kings and Nassau Counties)  Ms. Hines Abstained  Dr. Torres – Recusal</p>	Contingent Approval
2188 L	<p>Marquis Home Care, Inc.  (Queens, Bronx, Kings, Richmond, New York and Westchester Counties)  Ms. Hines Abstained  Dr. Torres – Recusal</p>	Contingent Approval
2436 L	<p>Paramount Homecare Agency, Inc.  (Kings, New York, Queens, Richmond, Bronx, and Nassau Counties)  Ms. Hines Abstained  Dr. Torres – Recusal</p>	Contingent Approval
2441 L	<p>Kirenaga Home Care Manhattan, Inc.  d/b/a Synergy Homecare  (New York, Kings, Bronx, Richmond, Queens, and Westchester Counties)  Ms. Hines Abstained  Dr. Torres – Recusal</p>	Contingent Approval

2501 L	CareGuardian, Inc. d/b/a Hometeam (New York, Kings, Queens, Bronx, and Richmond Counties) Ms. Hines Abstained Dr. Torres – Recusal	Contingent Approval
2542 L	Better Choice Home Care, Inc. (Bronx, Richmond, Kings, Nassau, New York, and Queens Counties) Ms. Hines Abstained Dr. Torres – Recusal	Contingent Approval
2547 L	All Boro Home Care, Inc. (Bronx, Richmond, Kings, Westchester, New York and Queens Counties) Ms. Hines Abstained Dr. Torres – Recusal	Contingent Approval
2554 L	Surfside Manor Home for Adults Licensed Home Care Services Agency, LLC d/b/a ExtraCare Home Care Agency (Bronx, Queens, Nassau, Richmond, New York, and Kings Counties) Ms. Hines Abstained Dr. Torres – Recusal	Contingent Approval
2592 L	Hakuna, Inc. (New York, Bronx, Kings, Richmond, Queens, and Westchester Counties) Ms. Hines Abstained Dr. Torres – Recusal	Contingent Approval
151264 E	Allcare Family Services, Inc. (Erie County) Ms. Hines Abstained Dr. Torres – Recusal	Contingent Approval
2280 L	CDS Monarch, Inc. (Monroe and Wayne Counties) Ms. Hines – Interest Dr. Torres – Recusal	Contingent Approval

2158 L	Azor Care at Home, Inc. d/b/a Azor Home Care (New York, Bronx, Kings, Richmond, Queens, and Westchester Counties) Mr. Fassler - Interest Ms. Hines Abstained Dr. Torres – Recusal	Contingent Approval
2606 L	L Woerner, Inc. d/b/a HCR/HCR Home Care (Genesee, Wyoming, Monroe, Orleans, Orleans, Livingston, Wayne, and Ontario Counties) Ms. Hines – Interest Ms. Hines Abstained Dr. Torres – Recusal	Contingent Approval

Dr. Kalkut began his report by calling the Home Health Agency Licensure applications listed above and noted for the record that Dr. Torres has declared conflicts and has left the meeting room. Dr. Kalkut motioned for approval. Dr. Gutiérrez seconded the motion. The motioned carried with Ms. Hines abstaining and Dr. Torres’ recusals. Dr. Torres returned to the meeting room. Please see pages 21 and 22 of the transcript.

**HOME HEALTH AGENCY LICENSURES**

**Exhibit #17**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
2504 L	L. Woerner, Inc. d/b/a HCR/HCR Home Care (Clinton, Hamilton, St. Lawrence, Franklin, Warren, Essex and Washington Counties) Dr. Rugge – Recusal Ms. Hines Abstained	Contingent Approval
2456 L	America Homecare Agency Services Corporation (Schenectady, Rensselaer, Warren, Saratoga, Schoharie, Albany and Washington Counties) Dr. Rugge – Recusal Ms. Hines Abstained	Contingent Approval

Dr. Kalkut introduced applications 2504L and 2456L and noted for the record that Dr. Rugge has a conflict and has exited the meeting room. Dr. Kalkut motions for approval, Dr. Gutiérrez seconds the motion. The motion carries with Dr. Rugge’s noted recusal. Dr. Rugge returns to the meeting room. Please see page 22 of the transcript.

**Restated Certificate of Incorporation**

**Applicant**

Housing Works Health Services III, Inc.

**Council Action**

Approval

**Certificate of Amendment of the Certificate of Incorporation**

**Applicant**

Samaritan Village, Inc.

**Council Action**

Approval

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

Approval

Brookdale Family Care Centers, Inc.

Approval

Urban Strategies/Brookdale Family Care Center, Inc.

Approval

**Certificate of Dissolution**

**Applicant**

River Hospital Foundation, Inc.

**Council Action**

Approval

Dr. Kalkut moves to the request for filing for the above listed proposed certificates and motions for consent. Dr. Gutiérrez seconds the motion. Please see pages 22 and 23 of the transcript.

**A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES**

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

**Acute Care Services - Construction**

**Exhibit #3**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
1.	151204 C	Vassar Brothers Medical Center (Dutchess County)	Contingent Approval

Dr. Kalkut describes application 151204 and motions for approval. Dr. Gutiérrez seconds the motion. The motion carries. Please see page 23 of the transcript.

**Hospice Services - Construction**

**Exhibit #4**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
1.	151270 C	Hospice Buffalo Inc (Erie County)	Approval

Dr. Kalkut calls application 151270 and motions for approval. Dr. Gutiérrez seconds the motion. The motion to approve carries. See page 24 of the transcript.

**CATEGORY 2:** Applications Recommended for Approval with the Following:

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

**Acute Care Services - Construction**

**Exhibit #5**

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 151213 C	Strong Memorial Hospital (Monroe County) Ms. Hines – Recusal Mr. Robinson – Recusal (not present at the meeting)	Contingent Approval

Next, Dr. Kalkut calls application 151213 and notes for the record that Ms. Hines has a conflict and has exited the meeting room. Dr. Kalkut makes a motion, Dr. Torres seconds the motion. The motion carries. Please see page 24 of the transcript.

**CATEGORY 3:** Applications Recommended for Approval with the Following:

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

**NO APPLICATIONS**

**CATEGORY 4:** Applications Recommended for Approval with the Following:

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

**NO APPLICATIONS**

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

**NO APPLICATIONS**

**CATEGORY 6:** Applications for Individual Consideration/Discussion

**NO APPLICATIONS**



**B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES**

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

**CON Applications**

**Acute Care Services – Establish/Construct**

**Exhibit #6**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
1.	151216 E	Columbia Memorial Hospital (Columbia County)	Contingent Approval

Dr. Kalkut describes application 151216 and motions for approval. Dr. Gutiérrez seconds the motion. The motion to approve carries. Please see page 24 of the attached transcript.

**Ambulatory Surgery Centers – Establish/Construct**

**Exhibit #7**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
1.	151201 E	Crystal Run Ambulatory Surgery Center of Middletown (Orange County)	Contingent Approval

Dr. Kalkut calls application 151201 and motions for approval. Dr. Gutiérrez seconds the motion. The motion to approve carries. Please see page 24 of the transcript.

2.	151246 B	Mid-Bronx Endoscopy Center (Bronx County)	Contingent Approval
3.	151288 B	Colonie ASC, LLC d/b/a Specialty Eye Surgery and Laser Center of the Capital Region (Albany County)	Contingent Approval
4.	152036 E	AGCNY East, LLC d/b/a Endoscopy Center of Central New York (Onondaga County)	Contingent Approval

Dr. Kalkut moves to applications 151246, 151288, and 152036 and motions for approval. Dr. Gutiérrez seconds the motion. The motion carries. Please see pages 24 and 25 of the attached transcript.

**Diagnostic and Treatment Centers – Establish/Construct****Exhibit #8**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	151250 B	LISH, Inc. (Suffolk County)	Contingent Approval
2.	152015 B	Community Health Initiatives, Inc. (Kings County)	Contingent Approval

Dr. Kalkut calls applications 151250 and 152015 and motions to approve. Dr. Gutiérrez seconds the motion. The motion to approve carries. Please see page 25 of the transcript.

**Dialysis Services – Establish/Construct****Exhibit #9**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	151269 B	Schenectady Partners, LLC d/b/a Rotterdam-Schenectady Dialysis Center (Schenectady County)	Contingent Approval
2.	151298 E	Pelham Parkway Dialysis Center (Bronx County)	Contingent Approval
3.	151308 B	Brooklyn Gardens Dialysis Center (Kings County)	Contingent Approval
4.	152025 E	Mohawk Valley Dialysis Center (Montgomery County)	Contingent Approval

Dr. Kalkut describes applications 151269, 151298, 151308, and 152025 and motions for approval. Dr. Gutiérrez seconds. The motion to approve carries. Please see page 25 of the transcript.

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

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	151180 E	ECRNC, LLC d/b/a Evergreen Commons Rehabilitation and Nursing Center (Rensselaer County)	Contingent Approval
2.	151196 E	Daleview Care Center (Nassau County)	Contingent Approval

Dr. Kalkut introduces applications 151180 and 151196 and motions for approval. Dr. Gutiérrez seconds the motion. The motion carries. See page 25 of the attached transcript.

**CATEGORY 2:** Applications Recommended for Approval with the Following:

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

**Acute Care Services – Establish/Construct**

**Exhibit #11**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
1.	152008 E	NYU Hospitals Center (Kings County) Dr. Kalkut – Recusal	Contingent Approval

Dr. Kalkut declares on conflict on application 152008 and exits the meeting room. Mr. Kraut describes the application and moves to approve. Dr. Gutiérrez seconds the motion. The motion to approve carries with the Dr. Kalkut’s noted recusal. Dr. Kalkut returns to the meeting room. Please see page 26 of the attached transcript.

**Ambulatory Surgery Centers – Establish/Construct**

**Exhibit #12**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
2.	151200 E	South Shore Surgery Center (Suffolk County) Mr. Kraut – Recusal	Contingent Approval

Dr. Kalkut introduces application 151200 and notes for the record that Mr. Kraut has a conflict and exited the meeting room. Dr. Kalkut motions for approval. Dr. Gutiérrez seconds the motion. The motion carries with Mr. Kraut’s noted recusal. Please see page 26 of the transcript.

3.	151226 E	DHCH, LLC d/b/a Digestive Health Center of Huntington (Suffolk County) Mr. Kraut - Recusal	Contingent Approval
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Dr. Kalkut introduces application 151226 and notes for the record that Mr. Kraut has a conflict and remained outside the meeting room. Dr. Kalkut motions for approval. Dr. Gutiérrez seconds the motion. The motion carries with Mr. Kraut’s noted recusal. Please see page 26 of the transcript.

4.	151258 E	Suffolk Surgery Center, LLC (Suffolk County) Mr. Kraut - Recusal	Contingent Approval
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Dr. Kalkut introduces application 151258 and notes for the record that Mr. Kraut has a conflict and again remained outside the meeting room. Dr. Kalkut motions for approval. Dr. Gutiérrez seconds the motion. The motion carries with Mr. Kraut’s noted recusal. Mr. Kraut returns to the meeting room. Please see page 26 of the transcript.

**Residential Health Care Facilities – Establish/Construct****Exhibit #13**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	151131 E	Latta Road Nursing Home West, LLC (Monroe County) Mr. Robinson – Recusal (not present at the meeting)	Contingent Approval
2.	151133 E	Latta Road Nursing Home East, LLC (Monroe County) Mr. Robinson – Recusal (not present at the meeting)	Contingent Approval
3.	151134 E	Hamilton Manor Nursing Home, LLC (Monroe County) Mr. Robinson – Recusal (not present at the meeting)	Contingent Approval

Dr. Kalkut introduces applications 151131, 151133, and 151134 and motions for approval. Dr. Torres seconds the motion. The motion to approve carries. Please see pages 26 and 27 of the attached transcript.

**Certified Home Health Agency – Establish/Construct****Exhibit #14**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	151099 E	HCR (Monroe County) Ms. Hines – Interest Mr. Robinson – Interest	Contingent Approval

Dr. Kalkut calls application 151099 and notes for the record Ms. Hines and Mr. Robinson’s interest and motions for approval. Dr. Gutiérrez seconds the motion. The motion carries. Please see page 27 of the attached transcript.

**CATEGORY 3:** Applications Recommended for Approval with the Following:

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

**NO APPLICATIONS**

**CATEGORY 4:** Applications Recommended for Approval with the Following:

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

**Ambulatory Surgery Centers – Establish/Construct**

**Exhibit #12**

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 151008 B	Pittsford Pain Center LLC (Monroe County) Ms. Hines – Recusal Mr. Robinson – Recusal (not present at the meeting)	Deferred to next Full Council Meeting

Next, Dr. Kalkut moves to application 151008 and motions for approval. Dr. Gutiérrez seconds the motion. The motion to approve failed. Mr. Kraut made a second motion to recall the first motion. Mr. Fassler seconded the motion. The motion to recall the first motion carries. Mr. Kraut makes a third motion for the application to be tabled until the next Full Council meeting. Dr. Brown seconded the motion. The motion to table the application until the next Full Council meeting passed. Please see pages 27 through 29 of the attached transcript.

**Ambulatory Surgery Centers – Establish/Construct**

**Exhibit #15**

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 151186 B	Premier Ambulatory Services Development Company, LLC d/b/a Premier Ambulatory Surgery Center (Erie County) Mr. Holt – Interest	Contingent Approval

Dr. Kalkut called application 151186 and notes for the record Mr. Holt’s interest. Dr. Kalkut motions for approval noting the Committee’s added condition. Dr. Gutierrez seconds the motion. The motion to approve carries with one member in opposition. Please see pages 29 and 30 of the transcript.

**Residential Health Care Facilities – Establish/Construct**

**Exhibit #16**

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 151060 E	Warren Operations Associates, LLC d/b/a Warren Center for Rehabilitation and Healthcare (Warren County) Mr. Fassler – Recusal Dr. Rugge – Recusal	Contingent Approval

Lastly, Dr. Kalkut calls application 151060 and notes for the record that Mr. Fassler and Dr. Ruge have conflicts and have left the meeting room. Dr. Kalkut motions for approval, Dr. Gutiérrez seconds the motion. The motion to approve carries with the noted recusals. Mr. Fassler and Dr. Ruge return to the meeting room. Please see pages 30 and 31 of the attached transcript.

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

**NO APPLICATIONS**

Dr. Kalkut concludes his report.

**ADJOURNMENT:**

Mr. Kraut adjourned the public portion of the Council meeting.

**OCTOBER 8, 2015**  
**PUBLIC HEALTH AND HEALTH PLANNING COUNCIL TRANSCRIPT**  
**NYC**

MR. KRAUT: Okay. It's my pleasure this morning to open up the call to order, the October 8th, 2015 meeting of the Public Health and Health Planning Council. I'm Jeff Kraut. I have the privilege to open this meeting. I want to welcome the members, Ms. Dreslin, our Executive Deputy Commissioner of Health Participants, Observers and Staff. We have in Albany, additional staff members attending as well. I'd like to remind the council members, staff in the audience, this meeting is subject to the open meeting law and is broadcast over the internet. The webcasts are accessed at the Department of Health's website at [nyhealth.gov](http://nyhealth.gov). The on-demand webcasts will be available no later than 7 days after the meeting. It'll be up there for a minimum of 30 days and then a copy is going to be retained in the department for up to 4 months. There is some suggestions and ground rules I'd like to make this meeting more successful. It's synchronized captioning, it's important that you don't talk over each other. Captioning can't be done correctly, obviously, when 2 people are speaking at the same time. The first time you speak, it would be helpful if you identify yourself as a council member or member of the staff. This will be helpful to the broadcasting company recording the meeting and any subsequent transcription that has to occur. Please note that the microphones are hot. That means they pick up every sound, including the rustling of pages next to the microphone, other personal conversations, side bars, essentially anything within a 2, 3 feet radius of you is going to be audible. Be thoughtful about what you say and how you say it. If you think it's private, it's not. As a reminder for our audience. There's a form that needs to be filled out before you enter the meeting room which records your attendance at today's meeting. This form is required by the Joint Commission on Public Ethics in accordance with executive law section 166. The form is also posted on the Department of Health's website again, [NYhealth.gov](http://NYhealth.gov) under the certificate of need so in the future, you could fill out that form prior to entering the room. We thank you for your cooperation in fulfilling our duties as prescribed by law. I'm going to start today's meeting with reports from the Department of Health first by Ms. Dreslin followed by Mr. Sheppard and Ms. Misa and Ms. Pirani. Mr. Roohan sends his apologies. He's not going to be providing us an update at this meeting and hopefully, he'll do so at the next. That'll be followed by committee report from Dr. Ruge with health policy. Dr. Gutierrez with codes and regulations and Dr. Kalkut with Project Review and Establishment. Then, I just want to remind everybody about our rules on conflicts. Most of the members of the council and most of our guests should be familiar with this. We've organized particularly the establishment agenda and the project review agenda by the roles and responsibilities of the council. We have batched certificate of need applications. If you have not done so already, I'd ask the members to take a look at the batch that is in the agenda that we have planned. If for any reason you'd like to have a project moved to another category because Dr. Kalkut calls it, please do so now and request a change. Just please tell Ms. Leonard or Ms. Thomson before we start that portion of the agenda. My first agenda item now is the adoption of the minutes. May I have a motion to adopt the August 6, 2015 minutes?

DR. TORRES: So moved.

MR. KRAUT: I have a motion by Dr. Torres. I have a second by Dr. Gutierrez. Anybody wants any modification to the minutes, hearing none call for a vote. All those in favor, aye?

Aye.

Opposed? Abstention. The motion carries.

Now, I'd like to turn over the mike to Ms. Dreslin who's going to update the council about the Department's activities since our last meeting.

MS. DRESLIN: Thank you very much. Thank you. It's a pleasure to be here, representing Dr. Zucker who couldn't be with us. Thank you.

As you know and as I reported last time, we have had a very busy summer. Due in large part to the outbreak of Legionella in New York City. The problem began, as you know, in late July with increasing numbers of people sickened with Legionnaires' disease in the Bronx. Legionnaires' disease is caused, as you know by Legionella bacteria. It exists naturally in water and moist soil as well as in the water in cooling towers and evaporative condensers but high concentrations of Legionella can be dangerous which is what happened in the Bronx this summer. With the number of cases rising, Governor Cuomo sent officials and support staff to the Bronx to test for Legionella in water cooling tower systems.

Given the circumstances, the Department needed to take more aggressive approach to the problem. As you, the members of the councils know, you worked with us to quickly adopt new regulations on cooling towers. Under the emergency health regulations that were adopted last month, New York State now requires that all cooling towers across the state be registered, tested, inspected and certified. The program is designed to make sure that owners are maintaining their towers according to industry standards and manufacturer's specifications. We also want to ensure that local and state health departments know where all the towers are located. Emergency regulations require that all towers be inspected, tested and registered by September 16. We've been working hard to raise awareness of these new regulations using press releases, conference calls and stakeholder meetings. To date, we have more than 7,000 registrations have been initiated. In addition, any owner of a building with a cooling tower must have a maintenance program in place by March 1, 2016. The plan must include a schedule for routine sampling as well as procedures for emergency testing and disinfection to control the growth of Legionella bacteria. No other state in the country have these kinds of regulations of cooling towers. We're definitely setting an example in this area. On another front, the department continues to participate in the Governor's new initiative Capital for a Day. Capital for a Day is an innovative way of bringing state government into local and regional communities. Since we last met, there have been 2 of these events around the state, the first being in Utica and Rome in August. The most recent one in Portland, Syracuse and Homer was just last week.

In Utica, the Governor's cabinet met with members and leaders in business and government to identify ways the state can partner with local communities to create more economic opportunity. The Utica event resulted in a comprehensive 31 point plan to create jobs and community resiliency in the Mohawk Valley region. It also led to the training of 70 volunteers in the use of naloxone, the drug that reverse opioid overdoses. In Rome, we announced a new collaboration



with the Department of Labor. This effort will provide job seekers with information about coverage through the New York State of Health, the official health plan marketplace. This will be at more than 90 career centers around the state. We'll also provide application assistance with these centers. Last week, the Department figured prominently in a Capital for a Day activities in central New York. In Syracuse, we discussed our commitment to fighting synthetic cannabinoids which have become a public health crisis in that city. We also showcased our efforts to combat youth obesity which in Syracuse, affects nearly a quarter of all students. Through the Creating Healthy Schools and Communities program, the - Onondaga Health Department has received a grant of \$250,000 a year for 5 years to help lower youth obesity rates. The funding is part of a \$6,700,000 initiative that the Governor did announce in July. In Homer, New York, Dr. Zucker was joined by Corinda Crossdale, Director of the state Office of Aging at the David Harum Senior Center and both of them got their flu shots that day. There's a picture on our website. He looks like he's having a good time getting his flu shot.

As a way to demonstrate the importance of getting vaccinated this fall, as we do enter flu season, Dr. Zucker stressed that it's especially important for adults over the age of 65 to get a flu shot. Older adults are more vulnerable to developing complications like pneumonia. We encourage everyone but especially seniors in our state to get vaccinated against the flu. I'd like to know as well that flu season marks the time when all health care workers must wear flu masks if they have not gotten vaccinated against flu. Last year, 86% of health care workers were vaccinated and we're hoping to achieve similar, if not better, rates this year.

We also had our first DSRIP program learning symposium in Westchester County in mid-September. The event attracted 400 members of performing provider systems from across the state who came together to share best practices. They covered a range of topics including value-based payment, integrated delivery systems, downstream provider collaboration and managed care, among others. The 2 day event, a featured key note speaker Francois de Brantes of the Health Care Incentives Improvement Institute and Dr. Amy Boutwell of Collaboration Healthcare Strategies. Along with the state and federal staff, the event attracted people from the Center for Medicaid and Medicare Services, William Toby and Ann Monroe, the co-chairs of the Project Approval and Oversight Panel Committee as well as Dr. Zucker.

This gathering, along with other ongoing meetings such as the state innovation model council and the prevention agenda ad hoc committee represent the Department's commitment to reforming the health care delivery system across the continuums of care. In other news, New York continues to grow its reputation as a center for scientific research. The governor recently announced that the state awarded \$3,000,000 in prostate cancer research funding to 20 institutions across the state. The funds will be used to explore new concepts in the detection, diagnosis and treatment of prostate cancer which remains the second most common cancer among men in New York State. That's behind skin cancer. In addition, the Governor announced \$17,200,000 in state awards to 26 academic medical institutions for the training of new clinical researchers working on cutting edge biomedical research. These awards come from the Empire Clinical Research Investigator Program and are important in helping the state attract new researchers. They help strengthen New York's reputation as a national biomedical research hub. Government Cuomo also announced \$5,700,000 in awards to 9 research teams across the state for the development of treatments and cures for spinal cord injuries. Each year, approximately 1,000 New Yorkers suffer one of these injuries which often result in paralysis. Luckily, New York is also the recipient of funds for research. New York was one of 9 states to receive funding

from the Paul Coverdell National Acute Stroke Program. The 5 year 3,750,000 grant comes from the CDC and will help establish comprehensive systems of care for stroke within 5 regions of the state. Since 2012, the state Coverdell program has made significant improvements in the care of patients with acute stroke. Stroke remains the fourth leading cause of death in New York, accounting for more than 6,000 deaths annually. In addition, New York also received \$8,000,000 in federal grants for new colorectal cancer screening initiatives. This 5 year grant also came from the CDC and will support the department's expanded screening effort in the North Country, Syracuse, Buffalo, Rochester and New York City where many communities are under-served. Among the most notable research institutions in New York is our very own National Center for Adaptive Neurotechnologies, also known as NCAN. NCAN is part of the Wadsworth Center and has been gaining national and international recognition for the new technologies it's developing. Just last week, we hosted an open house and invited area scientists and researchers as well as the media to come see the work that NCAN is doing. Under the leadership of its director, Jonathan Wolpaw and Deputy Director Gerwin Schalk, the Center is working to improve the lives of people with neurological diseases such as cerebral palsy, stroke and paralysis. The center's perhaps best known for its brain computer interface or BCI technology which enables people without speech such as those with ALS to communicate. NCAN is also developing technologies to help people with spinal cord injuries to walk better. It's devising technologies that make neurosurgery for patients with epilepsy or brain tumors better and safer and faster. We're proud to have a national center right here in New York, a center that will deliver new, life-altering technologies to people all over the world.

In other business, the third open enrollment period for the New York State of Health will begin on November 1 and end on January 31. New York State of Health has been a tremendous success. It has enrolled more than 2,000,000 New Yorkers. Starting January first, we're offering a new plan called the Essential Plan. It's designed for New Yorkers whose incomes are too high to qualify for Medicaid but are still not making enough to easily afford private health insurance. A family of 4 with a household income of 48,500 or less, for instance, would qualify for this Essential Plan. The Essential Plan costs \$20 a month or less for each adult, provides free preventive care and has no annual deductible. For some individuals, depending on income, there will be no monthly premium, so we're sure the Essential Plan will be a welcome addition to our offerings. You may have seen also a recent joint announcement by the Centers for Medicare and Medicaid Services, the New York State Department of Financial Services and the New York State of Health that Health Republic, a co-op established under the Federal Affordable Care Act will no longer be in operation in 2016. Current enrollees will have coverage until the end of this year and persons enrolled in Health Republic through the New York State of Health marketplace will be notified on how to select a new plan that will go into effect on January first. There will be plan options available for current Health Republic members in every county of the state. At this point, I want to take just a moment to commend 2 DOH employees who have recently received national recognition for their achievements. Just making sure people are here. Sylvia Pirani.

Give a wave. She is the director of the Department's Office of Public Health Practice, won the Association of State and Territorial Health Officials' 2015 State Excellence in Public Health award. Sylvia was the driving force behind the prevention agenda and the Department's successful accreditation efforts. Congratulations, Sylvia. Way to go. Also, pleased to announce that Jill Taylor, the director of the Wadsworth Center, was recently nominated to join in the National Library of Medicine Board of Regents. This is a very prestigious honor. The NLM

Board of Regents is the advisory body to the Secretary of Health and Human Services, the Assistant Secretary for Health of HHS, the Director of the National Institutes of Health and the Director of the National Library of Medicine. Congratulations for Jill for this terrific honor. She's not here. That concludes my comments. Thank you.

MR. KRAUT: Thank you very much, Ms. Dreslin. Does the Council have questions? Dr. Berliner?

DR. BERLINER: Ms. Dreslin, is the infrastructure in place to do all the inspection of the water towers and other cooling systems? Do we have enough places and people who do that kind of stuff?

MS. DRESLIN: Yeah. Thank you. The building owners contract with service companies and there is. There are sufficient of those types of people around, yes. The website is up and seems to be working well. Very good. I was in the community meeting over the summer in Sullivan County and because of all the press and the thing, the people were asking about when their water towers are going to be inspected and this and that. Even though I was in the audience, I was set with pride because somebody else stood up and described our regulations. The Department did a very effective job of getting the word out but it was very hard not to say, "I was there!" Okay.

MR KRAUT: Dr. Brown.

DR. BROWN: I want to thank you for such a comprehensive report. We've always had the sense and feeling that our Department has no comparative department in the world. We really appreciate that.

MS. DRESLIN: Thank you.

I also want to share with you, as you know, that many counties across the state have sometimes as competitive type of thing, what this type of jealousy type of thing. Would you be so kind to share with us what is the governor's, to the extent to which you know, priority at selecting the counties for being Capital for the Day?

MS. DRESLIN: I can't say that I know that but I know that they have been in Buffalo, in the Rochester area, in Utica, Syracuse. I think there is most definitely an attention being paid to areas upstate and across the state where perhaps there have not been as many opportunities to interact with government.

DR. BROWN: I would be derelict if I didn't say, "Could you put Brooklyn there." Okay. I'm through.

Dr. Brown, you should just send an email to the Governor's office to nominate your favorite county.

DR. BROWN: We'll do that and I will copy all the member

MR. KRAUT: Dr. Rugge, please.

DR. RUGGE: Just a general comment that I think those of us in the field are experiencing transformation of the system like never before. My list can go on and on but we've got new responsibility for health professionals requiring integration with state education department which is sometimes slow to respond. We have new relationships among disparate providers, concerned this council's heard about consolidation leading to, if not anticompetitive behavior, at least economic consequences which might be undesirable. We've got new payment systems putting providers at risk in ways we can't anticipate. We have difficulty with the speed. I'm thinking of the capital grant program which was to be announced in May and still yet to be announced and understandable but still difficult because of very capital grants are necessary to effect the kind of changes that we're looking for, all of which requires a degree of coordination by the commissioner and by the Governor's office, I think, like never before.

I am mindful of a recent comment at the health innovation council by a very influential commentator saying, some of our PPSes are sure to fail. There's no way in which we're going to have 25 successes across this state. Just concerned about whether you'd like some sympathy from the rest of us or editorial comments or just observations in terms of how do you think this bellowing and are we on track and is there any role that this public health and health planning council can do to assist in vetting ideas, bringing issues to public interest.

MS. DRESLIN: Right. I think I appreciate very much what you're saying of the huge number of initiatives that are going on and the stresses that the health delivery system and individual providers are under as far as trying to keep up and maintain and change so rapidly. Of course, the input of the members of the council is always tremendously valued, the wide range of experience and knowledge and work is tremendous. We obviously always welcome your input. I think continued participation on the various councils. I know you're on many of the other councils as well. I know you're working with Dan and the rest of the staff who worked with this council to identify other ways to continue to contribute and bring your unique perspectives to bear on how we're doing and how we can improve because there's always room for improvement. That really happens best through open communications. We'll just keep the lines open.

MR. KRAUT: Any other questions? Thank you, Mr. Dreslin, we appreciate the report. Mr. Sheppard is now going to update us on the Office of Primary Care and Health Systems Management.

MR. SHEPPARD: Thank you. Good morning. As I do each cycle, I'd like to just spotlight a couple of activities within the Office of Primary Care and Health Systems Management. These are by no means everything that's going on but just a handful of things that I just wanted to bring to your attention. Also, as always, while I have the privilege of presenting them to you, I'm just standing on the shoulders of many people working very, very hard to do these and other things. The first topic I wanted to cover is just a status report on the integration of primary behavioral services. You all may recall that in June, at the invitation of Dr. Rugge, the Department provided an overview to the health planning committee on the various approaches to integrating primary care and behavioral health services.

Today, I'm going to highlight 2 of the more recently developed approaches. The first is the department's integrated outpatient services regulations. As you know, the council voted to adopt those regulations in December, 2014. They took effect last January. OMH and Oasis also adopted identical regulations at that time. Under the regulations, health care or behavioral health service provider that is licensed or certified by more than one state agency can add services for which it is licensed or certified at one of its other sites without having to obtain a license or certification for that additional site. Guidance on these regulations is available on the websites of all 3 agencies. To date, 9 providers have been approved under either the pilot program or the regulations to add services at 17 sites. The second area I'd like to highlight for you is that Department of Health, Office of Mental Hygiene and Oasis released guidance several months ago for DSRIP PPSes that were interested in integrating primary care and behavioral health services. Again, we've spoken to this committee about that before. This guidance is also available on the DSRIP website. Under this model, a licensed or certified provider participating in a PPS may integrate primary care and behavioral health services under a single license or certification as long as the service being added doesn't exceed 49% of the provider's total annual visits. No applications have been received to date under this program but Department has received several inquiries recently about moving forward under this DSRIP licensure threshold model. It anticipates seeing applications in the near future. Over time, the department as well as OMH and Oasis will monitor the providers to see whether any regulatory changes are needed or if any additional changes are necessary to support the providers towards the more integrated system of care. We look forward to further dialog with you on this topic as I've mentioned several times. All of these efforts with really the US as building blocks and foundation to broader regulatory changes. The next topic I'd like to bring to your attention are some work we've been doing looking at opportunities for physical environment waivers for small clinics and homeless shelters. It's a narrow but very important topic and again, I think a building block to do some important work in the future. Health care providers providing care to the homeless in clinics that are located in transitional housing facilities or shelters are seeking waivers from certain architectural requirements that are required as part of the CON process. The issue is the clinics in homeless shelters are typically assigned space that's pre-designated or they're unutilized rooms. Not optimal space but in the shelter. Also, the space is often rented. It's difficult for clinic operators to make the necessary structural changes to the building to comply with traditional physical space requirements.

Your homeless shelters are ideal settings to locate a clinic to provide care to the populations that reside there. It makes it easier and making it easier for these clinics to open aligns well with the Department's broader objectives to increase access to primary and ambulatory care and reduce unnecessary hospitalizations. To address this issue, we formed an internal working group consisting of CON, architectural review and surveillance staff from OPCHSM as well as off the public health staff who are experts in infection control and health care facilities. While we find that current federal and state statutory and regulatory requirements present some challenges, we found that certain broad categories of waivers could be granted. Some examples are examination rooms that are less than the typically mandated 80 square feet. Alternatives to requiring separate clean and soiled utility rooms but still while providing for effective infection control. Exceptions to certain ADA standards, American with Disability Act standards provided that alternative

policies and procedures in place to ensure that persons requiring accommodations continue to have access to care. Exceptions related to patient's toilets being separate from public use toilets and that they be located in patient care areas as well as requirements that there be separate staff toilets and lounge requirements. Again, things that in the shelters are not really practical. These recommendations, once finalized, we'll roll them out as homeless clinic guidelines. Our plans also to look at similar treatment for rural and mobile clinics and over the longer term, work to address the regulatory issues that we could provide even further flexibility again without jeopardizing patient safety. Next topic, just a CON update. Since its implementation in December of 2010 the New York State electronic CON or NYSE-CON system has streamlined the CON process and improved communication with applicants and improved transparency. From 2011 to 2014, median CON review times have been improved or reduced by more than 60%. Recent improvements to NYSE-CON include the implementation of a module for use by the regional office surveillance teams to facilitate and streamline the pre-opening component of the project approval process. Applicants to the departments have been using the regional office module for projects since Spring of 2015. While development of this module is ongoing, to date, applicants in the Department can use it to online identify target opening dates, propose and schedule pre-opening surveys, submit and review pre-opening documentation, create multiple phases for projects and correspond within the NYSE-CON system regarding specific project issues. The next phase of the module that we're going to roll out that's currently under development will enable the department staff to post inspect findings in applicants. This will enable more efficient response for corrective action plans and again, ultimate goal to get these facilities open and compliant as soon as possible.

Next topic, I'd like to talk a little bit about emergency preparedness. I don't know if I've spoken to you folks about that. Under the leadership of Mike Primeau in our Office of Health Emergency Preparedness, OPCHSM's role focuses on response capabilities that involve the coordination of health facility evacuation or decisions to shelter in place that are made necessary by events like coastal storms or other natural or manmade extreme events. Then, the repatriation of patients or residents following of the event. In the downstate region, here by Celeste. Catch me if I'm misspeaking in any way. These activities take place in Healthcare Facility Evacuation Centers or HECs. A HEC is a physical location, a command center of sorts where department staff who've been deployed as well as liaisons from other state municipal agencies can work in close physical proximity to each other to coordinate and track evacuation activities. There's some things that we find that really, times when you need people in a room and not spread out all over the state. There's ongoing planning to expand HECs in other regions of the state. In 2015, we rolled out a new IT application to support HEC operations during a response. This application allows for up-to-date viewing of the number and types of patients that are to be transferred and bed availability. This is hospitals and nursing homes and adult care facilities. It also allows for the processing and tracking of bed transfer arrangements by facility in preparation for patient movement and the tracking of transportation assistance levels required for patients and residents. Who needs an ambulette, who needs an ambulance. Then, allows for the step by step tracking of bed transfers through all phases of the movement of patient cohorts. In August, approximately 110 department staff were trained to use this new application, culminating late in the month of August with a HEC exercise dubbed Coastal Tempest. It was a tabletop exercise to work through all the phases of preparation and evacuation repatriation during a storm. This

exercise simulated of an evacuation in the flood zones 1 and 2 in New York City, the 2 most hazardous categorizations. Mock transfers are registered in the system for 39 facilities and following 36 different scenarios that the moderators threw in to these unexpected situational changes to test people's ability to respond. It was a successful event. Last week, Hurricane Joaquin provided a real world opportunity to at least partially access the department's readiness. Prior to the storm taking a very fortunate eastern track out to sea, the probability models were strong enough that it could make landfall in New York City, that we began preparations to activate the HEC and actually send a couple people down. They were there for a few hours and unfortunately, again, the storm hooked enough that we sent them home. Staff performed very well. The final update I wanted to give you relates to OPCHSM personnel. I'm very pleased to announce that Tracy Raleigh has been appointed the director of the Center for Health Care Facility Planning, Licensure, and Finance. Tracy joins our team from the Dormitory Authority, the State of New York. DASNY, where she served as assistant director for Public Finance and Portfolio Management for about 18 years. In this role, Tracy developed expertise in capital finance, strategic planning, financial and operational restructuring for health care facilities as well as other facility related and finance-related responsibilities. Tracy was responsible for the development and management and monitoring processes for systems for hospitals, nursing homes and DNTCs in DASNY's \$8,000,000 health care bond portfolio. She has been involved in most of the financial and operational restructuring for financially-challenged facilities in New York state. She's managed the health care facility restructuring loan pool program that provides low interest rate loans to health care facility in support of their business plans and developed and prepared credit analyses in support of financings of construction and renovation projects requiring CON approval. Tracy also was providing analytical and policy development support for the Commission on Health Care for the 21st century, the 2006 Burger commission as well as the Medicaid redesign team's task force report on Brooklyn. also absolutely, to my left, you want to express the department's gratitude to Charlie Abel for guiding the center as acting director these past few months. As he has in the past, Charlie answered the call and provided outstanding leadership of the center. Many thanks to you, Charlie. I think Tracy is probably ... she's still with us, joining us from Albany today. She would have liked to be Want to wave? Are you there, Tracy? I'm not sure...there she is. She's joining us from Albany. She'd like to be here in person and will certainly become a fixture at future meetings and have opportunities to address the council but she's in Albany today playing a lead role in getting the \$1,200,000,000 capital restructuring financing program which is the DISRP related program that Dr. Ruge referred to earlier, getting the awards for that program across the finish line. Just for now. In anticipation of a late October, announcement of funding and again, she's certainly expressed an interest in how much she's looking forward to working with all of you during these exciting times in health care system planning and oversight. Thank you. That's the end of my report.

MR. KRAUT: Thanks. That's a busy couple of weeks since our last meeting. Dr. Strange.

Just a question on the first topic with integrating behavioral and primary care, especially as it relates to the PPSes having been a little involved in this, even in Staten Island. We know that there's an issue with the access on both sides, primary care and health. We looked at how to relax some of the issues that may deal with using telemedicine to maybe get to integrate this better

because right now, what it appears to be, at least locally, anyway but I can't imagine this isn't occurring around the state but there isn't enough. There aren't enough providers on both sides to do the things that we want done to provide the necessary care but telemedicine in this day and age, if done properly with the right security and all of that, may be a way to link this in a better way.

I'm going to begin addressing and Lee Solomon as ... Lee, you're at the table? I can see you. Please jump in in a minute but I think, Dr. Strange, as you know, the barriers with respect to telemedicine are the physical infrastructure. We expect that there will be successful applications under the capital restructuring financing program that I just mentioned that support those needs. It's certainly an area that as we speak to whether it's urban or rural providers, they express, some cases, they don't have the infrastructure. In some cases, the other barrier, they don't have the practitioners but we're certainly working in number of ways and working with Department of Mental Health, we use medicine as very much a critical component of that. Lisa Ullman's office, with an them, as it has some dedicated staff for that. I don't know. Lisa, if you want to make any remarks in response to Dr. Strange's question?

MR. SHEPPARD: Sure. Thanks, I think what I can add to that is that there was legislation recently enacted pertaining to telehealth and the idea that an encounter would be handled by face to face and it should also be delivered by a telehealth mechanism. The department is clearly in process of writing regulations pertaining to that. One of our goal is to work with OMH in particular which has their own recent regulations regarding telepsychiatry so our idea will certainly to coordinate with that and making sure that we're being consistent as we do our regulations and we're working in the context of the model that you've described under DSRIP, related to integrated care to make sure that it's all working together and that we're trying to facilitate the integration of services as much as the extent possible.

MR KRAUT: Thank you. Dr. Yang?

DR. YANG: Right. Hi. I just wanted to thank and recognize Mr. Sheppard and his team for this very rational reassessment of the clinic standards. In in particular, it's going to help really resolve some of the critical situations and improve the likelihood of better health and safety for people inside and outside shelters.

MR. SHEPPARD: That's great. Thanks.

MR. KRAUT: Dr. Boutin-Foster than Dr. Brown.

DR. BOUTIN-FOSTER: Follow up question, then. I was surprised to hear about it in this forum.

MR. KRAUT: Dr. Boutin-Foster, just make sure the mike's on and ...

DR. BOUTIN-FOSTER: Do they fall under article 28? How would they be presented for certificate of needed evaluation? Is it somewhat different than other clinics or ... The homeless shelters that Dr. Yang just spoke of. I was just surprised to hear about it in this context, because



I'm trying to think how we would evaluate these programs the same way we evaluate other programs that present to us?

MR. SHEPPARD: Let me take a stab. Most cases, they're extension clinics. They would probably, as extension clinics, would probably go through a limited or an administrative review process. You wouldn't necessarily see them here as for full review and typically the dollar thresholds given would not reach that. Yeah.

MR. KRAUT: Dr. Brown?

DR. BROWN: I'd like to recommend and I'm sure the department is involved with this, with the issue of telemedicine especially. You can appreciate the concerns on behavior health side, while in some cases, similar to physical health and many cases also very dissimilar and to the extent to which there's collaboration with other agencies that OMH and Oasis, it would be really useful to have them at the table as we go forward with that.

MR. SHEPPARD: Absolutely and I said, we will have some opportunities with work we are doing with the council in development of regulations going forward to bring them forward, to bring them in and I believe we had a senior member of the OMH here. Dr. Rugge, I think, it was our ... It was over the summer, I guess, one of our meetings but absolutely. We partner with them at multiple levels. My office has standing monthly issue planning calls with our counterparts at OMH. Yeah, absolutely increasingly where the lines between our organizations for good becoming increasingly fuzzy.

In that respect, like to recommend Oasis as a medical advisory panel. This issue about telehealth came front and center. It would be useful that the collaboration between Oasis OMH and any other agency that has such advisory groups to be participants in such an important endeavor.

DR. BROWN: The next thing I wanted to ask you about and I don't know, Mr. Chair, if this is really relevant. I guess I will find out because of your admirable leadership. The issue about hepatitis C. Because of, obviously the growing prevalence and concern, particularly on the behavior health side, because of the issue that many of their patient populations that higher risk. Given how expensive the treatments are for treating persons, at least they're more effective treatments would be useful at perhaps at some point in the future that we can hear the campaign, the approach the Department chooses to take and with respect to handling something that many primary care physicians are faced with the issue about how they can get the testing paid for and then the issue about access to care.

MR. KRAUT: Okay. Any other questions? Thank you so much, Mr. Sheppard. I'd now like to introduce Ms. Misa from Albany, to give us an update on activities of OHIP, the Office of Health Insurance Programs.

MS. MISA: Sure. Thank you very much and good morning. I just want to give a quick update on 2 major initiatives underway within the Office of Health Insurance Programs. The first is the work of our delivery system. As you know, we are currently in year one of implementation. Implementation plans of our performing provider systems have been reviewed by our

independent assessor and will be posted next week on the Department's website. We are aiming for posting those plans by the 13th of October but PPS plans are looking good. The PPSes should be in a good position to move forward with these plans. In addition, on November 8th and 9th, the project approval and oversight panel will review these plans. The panel will also have the opportunity to hear from the performing provider systems to report in on the progress made and also hear any challenges currently experienced by PPSes. There will be room for Q&A at the panel in November. In addition to the work of DSRIP, the value based payment work group has been meeting. There is very strong participation among many stakeholders. The value-based payment workgroup has created 5 subcommittees and various clinical advisory groups or CAGs. Each subcommittee is in CAGs are scheduled to meet throughout the end of the year to achieve their respective objectives. Value-based payment subcommittees play a crucial role in terms of developing the value-based payment implementation details. Each subcommittee is comprised of stakeholders who have a direct interest in or knowledge of the specific topics related to each respective subcommittee. Each subcommittee has co-chairs designated by the value based payment work group. The co-chairs really help manage the subcommittee towards the development of a final subcommittee report recommendation report. The 5 subcommittees are as follows. There's a technical design 1 subcommittee, a technical design 2 subcommittee, a regulatory impact subcommittee and there's also a subcommittee on advocacy and engagement as well as the social determinants of health and community-based organizations. There is a ton of information on the goals of each committee and the work that each committee is currently comprised of. As you can see, we have a lot of work before us but everything is certainly moving in the right direction. That concludes my report to the Office of Health Insurance Programs. Thank you.

MR. KRAUT: Thank you very much. Dr. Kalkut?

DR. KALKUT: Thanks for the report. I would ask you about the opt-in or opt-out process for DSRIP. There's the announcement this week that the consenting process would be in 2 parts starting late October for about 15% of the patients and then the remainder I think estimated at 5,100,000 in mid-February with results sometime in April. April marks the start of DSRIP year 2. Until the consents are done and certainly legitimate to share information, we're into year 2. Can you talk about that process, what the process will be and then how we can use the data that has been distributed up to this point in a de-identified way and how to ask questions about that data until we can look at individual patients which requires the consent?

MS. MISA: I very much apologize for currently a fire alarm. We're in the building but we have to evacuate but you are certainly correct they have some opt-out letters. We'll be coordinates and we will both phase out process to mail those letters to over 6,000,000 Medicaid members. I'm sorry with the noise here. I was unable to hear some of your questions.

MR. KRAUT: He'll repeat it but don't pull the alarm again, please.

DR. KALKUT: That came from Mr. Kraut, not from myself. The other questions are about ... I have an understanding of the limitations on the use of current data until the opt-in process but there are a lot of questions from partners. Is there a single document that describes use of the

data that we can point people to? That would be a direct question. Then, there are issues raised by the data that we have currently that is de-identified. For instance, there's a high percentage of patients who have no attribution, no primary care doctor and how do we ask questions about that in this 6 month period before we are able to use identified data? What's that process?

MS. MISA: Certainly and so I do not have specific detail on that at the moment but what I can do is I can go back and speak with Jason Helgerson and others and get additional detail. If it would be helpful, we could certainly present that that the next meeting or have a separate meeting on data.

DR. KALKUT: There's a lot of planning, obviously that has to take place. There is some work we can do on projects but understanding the data both in an attribution and the quality information that's been disseminated so far and having a dialog with the state about our questions that certainly we have and I assume every PPS across the state has would be very helpful.

MS. MISA: I understand. Then, we'll start

MR. KRAUT: Any other questions? Yes. Yes. Dr. Strange.

DR. STRANGE: I don't know if this belongs in this committee or not but I was a little concerned. Ms. Dreslin, you brought up this morning about Health Republic dropping out of the insurance field on Staten Island. I'm sure across the state there are other insurance companies who are dropping coverage in certain areas. For example, Elder Plan, Blue Cross, Medicare Advantage, to name a couple. This is creating a lot of havoc in communities. Understanding it's coming this time of the year when there are sign ins and changing but it has to do with provider networks, who's in, who's out. It has to do with continuity, where some primary docs may not be part of another network. Are we looking at things like for example Health Republic which is a new upstart company that's already out of business in a sense and other companies like Elder Plan and Blue Cross who've been in business for many years and are pulling out for whatever their reasons and I'm not sure some of the reasons and how this may be disrupting care, especially the continuity of primary care levels. Again, I ask it in this area. I don't know if it falls in this committee or should we be looking at it as a health council?

I would just say broadly that comment, compared with the other ones is, we can spend the entire 4 hours talking about some of the issues in DSRIP. Obviously, Dr. Kalkut had some operational understandings that are very vexing, given how we're doing it.

The trick for us is what is that appropriate role? I think the department is working through some of those things. I just say that as a before you respond but there are valid issues and it's so how deep can you go into this but there are some real high policy issues that you need to titrate out of this process and see if it's appropriate to discuss and if we actually can do something about them because there's so many entities doing something.

Yeah. I would also add that Health Republic is a fundamentally different situation than provider networks changing obviously as a co-op, they have challenges with access to capital and such different than other companies would have but I think as far as looking at networks as a constant

collaboration that goes on between the Department of Health, New York State of Health and the Department of Financial Services and all of that evaluation is done with the consumer utmost in our examinations, ensuring that there's adequate access, ensuring that we're meeting the thresholds of enough providers in the network so that there is true choice for the consumers. Yeah.

MR. KRAUT: Okay. I'm going to turn to Ms. Pirani to give an update on the Office of Public Health but maybe not.

MS. PIRANI: Good morning.

MR. KRAUT: Sylvia, you want to hold off for a second?

MS. PIRANI: Yes.

MR. KRAUT: All right. Put yourself on mute because I'm going to say something. I'll come right back to you, okay? Before we do it, I was going to this after Ms. Pirani spoke but I'll take the lull in the agenda. I just want to make 2 comments on behalf of the Council. We have had a couple of meetings where we've had a lot of participation. A lot of people wanted to speak. The Department put items on the agenda with a lot of opposition. As a consequence, we've stressed this building in maintaining the rules and doing that. I just want to acknowledge Ms. Celeste Johnson's in the room who's the associate commission and the regional director and I want to thank you. I know how stressful the Council can be on the building operations. I just want to thank you. You've been a great partner with us, trying to work out solutions. I certainly wanted to acknowledge that and thank you for all the help. We really want to get the public's input. We want to make these as open and engaging as possible but there is a limitation. At times, we can use the room twice this size in all frankness. It's real problematic and I'll just thank you because you've been a great partner. We're very appreciative of your tolerance when the circus comes to town. They really didn't know what went on but look, there's real concerns and they're valid concerns. We'll work around whatever, as I said, but I really want to thank you. Lastly, you've noticed, we've said it now at least 2 meetings. Hopefully everybody understands it. Chris Delker retired in the last week, I think. On repeated situations, I just want to tell the Council we've made very appropriate remarks in his presence. I won't take time to repeat those remarks to an empty chair but we just want to acknowledge his retirement, his years of service, his character and competence in serving the council and advancing the health policy of the State of New York. Chris, I'm assuming your first day on retirement, you're watching. We'll see you in Albany. Hopefully, you'll come back but thank you, Chris. Charlie, yes.

MR. ABEL: Maybe I should take this opportunity to introduce to you folks George Macko who is assumed the duties of the Director for the Division of Planning and Licensure. He will not replace Chris but he's trying to fill his shoes. Thank you.

MR. KRAUT: Welcome you and I already know things are going to be the same and a little different. The same because I understand you're very competent and smart. A little different in

the fact you've small 2 or 3 times during the day so I know it'll be a little different than Chris. Thank you and welcome.

MS. PIRANI: We're pleased to give this report this morning. I have two items to report on. First, briefly, that several weeks ago we had a joint meeting of the Public Health Committee and the ad hoc committee to lead the prevention agenda where we discussed health disparities with a presentation from Dr. Carla Boutin-Foster and also discussed our work integrating or collaborating with his support prevention agenda goals where we had a presentation from the District Program. Dr. Boufford is sorry that she can't be here today to do the presentation but she will do a full report when she returns in December.

The second thing I wanted to report on briefly was our work with the Governor and with the Aids Institute in our ambitious effort to end the AIDS epidemic. Karen Hagos who is a program coordinator from the Aids Institute will provide a brief report on our current activity.

MS. HAGOS: Hi everyone, good morning, it's great to be with you. As Sylvia mentioned I am with the AIDS Institute. I work with the Office of Planning and Community Affairs and I was the Lead Coordinator for the Ending the Epidemic Task Force. I think you heard the background information and have received a report prior to this so I'm just going to let you know a few things that are happening. As we move forward with implementation of ending the epidemic or ETE, because we need an acronym for everything, just to run by you the main goal of the ETE Initiative is to get down from an estimated 3,000 new infections to 750 new infections annually by the end of 2020. Certainly an ambitious goal but we're on our way to doing so. We currently released a dashboard that you can actually get on the website for that is [ete-boardny.org](http://ete-boardny.org). We can send up a link if that's something you want the link to. Right now it's our Version 1 of providing remaining transparent and providing data to anyone who would like to see it as it relates to ending the epidemic. Right now we have information on there about HIV prevention, incidents, testing, new diagnosis information as well as on deaths, and everything is compiled from various data sources and presented in one place. This is something that we've heard from the community as well as through the task force conversations that is vital to the success of this epidemic or to this initiative. We will have a second version that we'll release in Winter 2016 that will emphasize the actual ETE-related metrics. We have been very busy in terms of holding ETE regional listening discussions across the state. These began in August and they're ongoing through November. At this meeting various community members are able to come and receive information on data, discuss best practices and there's actually a call to action within each region in terms of tearing out ETE implementation at the regional level. There's 16 total regional meetings and we only have 4 more left. We've been busy. Queens and Staten Island are next week and then Suffolk and Nassau are taking place in November and there will be a Spanish-speaking forum I believe November 2nd, if I'm not mistaken. We're also doing a webinar series that are focusing on various either sub-populations or specific topics as it relates to ending the epidemic. There's one scheduled every month for the remainder of 2015. Our first one was on September 16th and there was nearly 100 persons who were registered to attend that. I think about that many showed up, as well. It was on ETE and the Criminal Justice System. The next one is October 21st and it's on Ending the Epidemic and the Vocational Opportunities for People Living with HIV. We're also working on a peer-certification program for those who work with the HIV population and that's a specific recommendation that came out of the task force.

Many things happening. We have some specific key actions in place that I'll just briefly list to you. Again, this is not an exhaustive list but just a few things to make you aware of. For instance, we have on January 1st the prep assistance program or what we refer to as, "Prep," launched. It provides reimbursement for primary care services for those who are eligible. Since January we have up to 158 applications for coverage. We also are conducting a match between New York State HIV Medicaid data and the New York State HIV Aids Registry. It's currently underway to identify people who are out of care for the purposes of linkage and retention. There's also an Ending the Epidemic Marketing campaign as well as a Proper Pre-Exposure Prophylaxis Specific Education campaign that is underway. Just to make sure you're aware, after the task force disbanded there is a subcommittee of the New York State Aids Advisory Council who meets every other month. This is to assist with ongoing implementation of the blueprint. It consists of members who were past task force members. Those are public meetings and there's always a dial-in so again if you're interested we can make sure that you get the information for those. Fast and furious but I'm welcomed to questions.

MR. KRAUT: Are there any questions? I just want to thank you. We just looked at the ETE website, it is really well done and the data has a wonderful dashboard if those of you who are students of health policy. It really just gives you the numbers you're looking for so congratulations on whoever conceptualized and executed that, really well done.

MS. HAGOS: We're working in partnership with Hunter College in terms of developing the dashboard. It's been a great partnership and we're certainly looking forward to what else we can do with it. I'd encourage everybody to look at that. We'll send around the link, okay?

MR. KRAUT: Thanks and now I'd like to ask Dr. Rugge to give a report on the Health Planning Committee. Thanks, Mrs. Pirani, and congratulations, again.

DR. RUGGE: Two weeks ago the Planning Committee began its consideration of updating the bed need methodology for nursing home beds. This is an exercise last undertaken in 2010 and new methodology is statutorily due at the end of 2016 in order to give the department enough time for implementation the council needs to address these and resolve these issues by the first quarter of 2016, not a lot of time. On the face of it, tweaking the numbers may seem like an exercise in technical arithmetic, but actually this methodology is foundational to our understanding of the capacity of the long term system and the configuration of that system. Since 2010 there have been no end to surprises. It turns out the demographic imperative did not apply. Instead of meeting expectations by way of number of beds to be filled, we fell way short. Thousands of beds have been de-commissioned and the current occupancy rate is significantly below the 97% threshold for full reimbursement of those facilities still in place. The reasons for this are basically a combination of factors, including certainly the development of better and more elaborate base services and very strong and patient preferences for services in the home wherever possible. At the same time there are a whole series of new dynamics that the committee and the council need to be considering as we look at this formula. These include substantial movement from a predominance of county-owned and voluntary facilities to a for-profit system. The imposition of the Medicaid global cap and the implications to that are profound. The establishment of population health improvement programs across the state, the

availability of district funds is a transformational effort like never before. The coming of MLTCs is a new mode of financing and organizing these services and not least, a change in the mix so that nursing homes, instead of being mostly custodial and long term residential are very importantly transitional care and rehab services providing a new level of care and a new pace of change and really a bifid kind of service within that system. Further implication in the event of failure in any community or region or across the state, this would not represent simply a nursing home failure, that if we have a failure of a post-acute system to function appropriately and be a place to transfer patients at the end of their necessary hospital stay, we'll have a failure of the acute-care system, as well, and if that fails, of course it means primary care has failed, so our system is truly interdependent and we need all systems to work well. Up to now the primary attention from this council has been on the acute care side but certainly we need to be binocular in our understanding and our vision. At the last, at the committee meeting, the emphasis was on making sure and not yet to find answers but to be asking the right questions, and the list that I have based on that conversation is not terribly short. Three categories. One of the technical questions, and that is, "What do we make of the demographic changes that are still to come with the aging of population, with account availing ever-increasing need as we talked about a few minutes ago about new services to be provided in the home and new agencies to do so?" In addition, I think it'll be a purview of the council to consider whether the 97% threshold is currently the appropriate marker for full reimbursement, given the quick turnover of those rehab and transition care patients. Those lead in turn to a series of policy questions that are broader but provide the context for all the arithmetic adjustments. For one, what is the proper geography for considering bed need and long term care need? Counties, I think represent a pretty arbitrary and not terribly health-sensitive indicator of need and there are others that are now available should the fifth regents, population health regents be an appropriate framework for those discussions and discussions? Could the district organizations be a player or be determinative in terms of how we consider long term care needs? Are there others? In addition, I think we need to give consideration to how bed need formula are applied community by community and region by region, thinking especially about the difference between rural care and urban care. As I try to hint a little earlier, there are certainly rural communities in which there is not the ability to provide community-based services and therefore we need more beds per population because these people can simply not be maintained to their home, and yet those people being admitted to the facilities who have by the nature of things lower acuity, lower reimbursement and putting in jeopardy the viability of those very facilities. There needs to some consideration about what's the appropriate size and rural communities, the population can support only relatively small-sized facilities, but these are of a scale that are not financially supportable and yet I would view it as unconscionable to force a family to move a family member 100 miles away because there's simply no beds inside. For example, the Adirondack Park, which is a risk. Then all that I think leads to another question and up until now we've regarded the Bed Need Methodology as what's the maximum? What's the limit? Should we consider whether there's a minimum number of beds by appropriate region so we're sure that we're not indeed shipping people too far from their own communities to give human and decent health care and residential care to our most infirmed and our most vulnerable citizens? These questions in turn to my mind lead to some even broader system considerations, and that is how are we looking at connecting and linking and affiliating our skilled nursing facilities and other long term care services to the PPSs and the services provided by the newly emerging integrated delivery systems, that these systems will be

incomplete unless we envelop long term care services, and yet they're very different kinds of activities and we don't necessarily need to look for a single owner or single operator of such diverse services. How indeed can we provide the right incentives and the right regulatory environment to assure that those post-acute services are available, once again, to protect the hospitals that depended upon places that place their patients when the acute care is finished? Ultimately, of course, the biggest systems question of all, how do we imagine and how do we formulate and how do we regulate services for those most vulnerable of all of our New Yorkers, and to be sure that we're doing it in every community and every nook and cranny of the state? No small charge, only a few months to do it but I think if we can begin with the bigger questions and zero in we'll come up with arithmetic that for sure 5 years from now will look archaic and strange and need revision again. We need to do the best we can for the coming half decade and hopefully we'll be able to do so. Along those lines, as the planning committee has perceived in the past, we are absolutely dependent not really on the wisdom of this council and it's members, but on the important stakeholders, the providers of care in this service, on experts who of whom we have a number in the state, on whom we'll be depending, I think, and also the public and the families of the people that we are trying to serve. In doing so, this planning committee will be very inclusive, the discussions will be very broad and they will be deep and they will be deeper than only an hour can be, that's available in the hour of a regular committee day, so at this point we are looking at a half-day meeting on Wednesday, November 18, the day prior to our next full committee day, reserving the option I would hope to reserve also an hour in the committee day for issues which may be more confined and may be unhandlable in a very short time. With this we have an appeal that if there are members of the council who do not currently sit on the planning committee would wish to joint the committee meeting or simply attend the committee meetings, we really need all the perspectives and all the expertise that we have and I think so many people with very deep experience in long term care don't happen to be on this particular committee given it's previous topics. With that we look forward to going from placing questions to beginning to have some answers. Thank you.

MR. KRAUT: Thank you, Dr. Ruge, and I just would reiterate the invitation that you don't have to be a member of the Health Planning Committee to participate. Given the interest and the desire to work on ... This is why you were put on the council. You were put on the council to work on these very complex, meaty, transformative need methodologies that get embedded and executive policy of the state, and they guide our conversations in establishment and codes and other venues, so even if you're not on the committee, try to make the time to come and attend one of those extended sessions because you couldn't really appreciate the nuances of some of the arguments. You may, when it gets for you to vote as a full council you really benefit, I think, from the richness of some of the discussion and certainly from the public comment period, which is always thought provoking. I know this is going to be a very tightly managed process, we have a timeline, we're trying to meet it, and Dr. Ruge, I know I'm confident you'll produce with the committee a very thoughtful recommendation.

MR. RUGGE: If we don't, you'll help us, Jeff.

MR. KRAUT: I certainly will guide you to use your time efficiently, that's the only promise I'll make.



DR. RUGGE: I would point out that we spent 91 minutes at our last meeting, and you were so worried that we were going to spill over. That's correct. We maintained our time.

MR. KRAUT: That's why you maintained your time because I was so worried you'd spill over. No, but in all fairness, you can't do this work in an hour, but he promises not to do it in 5 hours. Okay? So, 2-1/2, 3 is okay. Fair enough. Fair enough. Is there any questions for Dr. Ruggie? We're going to have a lot of conversations about this. Thank you so much, and thank you for committing to put this on the agenda. I'd now like to turn to Dr. Gutierrez to give a report on codes, regulation and legislation.

DR. GUTIERREZ: Still good morning. I'm code of regulation, Code Regulation and Legislation committee. We met this morning and we adapted a number of resolutions here for emergency adoption, protection against Legionella. This proposal will continue the emergency regulations related to cooling towers which recirculate and aerosolize water, were not properly monitored, maintained, and this infected aerosols may contain Legionella bacteria. The emergency regulation established requirements for the registration testing, cleaning and disinfection, maintenance, inspection, certification, record keeping and reporting of results and actions in order to control the growth of Legionella bacteria.

Without this action, the emergency regulation which are set forth in Part 4 of Title 10 Code, Rules and Regulations, will expire November 14th, 2015. The committee voted to recommend emergency adoption to the full council, and I so move.

MR. KRAUT: I have a motion, may I have a second, Mr. Fassler, are there any comments?

DR. GUTIERREZ: Dr. Graber from the Department is available for comments.

MR. KRAUT: If there is any questions, Dr. Graber is available to respond to them. Hearing that I'll call for a vote. All those in favor, aye. Opposed, abstention, the motion carries.

DR. GUTIERREZ: For emergency adoption also is synthetic. This proposal will continue the emergency regulations that expand the list of prohibited synthetic cannabinoids. The emergency regulations are in response to a rash of hospitalization related to new forms of synthetic cannabinoids whose chemical composition are not explicitly include in the current regulation. In addition, the emergency regulations are consistent with the federal schedule, one of controlled substances naming that newly identified synthetic cannabinoids better enables law enforcement to enforce the regulation and make it clear that the possession, manufacture, distribution or sale of this compounds is illegal. With all this action the emergency regulations, which are set forth in Part 9 of Title 10 would expire November 3rd, 2015.

The committee voted to recommend emergency adoption to the full council, and I so move.

MR. KRAUT: I have a motion, I have a second, Mr. Fassler. Any questions from the council? I know folks from the Department are available. Dr. Brown?

DR. BROWN: I am sort of curious as to the plan by the department to transition from emergency to final regulations.

DR. GUTIERREZ: Do you guys want to ... Josh, are you up in Albany?

MR. VINCIGUERRA: Yes, good morning. The question was at what point do we transition from emergency adoption to adoption? We believe that we could do that on the next cycle. The current emergency expires on November 13th but the 45 day comment period for our proposed reg actually ends on October 13th, so once that's over we believe we'll be able to have a final version to move forward in the next cycle.

MR. KRAUT: Thank you. Any other questions? Hearing that I'll call for a vote. All those in favor, aye? Opposed, abstention, the motion carries.

MR. GUTIERREZ: For adoption is observation services. This proposal will repeal Section 405.19G of Title 10 related to observation services and add a new section, 405.32. This new section, 405.32, will provide updated observation services that are consistent with Public Health Law Section 2805-V. The proposal will set forth organization and notice requirements and allow hospitals to provide observation services in in-patient beds, or in distinct observation units. The committee voted to recommend adoption to the full council, and I so move.

MR. KRAUT: I have a motion, may I have a second? Dr. Berliner? Is there any questions? Hearing none I'll call for a vote, all those in favor, aye, opposed, abstention, the motion carries.

DR. GUTIERREZ: For adoption is chronic renal dialysis services. This proposal will repeal Part 757 of Title 10, which governs New York State renal dialysis facilities and creates a new Part 757. The new part will conform to changes in federal regulations pertaining to providers of end state renal dialysis, renal disease services, clarify specific terms and strengthen operational requirements. The committee voted to recommend adoption to the full council, and I so move.

MR. KRAUT: I have a motion, may I have a second? Second, Dr. Brown. Any questions from the council? Hearing none I'll call for a vote. All those in favor, aye, opposed, abstention, the motion carries.

DR. GUTIERREZ: For adoption, patient access to laboratory test results, this proposal will amend provisions of Part 34 and 58 of Title 10, which govern laboratory test results reporting practices. The proposal will make state regulations consistent with federal regulations and for mid-laboratories to release patient test results directly to the patient upon patient request without the ordering provider's written consent. The committee voted to recommend adoption to the full council, and I so move.

MR. KRAUT: We have a motion, and there was ... Let me just do the motion. We have a motion to approve. We have a second, Ms. Fine. Let's just, you want to make a comment on.

DR. GUTIERREZ: I will make mention of another motion that was made later on so we can pass this one and then ...

MR. KRAUT: Does anybody have any questions on this motion? Hearing none I'll call for a vote. All those in favor, aye, opposed, abstention, the motion carries.

DR. GUTIERREZ: There was a further motion to request the DOH staff to bring to the November meeting of the committee and the council a timeline and process for consideration of the concerns raised by New York State physician pathologists, namely revising or revoking the state regulation that prohibits this specialist from discussing their findings with patients. I present it to the council and move.

MR. KRAUT: That's a motion, that's a recommendation of the committee and a motion you're making for our consideration. A second, Ms. Fine. Just so everybody understands who might not have been here this morning, the pathologist, we're one of 50 states, no, we are the only state that prohibits by regulation pathologists discussing test results with patients. We thought it involved the previous co-change that you had just approved. As it turns out, it really is ... You need to revise another co-change, and other than us saying we are committed to doing so, we ask the department to come back with a timeline how they could review it, make a recommendation, collect information from stakeholders so we can consider it. If you vote yes on this motion we're not voting to do it, we're just voting for the department to consider it and bring it to us, that's all. Any other questions?  
All those in favor, aye, opposed, abstention, the motion carries.

DR. GUTIERREZ: That concludes my report.

MR. KRAUT: Thank you, Dr. Gutierrez, thank you very much. Now I'd like to turn over to Dr. Kalkut for project review and establishment.

DR. KALKIT: Thank you. I'm Gary Kalkut, the Vice Chair of the Establishment and Project Review committee, and I am going to start with Category 6, Home Health Agency Licensures and go through the ones before us today.

1909L2042 ... Oh Dr. Torres from the council has conflict and is leaving the room. To continue, 2059L, 2133L, 2184L, 2186L, 2193L, 2260L, 2293L, 2362L, 2381L, 2405L, 2414L, 2437L, 2452L, 2459L, 2467L, 2469L, 2474L, 2475L, 2485L, 2490L, 2492L, 2493L, 2503L, 2505L, 2521L, 2546L, 2573L, 2300L, 2605L, 2188L, 2436L, 2441L, 2501L, 2542L, 2547L, 2554L, 2592L, 151264E, 2280L, interested Miss Hines, 2158L an interest declared by Mr. Fassler, 2606L, interest by Ms. Hines.

The committee recommends approval with... Left out 2504, you're going to do that separately?

I'm sorry, I didn't understand, sorry, continue.

The committee recommends approval with contingencies, and I so move.

MR. KRAUT: I have a motion, I have a second by Dr. Gutierrez, is there any comments or questions from the council members? Hearing none, I'll call for a vote. All those in favor, aye, opposed, abstention, the motion carries. Oh I'm sorry, an abstention, Miss Hines.

DR. KALKUT: There are two additional applications, Dr. Rugge you have a conflict, and I'd ask you to leave the room.

Those two are 2504L and 2456L, committee recommends approval with contingency and I so move.

MR. KRAUT: I have a second, Dr. Gutierrez, any questions? All those in favor, aye, opposed, abstentions, Miss Hines abstains. The motion carries.

DR. KALKUT: Good. I'd like to finish Category 6 and batch those certificates. Restate Certification of Incorporation for Housing Health Services, Certification of Amendment of the Certification of Incorporation for Samaritan Village, the Schulman and Schachne Institute for Nursing and Rotation to add fundraising, Brookdale Family Care Centers to amend, add to the corporate purposes, Urban Strategies Brookdale Family Health Center add to the corporate purposes and certificate of dissolution for River Hospital Foundation, committee recommends approval and I so move. Mr. Chair.

MR. KRAUT: I have a second by Dr. Gutierrez. Let's just, just a statement we want to make, do you want to just clarify that the approval of these certificates and changes and amendments, the whole general category, we're not endorsing the specifics of any of those activities, is that correct, but rather the form in which ... It requires Public Health council approval to amend bylaws, charters, name changes, that have to go to I believe the Secretary of State and it needs an action by us. We haven't passed on the legal structures or anything, is that correct? We're not endorsing the substance, we're endorsing the process of ongoing and the change. We're not the final say necessarily in doing so, so we just qualify that action.

Yes, Dr. Brown.

DR. BROWN: I'm sort of curious, and maybe at another time we can hear more about the merits of even coming before the council.

My understanding it's actually it's a legal requirement for anybody that's doing anything in the healthcare ... Let me not be lawyer.

MR. ZAHNLUETER: Hi, my name is Richard Zahnleuter, lawyer, Acting General Counsel. The statute requires that the Public Health & Health Planning Council approve the certificates of incorporation in the first instance of a corporation coming into existence, and so therefore every time there's a change or modification to those same certificates of incorporation, the Public Health & Health Planning Council also has to approve of those amendments.

DR. BROWN: I guess I'm more asking about the rationale behind the statute, maybe, at some point we can find out because I'm trying to figure out if we are endorsing something like this from the Public Health ... What is the thing that we are saying about this? Are we saying that this

is congruent with improving the health of citizens of the State of New York? That's what's challenging here.

MR. ZAHNLUETER: I don't know the rationale but I could speculate that let's say, for example, there was a change in corporate purpose to allow a hospital to engage in horse racing is a good example. You may not want to wish to have the hospital supplement it's income through that means or some substantive reason.

DR. BROWN: I apologize, Mr. Chair, I can see a lot of potential value and the good State of New York using it's resources in a way that it doesn't have to come through the Council, because having had an issues of transparency, having had that done with respect to our own agency and the length of time that it takes, it just seems to me that there might be a time to think of another way. I know that we can't do anything in violation of the statute.

MR. ZAHNLUETER: Having read the historic jacket on the bill that enacted this, because that's what I do for enjoyment... Yes, I am. Part of this has to do with the fact that as we created Article 28 and regulated hospitals and health facilities, there was a requirement when you incorporate, when you change. There needed to be a review other than the Secretary of State who really dealt with the legal structure and consistency with the not-for-profit law about the use of a name or anybody who is providing health or health-related services that is under Article 28, and therefore there needed to be an entity that looked at those purposes to see if it was consistent, and we were chosen as that entity having been established in 1903 in the state to oversee aspects of healthcare. There is a historical precedent where this became codified as part of not-for-profit law. I have actually some of the references, if you want to do.

We're going to take this show on the road.

Listen, let me tell you, if you want to have an empty room, let's go bring it.

There's the whole issue about the evolution of health planning and the role of the Council. It's an interesting historic ... Particularly in the context of the change in healthcare and the transformation, but I digress.

I have a motion on the table, are there any other questions? All those in favor, aye, opposed, abstention, the motion carries.

DR. KALKUT: Thank you. I'd like to move to applications for constructions, first is 151204C, Vassar Brothers Medical Center in Dutchess County, this is to construct a new Vet tower and renovate portions of the hospital campus to modernize the facility, decrease the total bed count from 365 to 350 by de-certifying 9 pediatric beds and 12 med-surg bed and adding 6 intensive care beds. Committee recommends approval with conditions and contingencies, and I so move.

MR. KRAUT: I have a second, Dr. Gutierrez, any comments from the department? Any questions from the Council? All those in favor, aye, opposed, abstention, the motion carries.

DR. KALKUT: 151270C, Hospice Buffalo Inc. in Erie County, this is to convert 10 residents beds to 10 in-patient certified beds and close their off-site location, committee recommended approval with a condition and I so move.

MR. KRAUT: I have a second, Dr. Gutierrez, any questions from the Council? All those in favor, aye, opposed, abstention, the motion carries.

DR. KALKUT: 151213C, Strong Memorial Hospital in Monroe County, Miss Hines and Mr. Robinson who is not in the room have recused themselves, this is to certify 8 pediatric intensive care beds and construct 6 operating rooms, a procedure room and a pediatric catheterization laboratory with support space. The committee recommended approval with conditions and contingencies, and I so move.

MR. KRAUT: I have a second, Dr. Torres, any questions from the Council? All those in favor, aye, opposed. Abstention, the motion carries. Could you ask Miss Hines to return to the room please? Thank you.

DR. KALKUT: Now moving to establishment and construction applications, 151216E, Columbia Memorial Hospital in Columbia County, this is to establish Albany Medical Center as the active parent and co-operator of Columbia Memorial Hospital. Committee recommends approval with conditions and contingencies and I so move.

MR. KRAUT: I have a second, Dr. Gutierrez, any questions? All those in favor, aye, opposed, abstention, motion carries.

DR. KALKUT: 151201E, Crystal Run Ambulatory Surgery Center of Middletown in Orange County, there request is for indefinite life for CON#082080, Committee recommends approval with conditions and contingency, and I so move.

MR. KRAUT: I have a second, Dr. Gutierrez, any questions? Hearing none I'll call for a vote. All those in favor, aye, opposed, abstention, motion carried.

DR. KALKUT: Can this be grouped? You can group the entire category so we can do this in one vote.

Excellent.

DR. KALKUT: Why don't we do that? 151246B, Mid-Bronx Endoscopy Center in Bronx County, this is to establish and construct a new single specialty ambulatory surgery center specializing in gastroenterology procedures to be located 57 West Burnside Avenue in the Bronx, 151288B Colonie ASC, LLC doing business as Specialty Eye Surgery in laser center of the capitol region in Albany County to establish a freestanding single specialty ambulatory surgery center for ophthalmology to be located at 207 Schenectady Rd. in Latham, 152036E AGCNY East doing business as Endoscopy Center of Central New York in Onondaga County,

that is ... The committee recommends approval with conditions and contingencies, and I so move.

MR. KRAUT: Do we have any ... I have a second by Dr. Gutierrez, any questions? Any comments? Hearing none I'll call for a vote, all those in favor, aye, opposed, abstentions, the motion carries.

DR. KALKUT: I'll also group the next two applications, 151250B, LISH, LISH in Suffolk County to establish a diagnostic and treatment center to be located at 159 Carlton Avenue in Central Islip and five extension clinics, all currently Article 28 facilities operated by three different operators. This amends and supersedes Number 142031, 152015B, Community Health's Initiatives, Inc., to establish and construct a diagnostic and treatment center located at 2882 West 15th St. in Brooklyn. The committee recommends approval with conditions and contingencies and I so move.

MR. KRAUT: May I have a second? Dr. Gutierrez, is there any questions, comments? All those in favor, aye, opposed, abstentions, the motion carries.

DR. KALKUT: The next group is applications for dialysis services. I will also batch this, starts with 151269B, Schenectady Partner doing business as Rotterdam Schenectady Dialysis Center in Schenectady County, this is to establish and construct a 13-station chronic renal dialysis center to be located at 1592 to 94 State Street in Schenectady, 151298E, Pelham Parkway Dialysis Center in the Bronx, transfer of 100% ownership to a new corporate parent, 151308B, Brooklyn Garden Dialysis Center in Kings County to establish and construct a 15-station chronic renal dialysis center to be located in Brooklyn Gardens Nursing and Rehabilitation Center at 835 Herkimer Street in Brooklyn, and then 152025 Mohawk Valley Dialysis Center in Montgomery county to transfer 19% of stock ownership of an existing 15-station chronic renal dialysis center to one new shareholder and multiple transfers of ownership between two existing members. The committee recommends approval with conditions and contingencies, and I so move.

MR. KRAUT: Second, Dr. Gutierrez, any comments or questions? Hearing none I'll call for a vote. All those in favor, aye, opposed, abstention, the motion carries.

DR. KALKUT: Next is Residential Health Care Facilities, establish and construction 151180E ECRNC doing business as Evergreen Commons Rehabilitation and Nursing Center in Rensselaer County. This is to establish CCRNC doing business as Evergreen Commons Rehabilitation and Nursing Center is the new operator of NY Med Rensselaer, doing business as Evergreen Commons, a 240-bed facility located in East Greenbush, 151196E, Daleville Care Center, Nassau County, transfer of 9% ownership interest from one existing shareholder to three existing shareholders, bringing each of the three shareholders to a total interest of 11%. The Committee recommends approval with conditions and contingencies for these applications, and I so move.

I have a second, Dr. Gutierrez, any questions? All those in favor, aye, opposed, abstentions, the motion carries.

MR. KRAUT: I'll now take over the Chair as Dr. Kalkut is in conflict with the next application. He's left the room. Calling Application 15200AD NYU Hospital Center in Kings County, conflict declared by Dr. Kalkut who's out of the room. This is to certify NYU Lutheran Medical Center as a division of NYU Hospital Center, DOH and the Committee recommend approval with the condition and contingencies and I so move, may I have a second? I have a second, Dr. Gutierrez. Any questions or comments? Hearing none I'll call for a vote. All those in favor, aye, opposed, abstentions, the motion carries, could you ask Dr. Kalkut to return?

151200E, South Shore Surgery Center in Suffolk County, conflict declared by Mr. Kraut who has left the room. This is to request a 2-year limited life, extension for CON0422001 and transfer 50.1% membership interest to North Shore LIJ Multi-Specialty Ventures as a Class C member. The Department recommends, the Committee recommends approval of the operating certificate 2 years from the recommendation letter, the condition and contingencies as recommended. I so move.

MR. KRAUT: I have a second from Dr. Gutierrez, any questions from the council? Hearing none I call a vote. All in favor? Opposed? Abstain? The motion carries.

DR. KALKUT: 151226E DHCH doing business as Digestive Health Center of Huntington in Suffolk County, a conflict declared by Mr. Kraut who has left the room. This is to establish DHCH LLC as the new operator of the Digestive Health Center of Huntington. The Committee recommends approval with conditions and contingencies and I so move.

MR. KRAUT: Second by Dr. Gutierrez, any questions from the Council? Hearing none I call for a vote. All in favor? Opposed? Abstain? The motion carries.

DR. KALKUT: 151258E Suffolk Surgery Center, Suffolk County, again a conflict by Mr. Kraut who has left the room, this is to transfer ownership interest for North Shore LIJ Multi-Specialty Ventures, LLC to become a 70% member of Suffolk Surgery Center, LLC, the committee recommends approval with conditions and contingencies and I so move. Any questions from the Council? Hearing none I call for a vote. In favor? Opposed? Abstain? The motion carries. Get Mr. Kraut to return.

DR. KALKUT: Next application is 151131E Latta Road Nursing Home West, LLC Monroe County, conflict declared by Mr. Robinson who is not at the meeting. This is to establish Ladder Road Nursing Home West, LLC as the new operator of Latta Road Nursing Home, a 40-bed facility located at 2100 Latta Road in Rochester. I'm going to group these, the following applications.

Next is 151133E Latta Road Nursing Home East, LLC in Monroe County, again a conflict by, recuse Mr. Robinson who is not here, this is to establish Latta Road Nursing Home East LLC as the new operator of the Latta Road Nursing Home, a 40-bed facility located at 2102 Latta Road in Rochester.

151134E Hamilton Nursing Home LLC, Monroe County, again Mr. Robinson is not in the room. This is to establish Hamilton Manor Nursing Home LLC as the new operator of Hamilton Manor



Nursing Home, a 40-bed facility located at 1172 Longpont Road in Rochester. Committee recommends approval with contingencies and I so move.

Oh should I have a second by Dr. Torres, any questions? All those in favor, aye opposed, abstentions, motion carries.

151099E HCR in Monroe County, interest declared by Miss Hines and Mr. Robinson to add a new trustee for their employee stock ownership plan trust and update the current status of the corporation stockholders, board members and trustees, the Committee recommends approval with conditions and contingencies, and I so move.

MR. KRAUT: I have a second, Dr. Gutierrez, any questions? All those in favor, aye, opposed, abstentions, the motion carries.

DR. KALKUT: 151008B Pittsford Pain Center in Monroe County, conflict and recusal by Miss Hines who has left the room, Mr. Robinson not in attendance. This is to establish and construct a single specialty ambulatory surgery center to provide pain and management services at 727 Lyndon Avenue, Pittsford, let me do this one separately and ... The Committee recommends approval with conditions and contingencies, and I so move.

MR. KRAUT: I have a second by Dr. Gutierrez. Charlie, I think just for the record you just want to explain, just comment a little on the application because there was a dissent by the HSA.

MR. ABEL: Sure. Happy to do that. This is a relatively rare situation where the Finger Lakes HSA, the only HSA we have left in the state recommended disapproval of this project and by statute the HSA must make a recommendation for it's projects to [inaudible 00:50:48] and it's just a recommendation. Department recommends approval and the reason for the disjoint is the ways in which the Department and the HSA looks at need for surgery centers.

Back in the 1990s with New York State having precious few ambulatory centers, the regulations were changed to encourage ambulatory surgery center growth, and having that as an option for consumer choice, whole host of rationale for that and as a result we went from a population-based need methodology to one that really relied upon a the ability for the proposed surgeons to demonstrate that they could attract the volume necessary to the ambulatory, proposed ambulatory surgery center to make the project financially feasible.

The HSA looked at it form a different perspective and said, "Look, the procedures that this ambulatory surgery center, proposed ambulatory surgery center proposes to provide are being done now in doctor's offices or in hospitals," and to the extent they've done it in hospitals there is capacity and to the extent that they've done in physician's offices there, that's being done and it's being done at a lower cost than would be the case if it was in an ambulatory surgery center certified by the Department of Health.

I think we've heard testimony that the because of payment changes at the federal and state level, the ability for physicians to provide services in the physician's office in a financially feasible manner is really been diminished, just from a practical, financial perspective and the increased rate that the ambulatory surgery centers provide makes it financially feasible.

On the flip side we do do state monitors ambulatory surgery centers for quality and so we do get something and we, they must, ambulatory surgery centers must commit to serve individuals regardless of ability to pay, so there's a public benefit to offset an increase in payment rate and for that matter managed care companies typically look at a certified setting as a basis for ... Take into consideration what the negotiated rate should be for that provider.

MR. KRAUT: Thanks.

We have a difference in need review, the Department maintains after consideration of the HSA disapproval recommendation, the Department remains that in approval of this project and that's per our regulatory approval process.

MR. KRAUT: Thank you. Thank you. If there aren't any questions or comments I'd like to call a vote. Seeing none, all those in favor, aye opposed okay, hold on. Let's do a roll call. Go ahead, you want me to ...

Dr. Berliner?

No.

Dr. Boutin Foster?

Yes.

Dr. Brown?

Yes.

Ms. Carver Cheney

yes.

Mr. Fassler?

Yes.

Ms. Fine?

yes.

Dr. Gutierrez

no.

Mr. Holt,

yes.

Dr. Kalkut?

Yes.

Dr. Ruggie?

No.

Dr. Strange?

Yes.

Dr. Torres?

Yes.

Dr. Yang?

Yes.

We have 10.

You don't have me, do we need?

We need 13.

We need 13. We have 10 affirmative votes.

I'm going to record a vote of yes.

That's 12 to 3.

Twelve to 3, the motion fails. Is this establishment? This is yeah, establishment construction, and we're missing how many members?

Six, seven members. Six seven.

Could I make a suggestion that this item be brought back on the agenda for the next meeting? Do we need to have a ... What? I just want to get procedurally doing this right. I'm going to recall the vote.

What we'd like to do and I know this is a departure from anything we've done. What we've done is because where we have not gotten a consensus and we've put an applicant in literal limbo because we are the final say. What I'm suggesting we do is we recall the vote that was just taken that failed that we know to get an approval. We then will make a motion. I'll recall that vote. Then it's as if we didn't vote. Instead of a motion to approve, the motion will be to table for another cycle to bring back to the full council up for a recommendation so we can have a full council meeting hopefully to vote. Does everybody understand? I am now going to make a motion to recall the vote we just took and do I have a second?

MR. FASSLER: Second.

MR. KRAUT: I have a second, Mr. Fassler. All those to recall the vote, vote yes.

Yes.

Opposed. Abstentions. The motion carries. That vote was now recalled. I'll entertain now another motion to table this project to the next full council meeting. It's not going to go back to establishment. The full council meeting for consideration before the council.

So moved.

I have a second by Dr. Brown. All those in favor, yes.

Yes.

Opposed. Abstention. The motion carries. Do that right? All right. I'm educable. Dr. Kalkut

DR. KALKUT: 151186B, Premier Ambulatory Surgery Development Company doing business as Premier Ambulatory Surgery Center in Erie County. This is to establish a constructive

freestanding multi-specialty ambulatory surgery center to be located at 2816 Pleasant Avenue in Hamburg. The department recommended that approval with conditions and contingencies. The project review committee added the following condition that, "No additional physician should be allowed to perform surgical or interventional procedures at the center without the department's prior approval to allow an assessment of the impact of such additions on TLC Health Network, Lakeshore Hospital, for a period of five years from the date of the issuance of the operating certificate." The committee then approved those conditions and contingencies with one member abstaining and I so move.

MR. KRAUT: I have a second.

I have a second by Dr. Gutierrez Just to make the point here, this contingency was put in at the request of the committee with the agreement of the applicant and the concurrence of TLC Network which was in opposition. I would make a point that the condition we imposed was greater than what TLC Network had requested which was to keep them as a single specialty and not permit them to be multi-specialty. We took the additional step of saying, "No physician" because this way we won't have a fight about what's a single specialty or multi-specialty. It requires it to come back here and really what it requires is for the department to adjudicate. The belief is by both the applicant and the hospital in opposition, which you read the letters, is struggling, as they described it, this should have a negligible effect on the hospital's operations with this limitation. Is there anything to add I think other than what I've just said? As you understand what went behind that this contingency that was added. Dr. Gutierrez.

Dr. GUTIERREZ: I have a question that did not come up before is what happens should in fact the hospital cease to exist?

Mr. KRAUT: Well, I think, if the hospital ceases to exist, the applicant has the right to come back. The events in which we opposed this condition changes and I would gather that, if the applicant was so interested, it could apply to lift this condition because the circumstances under which we imposed it, but it has to come back here either way, so you have that opportunity. Any other questions? Hearing none, I'll call for a vote. All those in favor, aye.

Aye.

Opposed. Abstention. The motion carries. I'm sorry. You abstained.

Opposed.

Dr. Brown is opposed. Any abstentions? I believe the motion carries. Motion carries. 151060E, Warren Operation Associates doing business as Warren Center Rehabilitation and Healthcare in Warren County. This is to establish Warren Operation Associates as the new operative of the 80 bed facility located at 42 Gurney Lane, Queensbury, that is currently operated as Westmount Health Facility. The committee recommends approval with conditions and contingencies with one member abstaining and I assume ...

DR. KALKUT: We have two ... I would add that Dr. Rugge has conflict and Mr. Fassler both have left the room. I have a motion.

MR. KRAUT: May I have a second? Dr. Gutierrez. Is there any questions on this application? Hearing none ... Is there any comment from the department on this application? I'm not sure we need ...

MR. ABEL: The department continues to recommend approval.

MR. KRAUT: All those in favor, aye.

Aye, aye.

Opposed. Abstention. The motion carries. Could you ask them to return?

DR. KALKUT: Mr. Chairman, that concludes the report of the Establishment and Project Review Committee.

Thank you very much, Dr. Kalkut and members of the committee who labored on that committee day to get us through that agenda which was quite lengthy. This now concludes the ... I'm going to adjourn the meeting of the Public Health and Health Planning Council.

The next committee day is going to be on November 19th. It's going to be conducted in Albany. As you heard Dr. Rugge say he'll see if they can get an expanded health planning part of the committee the day before on Wednesday. The full council will be meeting in Albany on December 10th.

We're now going to go into executive session. I'm going to ask the members of the public to please exit the meeting room as we enter executive session. I'll turn off the web casting. We're going to take a little bio break. I think there's some lunch we can grab and we'd like to go right into the executive session so you can bring stuff in here.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 225(5)(a) of the Public Health Law, Part 4 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is added, to be effective upon filing with the Secretary, to read as follows:

#### 4.1 Scope.

All owners of cooling towers, and all general hospitals and residential health care facilities as defined in Article 28 of the Public Health Law, shall comply with this Part.

#### 4.2 Definitions.

As used in this Part, the following terms shall have the following meanings:

(a) Building. The term “building” means any structure used or intended for supporting or sheltering any use or occupancy. The term shall be construed as if followed by the phrase “structure, premises, lot or part thereof” unless otherwise indicated by the text.

(b) Commissioner. The term “commissioner” means the New York State Commissioner of Health.

(c) Cooling Tower. The term “cooling tower” means a cooling tower, evaporative condenser or fluid cooler that is part of a recirculated water system incorporated into a building’s cooling, industrial process, refrigeration or energy production system.

(d) Owner. The term “owner” means any person, agent, firm, partnership, corporation or other legal entity having a legal or equitable interest in, or control of the premises.

#### 4.3 Registration.

All owners of cooling towers shall register such towers with the department within 30 days after the effective date of this Part. Thereafter, all owners of cooling towers shall register such towers with the department prior to initial operation, and whenever any owner of the cooling tower changes. Such registration shall be in a form and manner as required by the commissioner and shall include, at a minimum, the following information:

- (a) street address of the building at which the cooling tower is located, with building identification number, if any;
- (b) intended use of the cooling tower;
- (c) name(s), address(es), telephone number(s), and email address(es) of all owner(s) of the building;
- (d) name of the manufacturer of the cooling tower;
- (e) model number of the cooling tower;
- (f) specific unit serial number of the cooling tower;
- (g) cooling capacity (tonnage) of the cooling tower;
- (h) basin capacity of the cooling tower;
- (i) whether systematic disinfection is maintained manually, through timed injection, or through continuous delivery;
- (j) the contractor or employee engaged to inspect and certify the cooling tower; and
- (k) commissioning date of the cooling tower.

#### 4.4 Culture sample collection and testing; cleaning and disinfection.

- (a) All owners of cooling towers shall collect samples and obtain culture testing:

(1) within 30 days of the effective date of this Part, unless such culture testing has been obtained within 30 days prior to the effective date of this Part, and shall take immediate actions in response to such testing, including interpreting Legionella culture results, if any, as specified in Appendix 4-A.

(2) in accordance with the maintenance program and plan, and shall take immediate actions in response to such testing as specified in the plan, including interpreting Legionella culture results, if any, as specified in Appendix 4-A; provided that if a maintenance program and plan has not yet been obtained in accordance with section 4.6 of this Part, bacteriological culture samples and analysis (dip slides or heterotrophic plate counts) to assess microbiological activity shall be obtained, at intervals not exceeding 90 days while the tower is in use, and any immediate action in response to such testing shall be taken, including interpreting Legionella culture results, if any, as specified in Appendix 4-A.

(b) Any person who performs cleaning and disinfection shall be a commercial pesticide applicator or pesticide technician who is qualified to apply biocide in a cooling tower and certified in accordance with the requirements of Article 33 of the Environmental Conservation Law and 6 NYCRR Part 325, or a pesticide apprentice under the supervision of a certified applicator.

(c) Only biocide products registered by the New York State Department of Environmental Conservation may be used in disinfection.

(d) All owners shall ensure that all cooling towers are cleaned and disinfected when shut down for more than five days.



#### 4.5 Inspection and certification.

(a) Inspection. All owners of cooling towers shall inspect such towers within 30 days of the effective date of this Part, unless such tower has been inspected within 30 days prior to the effective date of this Part. Thereafter, owners shall ensure that all cooling towers are inspected at intervals not exceeding every 90 days while in use. All inspections shall be performed by a New York State licensed professional engineer; certified industrial hygienist; certified water technologist; or environmental consultant with training and experience performing inspections in accordance with current standard industry protocols including, but not limited to ASHRAE 188-2015, as incorporated by section 4.6 of this Part.

(1) Each inspection shall include an evaluation of:

- (i) the cooling tower and associated equipment for the presence of organic material, biofilm, algae, and other visible contaminants;
- (ii) the general condition of the cooling tower, basin, packing material, and drift eliminator;
- (iii) water make-up connections and control;
- (iv) proper functioning of the conductivity control; and
- (v) proper functioning of all dosing equipment (pumps, strain gauges).

(2) Any deficiencies found during inspection will be reported to the owner for immediate corrective action. A person qualified to inspect pursuant to paragraph (a) of this section shall document all deficiencies, and all completed corrective actions.

(3) All inspection findings, deficiencies, and corrective actions shall be reported to the owner, recorded, and retained in accordance with this Part, and shall also be reported to the department in accordance with section 4.10 of this Part.

(b) Certification. Each year, the owner of a cooling tower shall obtain a certification from a person identified in paragraph (a) of this section, that such cooling tower was inspected, tested, cleaned, and disinfected in compliance with this Part, that the condition of the cooling tower is appropriate for its intended use, and that a maintenance program and plan has been developed and implemented as required by this Part. Such certification shall be obtained by November 1, 2016, and by November 1 of each year thereafter. Such certification shall be reported to the department.

#### 4.6 Maintenance program and plan.

(a) By March 1, 2016, and thereafter prior to initial operation, owners shall obtain and implement a maintenance program and plan developed in accordance with section 7.2 of Legionellosis: Risk Management for Building Water Systems (ANSI/ASHRAE 188-2015), 2015 edition with final approval date of June 26, 2015, at pages 7-8, incorporated herein by reference. The latest edition of ASHRAE 188-2015 may be purchased from the ASHRAE website ([www.ashrae.org](http://www.ashrae.org)) or from ASHRAE Customer Service, 1791 Tullie Circle, NE, Atlanta, GA 30329-2305. E-mail: [orders@ashrae.org](mailto:orders@ashrae.org). Fax: 678-539-2129. Telephone: 404-636-8400, or toll free 1-800-527-4723. Copies are available for inspection and copying at: Center for Environmental Health, Corning Tower Room 1619, Empire State Plaza, Albany, NY 12237.

(b) In addition, the program and plan shall include the following elements:

- (1) a schedule for routine bacteriological sampling and analysis (dip slides or heterotrophic plate counts) to assess microbiological activity and a schedule for Legionella sampling and culture analysis; provided that where the owner is a general hospital or residential health care facility, as defined in Article 28 of the Public Health

Law, routine testing shall be performed at a frequency in accordance with the direction of the department.

(2) emergency sample collection and submission of samples for Legionella culture testing to be conducted in the case of events including, but not limited to:

- (i) power failure of sufficient duration to allow for the growth of bacteria;
- (ii) loss of biocide treatment sufficient to allow for the growth of bacteria;
- (iii) failure of conductivity control to maintain proper cycles of concentration;
- (iv) a determination by the commissioner that one or more cases of legionellosis is or may be associated with the cooling tower, based upon epidemiologic data or laboratory testing; and
- (v) any other conditions specified by the commissioner.

(3) immediate action in response to culture testing, including interpreting Legionella culture results, if any, as specified in Appendix 4-A; provided that where the owner is a general hospital or residential health care facility, as defined in Article 28 of the Public Health Law, the provisions shall additionally require immediately contacting the department for further guidance, but without any delay in taking any action specified in Appendix 4-A.

(c) An owner shall maintain a copy of the plan required by this subdivision on the premises where a cooling tower is located. Such plan shall be made available to the department or local health department immediately upon request.

#### 4.7 Recordkeeping.

An owner shall keep and maintain records of all inspection findings, deficiencies, corrective actions, cleaning and disinfection, and tests performed pursuant to this Part, and certifications, for at least three years. An owner shall maintain a copy of the maintenance program and plan required by this Part on the premises where a cooling tower is located. Such records and plan shall be made available to the department or local health department immediately upon request.

#### 4.8 Discontinued use.

The owner of a cooling tower shall notify the department within 30 days after removing or permanently discontinuing use of a cooling tower. Such notice shall include a statement that such cooling tower has been disinfected and drained in accordance with the same procedures as set forth in the shutdown plan, as specified in the maintenance program and plan required pursuant to this Part.

#### 4.9 Enforcement.

(a) An officer, employee or agent of the department or local health department may enter onto any property to inspect the cooling tower for compliance with the requirements of this Part, in accordance with applicable law.

(b) Where an owner does not register, obtain certification, clean or disinfect, culture test or inspect a cooling tower within the time and manner set forth in this Part, the department or local health department may determine that such condition constitutes a nuisance and may take such action as authorized by law. The department or local health department may also take any other action authorized by law.

(c) A violation of any provision of this Part is subject to all civil and criminal penalties as provided for by law. Each day that an owner remains in violation of any provision of this Part shall constitute a separate and distinct violation of such provision.

#### 4.10 Electronic registration and reporting.

(a) (1) Within 30 days of the effective date of this Part, and thereafter within 10 days after any action required by this Part, owners shall electronically input the following information in a statewide electronic system designated by the commissioner:

- (i) registration information;
- (ii) date of last routine culture sample collection, sample results, and date of any required remedial action;
- (iii) date of any legionella sample collection, sample results, and date of any required remedial action;
- (iv) date of last cleaning and disinfection;
- (v) dates of start and end of any shutdown for more than five days;
- (vi) date of last certification and date when it was due;
- (vii) date of last inspection and date when it was due;
- (viii) date of discontinued use; and
- (ix) such other information as shall be determined by the department.

(2) The commissioner may suspend this requirement in the event that the electronic system is not available.

(b) The data in the system referenced in paragraph (a) shall be made publicly available, and shall be made fully accessible and searchable to any local health department. Nothing in this Part shall

preclude a local health department from requiring registration and reporting with a local system or collecting fees associated with the administration of such system.

#### 4.11 Health care facilities

(a) All general hospitals and residential health care facilities, as defined in Article 28 of the Public Health Law, shall, as the department may determine appropriate:

- (1) adopt a Legionella sampling plan for its facilities' potable water distribution system;
- (2) report the results of such sampling; and
- (3) take necessary responsive actions.

(b) With respect to such general hospitals and residential health care facilities, the department shall investigate to what extent, if any, requirements more stringent than those set forth in this Part are warranted.

#### 4.12 Severability.

If any provisions of this Part or the application thereof to any person or entity or circumstance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Part or the application thereof to other persons, entities, and circumstances.

### Appendix 4-A

<b>Interpretation of Legionella Culture Results from Cooling Towers</b>	
Legionella Test	Approach
Results in CFU <sup>1</sup> /ml	

<p>No detection (&lt; 10 CFU /ml)</p>	<p>Maintain treatment program and <i>Legionella</i> monitoring.</p>
<p>For levels at <math>\geq 10</math> CFU /ml but &lt; 1000 CFU /ml perform the following:</p>	<ul style="list-style-type: none"> <li>○ Review treatment program.</li> <li>○ Institute immediate <u>online disinfection</u><sup>2</sup> to help with control</li> <li>○ Retest the water in 3 – 7 days. <ul style="list-style-type: none"> <li>▪ Continue to retest at the same time interval until two consecutive readings show acceptable improvement, as determined by a person identified in 10 NYCRR 4.5(a). Continue with regular maintenance strategy.</li> <li>▪ If &lt; 100 CFU /ml repeat <u>online disinfection</u><sup>2</sup> and retest.</li> <li>▪ If <math>\geq 100</math> CFU /ml but &lt; 1000 CFU /ml further investigate the water treatment program and immediately perform <u>online disinfection</u>.<sup>2</sup> Retest and repeat attempts at control strategy.</li> </ul> </li> <li>○ If <math>\geq 1000</math> CFU /ml undertake control strategy as noted below.</li> </ul>
<p>For levels <math>\geq 1000</math> CFU /ml perform the following:</p>	<ul style="list-style-type: none"> <li>○ Review the treatment program</li> <li>○ Institute immediate <u>online decontamination</u><sup>3</sup> to help with control</li> <li>○ Retest the water in 3 – 7 days. <ul style="list-style-type: none"> <li>▪ Continue to retest at the same time interval until two consecutive readings show acceptable improvement, as determined by a person identified in 10 NYCRR 4.5(a). Continue with regular maintenance strategy.</li> <li>▪ If &lt; 100 CFU /ml repeat <u>online disinfection</u><sup>2</sup> and retest;</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>▪ If <math>\geq 100</math> CFU /ml but <math>&lt; 1000</math> CFU /ml further investigate the water treatment program and immediately perform <u>online disinfection</u>.<sup>2</sup> Re-test and repeat attempts at control strategy.</li> <li>▪ If <math>\geq 1000</math> CFU /ml carry out <u>system decontamination</u><sup>4</sup></li> </ul>
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<sup>1</sup> Colony forming units.

<sup>2</sup> Online disinfection means – Dose the cooling tower water system with either a different biocide or a similar biocide at an increased concentration than currently used.

<sup>3</sup> Online decontamination means – Dose the recirculation water with a chlorine-based compound equivalent to at least 5 mg/l (ppm) free residual chlorine for at least one hour; pH 7.0 to 7.6.

<sup>4</sup> System decontamination means – Maintain 5 to 10 mg/l (ppm) free residual chlorine for a minimum of one hour; drain and flush with disinfected water; clean wetted surface; refill and dose to 1 – 5 mg/l (ppm) of free residual chlorine at pH 7.0 – 7.6 and circulate for 30 minutes. Refill, re-establish treatment and retest for verification of treatment.



## **Regulatory Impact Statement**

### **Statutory Authority:**

The Public Health and Health Planning Council (PHHPC) is authorized by Section 225 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. PHL Section 225(5)(a) provides that the SSC may deal with any matter affecting the security of life or health, or the preservation or improvement of public health, in the state of New York.

### **Legislative Objectives:**

This rulemaking is in accordance with the legislative objective of PHL Section 225 authorizing the PHHPC, in conjunction with the Commissioner of Health, to protect public health and safety by amending the SSC to address issues that jeopardize health and safety. Specifically, these regulations establish requirements for cooling towers relating to: registration, reporting and recordkeeping; testing; cleaning and disinfection; maintenance; inspection; and certification of compliance. Additionally, these regulations require general hospitals and nursing homes to implement a *Legionella* sampling plan and take necessary responsive actions, as the department may deem appropriate.

### **Needs and Benefits:**

Improper maintenance of cooling towers can contribute to the growth and dissemination of *Legionella* bacteria, the causative agent of legionellosis. Optimal conditions for growth of *Legionella* include warm water that is high in nutrients and protected from light. People are exposed to *Legionella* through inhalation of aerosolized water containing the bacteria. Person-

to-person transmission has not been demonstrated. Symptoms of legionellosis may include cough, shortness of breath, high fever, muscle aches, and headaches, and can result in pneumonia. Hospitalization is often required and between 5-30% of cases are fatal. People at highest risk are those 50 years of age or older; current or former smokers; those with chronic lung diseases; those with weakened immune systems from diseases like cancer, diabetes, or kidney failure; and those who take drugs to suppress the immune system during chemotherapy or after an organ transplant. The number of cases of legionellosis reported in New York State between 2005-2014 increased 323% when compared to those reported in the previous ten year period.

Outbreaks of legionellosis have been associated with cooling towers. A cooling tower is an evaporative device that is part of a recirculated water system incorporated into a building's cooling, industrial process, refrigeration, or energy production system. Because water is part of the process of removing heat from a building, these devices require disinfectants—chemicals that kill or inhibit bacteria (including *Legionella*)—as means of controlling bacterial overgrowth. Overgrowth may result in the normal mists ejected from the tower having droplets containing *Legionella*.

For example, in 2005, a cooling tower located at ground level adjacent to a hospital in New Rochelle, Westchester County resulted in a cluster of 19 cases of legionellosis and multiple fatalities. Most of the individuals were dialysis patients or companions escorting the patients to their dialysis session. One fatality was in the local neighborhood. The cooling tower was found to have insufficient chemical treatment. The entire tower was ultimately replaced by the manufacturer in order to maintain cooling for the hospital and to protect public health. In June and July of 2008, 12 cases of legionellosis including one fatality were attributed to a small evaporative condenser on Onondaga Hill in Syracuse, Onondaga County. An investigation

found that the unit was not operating properly and this resulted in the growth of microorganisms in the unit. Emergency biocide treatment was initiated and proper treatment was maintained. No new cases were then detected thereafter.

Recent work has shown that sporadic cases of community legionellosis are often associated with extended periods of wet weather with overcast skies. A study conducted by the New York State Department of Health that included data from 13 states and one United States municipality noted a dramatic increase in sporadic, community acquired legionellosis cases in May through August 2013. Large municipal sites such as Buffalo, Erie County reported 2- to 3-fold increases in cases without identifying common exposures normally associated with legionellosis. All sites in the study except one had a significant correlation, with some time lag, between legionellosis case onset and one or more weather parameters. It was concluded that large municipalities produce significant mist (droplet) output from hundreds of cooling towers during the summer months. Periods of sustained precipitation, high humidity, cloud cover, and high dew point may lead to an “urban cooling tower” effect. The “urban cooling tower” effect is when a metropolitan area with hundreds of cooling towers acts as one large cooling tower producing a large output of drift, which is entrapped by humid air and overcast skies.

More recently, 133 cases of legionellosis, which included 16 fatalities, occurred in Bronx, NY (July-September, 2015). This event was preceded by an outbreak in Co-Op City in the Bronx, from December 2014 to January 2015, which involved 8 persons and no fatalities. Both of these outbreaks have been attributed to cooling towers, and emergency disinfection of compromised towers helped curtail these outbreaks. These events highlight the need for proper maintenance of cooling towers.

The heating, ventilation, and air-conditioning (HVAC) industry has issued guidelines on how to: seasonally start a cooling tower; treat it with biocides and other chemicals needed to protect the components from scale and corrosion; set cycles of operations that determine when fresh water is needed; and shut down the tower at the end of the cooling season. The American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) has recently released a new Standard entitled *Legionellosis: Risk Management for Building Water Systems* (ANSI/ASHRAE Standard 188-2015). Section 7.2 of that document outlines components of the operations and management plan for cooling towers. The industry also relies on other guidance for specific treatment chemicals, emergency disinfection or decontamination procedures, and other requirements.

However, none of the guidance is obligatory. Consequently, maintenance deficiencies such as poor practice in operation and management can result in bacterial overgrowth, increases in *Legionella*, and mist emissions that contain pathogenic legionellae. This regulation requires that all owners of cooling towers ensure proper maintenance of the cooling towers, to protect the public and address this public health threat.

Further, these regulations requires that all owners of cooling towers ensure proper maintenance of the cooling tower *Legionella* sampling plan for their potable water system, report the results, and take necessary actions to protect the safety of their patients or residents, as the Department may deem appropriate. The details of each facility's sampling plan and remedial measures will depend on the risk factors for acquiring Legionnaires' disease in the population served by the hospital or nursing home.

Most people in nursing homes should be considered at risk, as residents are typically over 50 years of age. In general hospitals, persons at risk include those over 50 years of age, as well

as those receiving chemotherapy, those undergoing transplants, and other persons housed on healthcare units that require special precautions. Additional persons who might be at increased risk for acquiring Legionnaires' disease include persons on high-dose steroid therapy and persons with chronic lung disease. Certain facilities with higher risk populations, such as those with hematopoietic stem-cell transplant (HSCT) and solid organ transplant units, require more protective measures.

An environmental assessment involves reviewing facility characteristics, hot and cold water supplies, cooling and air handling systems, and any chemical treatment systems. The purpose of the assessment is to discover any vulnerabilities that would allow for amplification of *Legionella* and to determine appropriate response actions in advance of any environmental sampling for *Legionella*. Initial and ongoing assessment should be conducted by a multidisciplinary team that represents the expertise, knowledge, and functions related to the facility's operation and service. A team should include, at a minimum, representatives from the following groups: Infection Control, Physical Facilities Management, Engineering, Clinicians, Laboratory, and Hospital Management.

**Costs:**

**Costs to Private Regulated Parties:**

Building owners already incur costs for routine operation and maintenance of cooling towers. This regulation establishes the following new requirements:

- Routine Bacteriological Culture Testing – The regulations require routine bacteriological testing pursuant to their cooling tower maintenance program and plan. The cost per dip

slide test is \$3.50. Assuming that some plans may require tests be performed twice a week, this could result in an annual cost of \$364. If heterotrophic plate count analysis is used the cost per sample on average is \$25.

- Emergency *Legionella* Culture Testing – Owners of cooling towers are required to conduct additional testing for Legionella in the event of disruption of normal operations or process control, or when indicated by epidemiological evidence. The average cost of each sample analysis is estimated to be approximately \$125.00.
- Maintenance Program and Plan Development – The formulation of a cooling tower program and sampling plan would require 4 to 8 hours at \$150 per hour (\$600 to \$1200). The range represents the cost for reviewing and modifying an existing plan versus the preparation of a new plan.
- Inspection – Owners of cooling towers shall obtain the services of a professional engineer (P.E.), certified industrial hygienist (C.I.H.), certified water technologist, or environmental consultant with training and experience performing inspections in accordance with current standard industry protocols including, but not limited to ASHRAE 188-2015, for inspection of the cooling towers at intervals not exceeding 90 days while in use. The cost of such services is estimated to be approximately \$150.00 per hour and estimated to take approximately eight (8) hours.
- Annual Certification – The same persons qualified to perform inspections are qualified to perform annual certifications. The certification can follow one of the required inspections and requires some additional evaluation and considerations. The cost of such services is estimated to be approximately \$150.00 per hour and is estimated to take approximately four (4) hours.

- Emergency Cleaning and Disinfection – If emergency cleaning and disinfection is required, owners of cooling towers are required to obtain the services of a certified commercial pesticide applicator or pesticide technician who is qualified to apply biocide in a cooling tower, or a pesticide apprentice under the supervision of a certified applicator. The cost of such services is estimated to be approximately \$5,000.00 for labor, plus the cost of materials.
- Recordkeeping and Electronic Reporting – Owners of cooling towers are required to maintain certain specified records and to electronically report certain specified information. The costs of these administrative activities are predicted to be minimal.
- Health Care Facilities – The cost of adopting a sampling plan for Article 28 facilities is dependent upon any existing plan and the status of existing record keeping. It is estimated that with prior records and a maintenance plan the time required should a consultant be hired would be 6.5 hours at \$150 per hour (\$975). Without a prior plan and poor maintenance documentation the time required would be 13 hours at \$150 per hour (\$1950). It is anticipated that facilities may develop the plan using existing staff.

**Costs to State Government and Local Government:**

State and local governments will incur costs for administration, implementation, and enforcement. Exact costs cannot be predicted at this time. However, some local costs may be offset through the collection of fees, fines and penalties authorized pursuant to this Part. Costs to State and local governments may be offset further by a reduction in the need to respond to community legionellosis outbreaks.

**Local Government Mandates:**

The SSC establishes a minimum standard for regulation of health and sanitation. Local governments can, and often do, establish more restrictive requirements that are consistent with the SSC through a local sanitary code. PHL § 228. Local governments have the power to enforce the provisions of the State Sanitary Code, including this new Part, utilizing both civil and criminal options available. PHL §§ 228, 229, 309(1)(f) and 324(1)(e).

**Paperwork:**

The regulation imposes new registration, reporting and recordkeeping requirements for owners of cooling towers.

**Duplication:**

This regulation does not duplicate any state requirements.

**Alternatives:**

The no action alternative was considered. Promulgating this regulation was determined to be necessary to address this public health threat.

**Federal Standards:**



There are no federal standards or regulations pertaining to registration, maintenance, operation, testing, and inspection for cooling towers.

**Compliance Schedule:**

On August 17, 2015, when this regulation first became effective, owners were given until September 16, 2015, to register their cooling towers and perform bacteriological sampling. Now that the deadline has past, all owners should have registered their cooling towers, and any owners that have not registered their cooling towers must come into compliance immediately. All owners must register such towers prior to initial operation.

By March 1, 2016, all owners of existing cooling towers must obtain and implement a maintenance program and plan. Until such plan is obtained, culture testing must be performed every 90 days, while the tower is in use.

All owners must inspect their cooling towers at least every 90 days while in use. All owners of cooling towers shall obtain a certification that regulatory requirements have been met by November 1, 2016, with subsequent annual certifications by November 1<sup>st</sup> of each year.

Owners must register cooling towers and report certain actions, using a statewide electronic system. Reportable events include date of sample collections; date of cleaning and disinfection; start and end dates of any shutdown lasting more than five days; dates of last inspection and when due; dates of last certification and when due; and date of discontinued use. These events must be reported to the statewide electronic system within 10 days of occurrence.

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## **Regulatory Flexibility Analysis for Small Business and Local Governments**

### **Effect of Rule:**

The rule will affect the owner of any building with a cooling tower, as those terms are defined in the regulation. This could include small businesses. At this time, it is not possible to determine the number of small businesses so affected. This regulation affects local governments by establishing requirements for implementing, administering, and enforcing elements of this Part. Local governments have the power to enforce the provisions of the State Sanitary Code, including this new Part. PHL §§ 228, 229, 309(1)(f) and 324(1)(e).

### **Compliance Requirements:**

Small businesses that are also owners of cooling towers must comply with all provisions of this Part. A violation of any provision of this Part is subject to all civil and criminal penalties as provided for by law. Each day that an owner remains in violation of any provision of this Part shall constitute a separate and distinct violation of such provision.

### **Professional Services:**

To comply with inspection and certification requirements, small businesses will need to obtain services of a P.E., C.I.H., certified water technologist, or environmental consultant with training and experience performing inspections in accordance with current standard industry protocols including, but not limited to ASHRAE 188-2015. Small businesses will need to secure laboratory services for routine culture sample testing and, if certain events occur, emergency *Legionella* culture testing.

To comply with disinfection requirements, small businesses will need to obtain the services of a commercial pesticide applicator or pesticide technician, or pesticide apprentice under supervision of a commercial pesticide applicator. These qualifications are already required for the properly handling of biocides that destroy *Legionella*.

### **Compliance Costs:**

#### **Costs to Private Regulated Parties:**

Building owners already incur costs for routine operation and maintenance of cooling towers. This regulation establishes the following new requirements:

- Routine Bacteriological Culture Testing – The regulations require routine bacteriological testing pursuant to industry standards. The cost per test is \$3.50. Assuming tests are performed twice a week, this would result in an annual cost of \$364.
- Emergency *Legionella* Culture Testing – Owners of cooling towers are required to conduct additional testing for *Legionella* in the event of disruption of normal operations. The average cost of each sample analysis is estimated to be approximately \$125.00.
- Inspection – Owners of cooling towers shall obtain the services of a professional engineer (P.E.), certified industrial hygienist (C.I.H.), certified water technologist, or environmental consultant with training and experience performing inspections in accordance with current standard industry protocols including, but not limited to ASHRAE 188-2015; for inspection of the cooling towers at intervals not exceeding once every 90 days while the cooling towers are in use. The cost of such services is estimated to be approximately \$150.00 per hour and estimated to take approximately eight (8)

hours.

- Annual Certification – The same persons qualified to perform inspections are qualified to perform annual certifications. The cost of such services is estimated to be approximately \$150.00 per hour and is estimated to take approximately four (4) hours.
- Emergency Cleaning and Disinfection – If emergency cleaning and disinfection is required, owners of cooling towers are required to obtain the services of a certified commercial pesticide applicator or pesticide technician who is qualified to apply biocide in a cooling tower, or a pesticide apprentice under the supervision of a certified applicator. The cost of such services is estimated to be approximately \$5,000.00 for labor, plus the cost of materials.
- Recordkeeping and Electronic Reporting – Owners of cooling towers are required to maintain certain specified records and to electronically report certain specified information. The costs of these administrative activities are predicted to be minimal.
- The formulation of a cooling tower program and sampling plan would require 4 to 8 hours at \$150 per hour (\$600 to \$1200). The range represents the cost for reviewing and modifying an existing plan versus the preparation of a new plan.
- Formulation of a sampling plan for Article 28 facilities is dependent upon any existing plan and the status of existing record keeping. It is estimated that with prior records and a maintenance plan the time required should a consultant be hired would be 6.5 hours at \$150 per hour (\$975). Without a prior plan and poor maintenance documentation the time required would be 13 hours at \$150 per hour (\$1950). It is anticipated that facilities may develop the plan using existing staff.

**Costs to State Government and Local Government:**

State and local governments possess authority to enforce compliance with these regulations. Exact costs cannot be predicted at this time. However, some local costs may be offset through the collection of fees, fines and penalties authorized pursuant to this Part. Costs to State and local governments may be offset by a reduction in the need to respond to community legionellosis outbreaks.

**Economic and Technological Feasibility:**

Although there will be an impact of building owners, including small businesses, compliance with the requirements of this regulation is considered economically and technologically feasible as it enhances and enforces existing industry best practices. The benefits to public health are anticipated to outweigh any costs. This regulation is necessary to protect public health.

**Minimizing Adverse Impact:**

The New York State Department of Health will assist local governments by providing a cooling tower registry and access to the database, technical consultation, coordination, and information and updates.

**Small Business and Local Government Participation:**

Development of this regulation has been coordinated with New York City.

**Cure Period:**

Violation of this regulation can result in civil and criminal penalties. In light of the magnitude of the public health threat posed by the improper maintenance and testing of cooling towers, the risk that some small businesses will not comply with regulations justifies the absence of a cure period.



## **Rural Area Flexibility Analysis**

Pursuant to Section 202-bb of the State Administrative Procedure Act (SAPA), a rural area flexibility analysis is not required. These provisions apply uniformly throughout New York State, including all rural areas. The proposed rule will not impose an adverse economic impact on rural areas, nor will it impose any disproportionate reporting, record keeping or other compliance requirements on public or private entities in rural areas.

## **Job Impact Statement**

### **Nature of the Impact:**

The Department of Health expects there to be a positive impact on jobs or employment opportunities. The requirements in the regulation generally coincide with industry standards and manufacturers specification for the operation and maintenance of cooling towers. However, it is expected that a subset of owners have not adequately followed industry standards and will now hire firms or individuals to assist them with compliance and to perform inspections and certifications.

### **Categories and Numbers Affected:**

The Department anticipates no negative impact on jobs or employment opportunities as a result of the proposed regulations.

### **Regions of Adverse Impact:**

The Department anticipates no negative impact on jobs or employments opportunities in any particular region of the state.

### **Minimizing Adverse Impact:**

Not applicable.

## Emergency Justification

Improper maintenance of cooling towers can contribute to the growth and dissemination of *Legionella* bacteria, the causative agent of legionellosis. Legionellosis causes cough, shortness of breath, high fever, muscle aches, headaches and can result in pneumonia. Hospitalization is often required, and between 5-30% of cases are fatal. People at highest risk are those 50 years of age or older, current or former smokers, those with chronic lung diseases, those with weakened immune systems from diseases like cancer, diabetes, or kidney failure, and those who take drugs to suppress the immune system during chemotherapy or after an organ transplant. The number of cases of legionellosis reported in New York State between 2005-2014 increased 323% when compared to those reported in the previous ten year period.

Outbreaks of legionellosis have been associated with cooling towers. A cooling tower is an evaporative device that is part of a recirculated water system incorporated into a building's cooling, industrial process, refrigeration, or energy production system. Because water is part of the process of removing heat from a building, these devices require biocides—chemicals that kill or inhibit bacteria (including *Legionella*)—as means of controlling bacterial overgrowth. Overgrowth may result in the normal mists ejected from the tower having droplets containing *Legionella*.

For example, in 2005, a cooling tower located at ground level adjacent to a hospital in New Rochelle, Westchester County resulted in a cluster of 19 cases of legionellosis and multiple fatalities. Most of the individuals were dialysis patients or companions escorting the patients to their dialysis session. One fatality was in the local neighborhood. The cooling tower was found to have insufficient chemical treatment. The entire tower was ultimately replaced by the

manufacturer in order to maintain cooling for the hospital and to protect public health. In June and July of 2008, 12 cases of legionellosis including one fatality were attributed to a small evaporative condenser on Onondaga Hill in Syracuse, Onondaga County. An investigation found that the unit was not operating properly and this resulted in the growth of microorganisms in the unit. Emergency biocide treatment was initiated and proper treatment was maintained. No new cases were then detected thereafter.

Recent work has shown that sporadic cases of community legionellosis are often associated with extended periods of wet weather with overcast skies. A study conducted by the New York State Department of Health that included data from 13 states and one United States municipality noted a dramatic increase in sporadic, community acquired legionellosis cases in May through August 2013. Large municipal sites such as Buffalo, Erie County reported 2- to 3-fold increases in cases without identifying common exposures normally associated with legionellosis. All sites in the study except one had a significant correlation, with some time lag, between legionellosis case onset and one or more weather parameters. It was concluded that large municipalities produce significant mist (droplet) output from hundreds of cooling towers during the summer months. Periods of sustained precipitation, high humidity, cloud cover, and high dew point may lead to an “urban cooling tower” effect. The “urban cooling tower” effect is when a metropolitan area with hundreds of cooling towers acts as one large cooling tower producing a large output of drift, which is entrapped by humid air and overcast skies.

More recently, 133 cases of legionellosis, which included 16 fatalities, occurred in Bronx, NY (July-September, 2015). This event was preceded by an outbreak in Co-Op City in the Bronx, from December 2014 to January 2015, which involved 8 persons and no fatalities. Both of these outbreaks have been attributed to cooling towers, and emergency disinfection of

compromised towers helped curtail these outbreaks. These events highlight the need for proper maintenance of cooling towers.

The heating, ventilation, and air-conditioning (HVAC) industry has issued guidelines on how to seasonally start a cooling tower; treat it with biocides and other chemicals needed to protect the components from scale and corrosion; and set cycles of operations that determine when fresh water is needed; and how to shut down the tower at the end of the cooling season. The American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) has recently released a new Standard entitled *Legionellosis: Risk Management for Building Water Systems* (ANSI/ASHRAE Standard 188-2015). Section 7.2 of that document outlines components of the operations and management plan for cooling towers. The industry also relies on other guidance for specific treatment chemicals, emergency disinfection or decontamination procedures and other requirement.

However, none of the guidance is obligatory. Consequently, poor practice in operation and management can result in bacterial overgrowth, increases in legionellae, and mist emissions that contain a significant dose of pathogenic legionellae. This regulation requires that all owners of cooling towers ensure proper maintenance of the cooling towers, to protect the public and address this public health threat.

Further, these regulations require all general hospitals and residential health care facilities (i.e., nursing homes) to develop a sampling plan, report the results, and take necessary actions to protect the safety of their patients or residents. The details of each facility's sampling plan and remedial measures will depend on the risk factors for acquiring Legionnaires' disease in the

population served by the hospital or nursing home.

Most people in nursing homes should be considered at risk, as residents are typically over 50 years of age. In general hospitals, persons at risk include those over 50 years of age, as well as those receiving chemotherapy, those undergoing transplants, and other persons housed on healthcare units that require special precautions. Additional persons who might be at increased risk for acquiring Legionnaires' disease include persons on high-dose steroid therapy and persons with chronic lung disease. Certain facilities with higher risk populations, such as those with hematopoietic stem-cell transplant (HSCT) and solid organ transplant units, require more protective measures.

An environmental assessment involves reviewing facility characteristics, hot and cold water supplies, cooling and air handling systems and any chemical treatment systems. The purpose of the assessment is to discover any vulnerabilities that would allow for amplification of *Legionella* spp. and to determine appropriate response actions in advance of any environmental sampling for *Legionella*. Initial and ongoing assessment should be conducted by a multidisciplinary team that represents the expertise, knowledge and functions related to the facility's operation and service. A team should include, at a minimum, representatives from the following groups: Infection Control; Physical Facilities Management; Engineering; Clinicians; Laboratory; and Hospital Management.

These regulations, which originally became effective on August 17, 2015, implemented important requirements that protect the public from the threat posed by *Legionella*. To ensure that protection is maintained, the Commissioner of Health and the Public Health and Health

Planning Council have determined it necessary to file these regulations on an emergency basis. Public Health Law § 225, in conjunction with State Administrative Procedure Act § 202(6) empowers the Council and the Commissioner to adopt emergency regulations when necessary for the preservation of the public health, safety or general welfare and that compliance with routine administrative procedures would be contrary to the public interest.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Section 225 of the Public Health Law, section 9.1 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective upon publication of a Notice of Adoption in the New York State Register.

Subdivision (b) of section 9.1 is amended as follows:

(b) Synthetic Cannabinoid means any manufactured chemical compound that is a cannabinoid receptor agonist and includes, but is not limited to any material, compound, mixture, or preparation that is not listed as a controlled substance in Schedules I through V of § 3306 of the Public Health Law, and not approved by the federal Food and Drug Administration (FDA), and contains any quantity of the following substances, their salts, isomers (whether optical, positional, or geometric), homologues (analogs), and salts of isomers and homologues (analogs), unless specifically exempted, whenever the existence of these salts, isomers, homologues (analogs), and salts of isomers and homologues (analogs) is possible within the specific chemical designation:

(1) Naphthoylindoles. Any compound containing a 3-(1-Naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. (Other names in this structural class include but are not limited to: JWH 007, JWH 015, JWH 018, JWH 019, JWH 073, JWH 081, JWH 98, JWH 122, JWH 164, JWH 200, JWH 210, JWH 398, AM 2201, MAM 2201, EAM 2201 and WIN 55 212.)



(2) Naphthylmethyloindoles. Any compound containing a 1 H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. (Other names in this structural class include but are not limited to: JWH-175, and JWH-184.)

(3) Naphthoylpyrroles. Any compound containing a 3-(1-naphthoyl) pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent. (Other names in this structural class include but are not limited: JWH 307.)

(4) Naphthylmethylindenes. Any compound containing a naphthylmethyl indenes structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent. (Other names in this structural class include but are not limited: JWH-176.)

(5) Phenylacetylindoles. Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any

extent and whether or not substituted in the phenyl ring to any extent. (Other names in this structural class include but are not limited to: RCS-8 (SR-18), JWH 201, JWH 250, JWH 203, JWH-251, and JWH-302.)

(6) Cyclohexylphenols. Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not substituted in the cyclohexyl ring to any extent. (Other names in this structural class include but are not limited to: CP 47,497 (and homologues (analog)), cannabicyclohexanol, and CP 55,940.)

(7) Benzoylindoles. Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. (Other names in this structural class include but are not limited to: AM 694, Pravadoline (WIN 48,098), RCS 4, AM-2233 and AM-679.)

(8) [2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo [1,2,3-de]-1, 4-benzoxazin-6-yl]-1-naphthalenylmethanone. (Other names in this structural class include but are not limited to: WIN 55,212-2.)

(9) (6aR,10aR)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10, 10a-tetrahydrobenzo[c]chromen-1-ol. (Other names in this structural class include but are not limited to: HU-210.)

(10) (6aS, 10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo{c}chromen-1-ol (Dezanabinol or HU-211)

(11) Adamantoylindoles. Any compound containing a 3-(1-adamantoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the adamantyl ring system to any extent. (Other names in this structural class include but are not limited to: AM-1248.)

(12) Adamantoylindazoles including but not limited to Adamantyl Carboxamide Indazoles. Any compound containing a 3-(1-adamantoyl)indazole structure with substitution at the nitrogen atom of the indazole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the adamantyl ring system to any extent. (Other names in this structural class include but are not limited to: AKB-48, MAB-CHMINACA, 5F-AKB-48.)

(13) Tetramethylcyclopropylcarbonylindoles or any compound structurally derived from 3-(2,2,3,3-tetramethylcyclopropylcarbonyl) indole by substitution at the nitrogen atom of the indole ring with alkyl, haloalkyl, alkenyl, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)methyl or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent, including without limitation the following: UR-11, XLR-11, A-796,260.

(14) Any other synthetic chemical compound that is a cannabinoid receptor agonist that is not listed in Schedules I through V of § 3306 of the Public Health Law, or is not an FDA approved drug.

## **Regulatory Impact Statement**

### **Statutory Authority:**

The Public Health and Health Planning Council (PHHPC) is authorized by Section 225 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. PHL Section 225(5)(a) provides that the SSC may deal with any matter affecting the security of life and health of the people of the State of New York.

### **Legislative Objectives:**

PHL Section 225(4) authorizes PHHPC, in conjunction with the Commissioner of Health, to protect public health and safety by amending the SSC to address issues that jeopardize health and safety. Accordingly, PHHPC has issued 10 NYCRR Part 9, which prohibits the possession, manufacture, distribution, sale or offer of synthetic phenethylamines and cannabinoids. This amendment would add additional chemicals to the list of explicitly prohibited synthetic cannabinoids.

### **Needs and Benefits:**

“Synthetic cannabinoids” encompass a wide variety of chemicals that are designed specifically to stimulate the same receptor in the body as cannabinoid 9-tetrahydrocannabinol (THC). However, they cause additional side effects that mimic other controlled substances and have been linked to severe adverse reactions, including death and acute renal failure. Reported side effects include: tachycardia (increased heart rate); paranoid behavior, agitation and irritability; nausea and vomiting; confusion; drowsiness; headache; hypertension; electrolyte

abnormalities; seizures; and syncope (loss of consciousness). Additional signs and symptoms of synthetic cannabinoids include: anxiety; tremor; hallucinations; and violent behavior. These effects can be similar to those of phencyclidine (PCP). It has been reported that some recent patients have presented with both somnolence (drowsiness) and bradycardia (decreased heart rate), some requiring endotracheal intubation.

Synthetic cannabinoids are frequently applied to plant materials and then packaged as incense, herbal mixtures or potpourri. They often carry a “not for human consumption” label, and are not approved for medical use in the United States. Products containing synthetic cannabinoids are, in actuality, consumed by individuals, most often by smoking, either through a pipe, a water pipe, or rolled in cigarette papers.

Products containing synthetic cannabinoids have become prevalent drugs of abuse. In 2012, before 10 NYCRR Part 9 was promulgated, calls to New York State Poison Control Centers relating to the consumption of synthetic cannabinoids had increased dramatically. Over half of the calls to the Upstate Poison Control Center in 2011 involved children under the age of 19, which was consistent with the results of a 2011 “Monitoring the Future” national survey of youth drug-use trends that showed that 11.4% of 12th graders used a synthetic cannabinoid during the twelve months prior to the survey, making it the second most commonly used illicit drug among high school seniors at the time.

In 2012, the Department issued 10 NYCRR Part 9, which addressed this emergent threat to public health by prohibiting the possession, manufacture, distribution, sale or offer of synthetic cannabinoids and other substances. Thereafter, New York State experienced a substantial decrease in reported cases of adverse health effects related to synthetic cannabinoid use, an achievement that was sustained until the early part of this year.

Recently, however, New York State experienced a dramatic increase in synthetic cannabinoid-related adverse events and emergency department visits. During April 1 to June 30, New York State has seen more than 1,900 emergency department visits and 680 poison control center calls due to reports of adverse health effects associated with synthetic cannabinoid use. This represents more than a tenfold increase over the same time period in 2014, when there was more than 150 emergency department visits and 50 poison control center calls reported. Nationally, there have been 15 synthetic cannabinoid-related deaths reported to poison control centers during from January to May of 2015. In New York, no fatalities have been reported to date, although there has been a 44% increase in the proportion of patients being admitted to critical care units from April 6 to June 30, 2015 when compared to the proportion of patients admitted to the critical care unit from Jan 1, 2011 to April 5, 2015. Calls received by poison control centers generally reflect only a small percentage of actual instances of poisoning.

Testing has identified synthetic cannabinoids that were not known to the Department in 2012, when 10 NYCRR Part 9 was first issued, and that are associated with the recent increase in cannabinoid-related adverse events and emergency department visits. Identifying these new synthetic cannabinoids in the regulation will simplify and enhance the efforts of local governments to control these dangerous chemicals.

**Costs:**

**Costs to Private Regulated Parties:**

The regulation imposes no new costs for private regulated parties.

**Costs to State Government and Local Government:**

There will be no additional cost to State Government. Local governments are already enforcing 10 NYCRR Part 9, which prohibits the possession, manufacture, distribution, sale or offer of synthetic phenethylamines and cannabinoids. The addition of these chemicals is expected to have negligible cost on local enforcement programs.

**Local Government Mandates:**

The SSC establishes a minimum standard for regulation of health and sanitation. Local governments can, and often do, establish more restrictive requirements that are consistent with the SSC through a local sanitary code. PHL § 228. Local governments have the power and duty to enforce the provisions of the State Sanitary Code, including 10 NYCRR Part 9, utilizing both civil and criminal options available. PHL §§ 228, 229, 309(1)(f) and 324(1)(e).

**Paperwork:**

The regulation imposes no new reporting or filing requirements.

**Duplication:**

The federal Synthetic Drug Abuse Prevention Act of 2012 banned the sale and distribution of products containing the synthetic cannabinoids identified in this regulation, by placing them on the federal schedule I list of substances under the federal Controlled Substances Act (21 U.S.C. § 812[c]). This regulation does not conflict with or duplicate that federal law, because it provides local enforcement authority, which the federal law does not provide.



**Alternatives:**

The Department considered relying on the existing regulation to address these recently identified synthetic cannabinoids. However, the Department determined that amending the regulation to explicitly identify these substances would enhance state and local enforcement authority and more effectively address this public health threat.

**Federal Standards:**

As noted above, the Synthetic Drug Abuse Prevention Act of 2012 places synthetic cannabinoids on the federal schedule I list of substances under the federal Controlled Substances Act (21 U.S.C. § 812[c]). This regulation does not conflict with or duplicate that federal law, because it provides local enforcement authority, which the federal law does not provide.

**Compliance Schedule:**

Regulated parties should be able to comply with these regulations effective upon publication of a Notice of Adoption in the New York State Register.

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## **Regulatory Flexibility Analysis for Small Business and Local Governments**

### **Effect of Rule:**

The amendment will affect only the small businesses that are engaged in selling products containing synthetic cannabinoids. The Department does not have information concerning the number of small businesses that currently sell these products. However, in 2011 and 2012, Commissioner's Orders were issued banning certain synthetic phenethylamines and synthetic cannabinoids, resulting in approximately 8,000 establishments being served with one or both Orders by public health authorities. Banned product was found in 286 of these locations. Subsequent to these efforts, the number of related complaints dropped significantly.

This regulation affects local governments by establishing a minimum standard regarding the possession, manufacture, distribution, sale or offer of sale of additional synthetic cannabinoids. Local governments have the power and duty to enforce the provisions of the State Sanitary Code, including Part 9, utilizing any civil and criminal remedies that may available. PHL §§ 228, 229, 309(1)(f) and 324(e). Local governments are also empowered to establish a local sanitary code that is more restrictive than the State Sanitary Code.

### **Compliance Requirements:**

Small businesses must comply by not engaging in any possession, manufacturing, distribution, sale, or offer of sale of the additional synthetic cannabinoids.

Local governments must comply by enforcing the State Sanitary Code. Local boards of health may impose civil penalties for a violation of this regulation of up to \$2,000 per violation, pursuant to PHL § 309(1)(f). Pursuant to PHL § 229, local law enforcement may seek criminal penalties for a first offense of up to \$250 and 15 days in prison, and for each subsequent offense

up to \$500 and 15 days in prison.

**Professional Services:**

Small businesses will need no additional professional services to comply. Local governments, in certain instances where local governments enforce, will need to secure laboratory services for testing of substances.

**Compliance Costs:**

**Costs to Private Regulated Parties:**

The regulation imposes no new costs for private regulated parties.

**Costs to State Government and Local Government:**

There will be no additional cost to State Government. Local governments are already enforcing 10 NYCRR Part 9, which prohibits the possession, manufacture, distribution, sale or offer of synthetic phenethylamines and cannabinoids. The addition of these chemicals is expected to have negligible cost on local enforcement programs.

**Economic and Technological Feasibility:**

Although there will be an impact on small businesses that sell these products, the prohibition is justified by the extremely dangerous nature of these products.

**Minimizing Adverse Impact:**

The New York State Department of Health will assist local governments by providing

consultation, coordination and information and updates on its website.

**Small Business and Local Government Participation:**

The Department will work with local governments to provide technical information concerning the newly-listed synthetic cannabinoids.

**Cure Period:**

Violation of this regulation can result in civil and criminal penalties. In light of the magnitude of the public health threat posed by these substances, the risk that some small businesses will not comply with regulations and continue to make or sell or distribute the substance justifies the absence of a cure period.

### **Rural Area Flexibility Analysis**

Pursuant to Section 202-bb of the State Administrative Procedure Act (SAPA), a rural area flexibility analysis is not required. These provisions apply uniformly throughout New York State, including all rural areas.

The proposed rule will not impose an adverse economic impact on rural areas, nor will it impose any additional reporting, record keeping or other compliance requirements on public or private entities in rural areas.

## **Job Impact Statement**

### **Nature of the Impact:**

The Department of Health does not expect there to be a positive or negative impact on jobs or employment opportunities.

### **Categories and Numbers Affected:**

The Department anticipates no negative impact on jobs or employment opportunities as a result of the amended rule.

### **Regions of Adverse Impact:**

The Department anticipates no negative impact on jobs or employment opportunities in any particular region of the state.

### **Minimizing Adverse Impact:**

Not applicable.

## **SUMMARY OF EXPRESS TERMS**

Public Health Law § 206(18-a)(d) gives the Department broad authority to promulgate regulations, consistent with federal law and policies, that govern the Statewide Health Information Network for New York (SHIN-NY).

This regulation makes clear that, consistent with 42 USC § 17938, Qualified entities (QEs) may, without patient authorization, make patient information available among SHIN-NY participants or other entities otherwise serving the patient so long as the QEs enter into and adhere to participation agreements that comply with federal requirements under HIPAA and 42 CFR Part 2 for business associates and qualified service organizations. This regulation specifies consent requirements to access patient information made available through the QEs. This regulation incorporates legal requirements related to disclosure of patient information without consent, as well as laws that specifically authorize disclosure of patient information for health care purposes, including public health and health oversight purposes, without the type of written, signed authorization that contains all of the elements that would be required for a health care provider to get permission to disclose patient information to a third party for purposes other than health care.

In order to participate in the SHIN-NY, regional health information organizations will need to be certified as QEs by the Department and satisfy certification requirements on an ongoing basis under the procedures established by this regulation.

Pursuant to the authority vested in the Commissioner of Health and the Public Health and Health Planning Council by sections 201, 206(1) and (18-a)(d), 2800, 2803, 2816, 3600, 3612, 4000, 4010, 4400, 4403, 4700 and 4712 of the Public Health Law, a new Part 300 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is added to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Part 300

Statewide Health Information Network for New York (SHIN-NY)

Sec.

300.1 Definitions

300.2 Establishing the SHIN-NY

300.3 Statewide collaboration process and SHIN-NY policy guidance

300.4 Qualified Entities

300.5 Sharing of patient information

300.6 Participation of health care facilities

§ 300.1 Definitions. For the purposes of this Part, these terms shall have the following meanings:

(a) “Statewide Health Information Network for New York” or “SHIN-NY” means the technical infrastructure and the supportive policies and agreements that make possible the electronic exchange of clinical information among qualified entities and qualified entity participants for authorized purposes to improve the quality, coordination and efficiency



of patient care, reduce medical errors and carry out public health and health oversight activities, while protecting patient privacy and ensuring data security.

(b) “Qualified entity” means a not-for-profit regional health information organization or other entity that has been certified under section 300.4 of this Part.

(c) “Qualified entity participant” means any health care provider, health plan, governmental agency or other type of entity or person that has executed a participation agreement with a qualified entity, pursuant to which it has agreed to participate in the SHIN-NY.

(d) “Health care provider” means a health care provider as defined in paragraph (b) of subdivision one of section 18 of the Public Health Law entitled “Access to patient information.”

(e) “Statewide collaboration process” means an open, transparent process within which multiple SHIN-NY stakeholders contribute to recommendations for SHIN-NY policy guidance.

(f) “SHIN-NY policy guidance” means the set of policies and procedures, including technical standards and SHIN-NY services and products that are approved by the New York State Department of Health.

(g) “Patient information” means health information that is created or received by a qualified entity participant and relates to the past, present, or future physical or mental health or condition of an individual or the provision of health care to an individual, and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

(h) “Minor consent patient information” means patient information relating to health care of a patient under 18 years of age for which the patient provided his or her own consent as permitted by law, without a parent’s or guardian’s permission.

(i) “Health oversight agency” means an agency or authority of the United States, or New York State, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant.

(j) “Public health authority” means an agency or authority of the United States, the New York State Department of Health, a New York county health department or the New York City Department of Health and Mental Hygiene, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandate.

(k) “Written authorization” means a signed consent that complies with the requirements for written authorizations in this Part. A written authorization may be an electronic record with an electronic signature, as provided by State Technology Law Article 3 (Electronic Signatures and Records Act).

(l) “Law” means a federal, state or local constitution, statute, regulation, rule, common law, or other governmental action having the force and effect of law, including the

charter, administrative code and rules of the city of New York. Required by law means a mandate contained in law that compels a person or entity to make a use or disclosure of patient information and that is enforceable in a court of law.

§ 300.2 Establishing the SHIN-NY. The New York State Department of Health may:

- (a) Oversee the implementation and ongoing operation of the SHIN-NY.
- (b) Implement the infrastructure and services to support the private and secure exchange of health information among qualified entities and qualified entity participants.
- (c) Administer the statewide collaboration process and facilitate the development, regular review and update of SHIN-NY policy guidance.
- (d) Perform regular audits, either directly or through contract, of qualified entity functions and activities as necessary to ensure the quality, security and confidentiality of data in the SHIN-NY.
- (e) Provide technical services, either directly or through contract, to ensure the quality, security and confidentiality of data in the SHIN-NY.
- (f) Assess qualified entity participation in the SHIN-NY and, if necessary, suspend a qualified entity's access to or use of the SHIN-NY, when it reasonably determines that the qualified entity has created, or is likely to create, an immediate threat of irreparable harm to the SHIN-NY, to any person accessing or using the SHIN-NY, or to any person whose information is accessed or transmitted through the SHIN-NY.
- (g) Publish reports on health care provider participation and usage, system performance, data quality, the qualified entity certification process, and SHIN-NY security.
- (h) Take such other actions as may be needed to promote development of the SHIN-NY.

§ 300.3 Statewide collaboration process and SHIN-NY policy guidance.

(a) SHIN-NY policy guidance. The New York State Department of Health may establish SHIN-NY policy guidance as set forth below:

- (1) The New York State Department of Health shall establish or designate a policy committee to make recommendations on SHIN-NY policy guidance and standards.
- (2) Policy committee agendas, meeting minutes, white papers and recommendations shall be made publicly available.
- (3) The New York State Department of Health shall consider SHIN-NY policy guidance recommendations made through the statewide collaboration process and may accept or reject SHIN-NY policy guidance recommendations at its sole discretion.

(b) Minimum contents of SHIN-NY policy guidance. SHIN-NY policy guidance standards shall include, but not be limited to policies and procedures on:

- (1) privacy and security;
- (2) monitoring and enforcement;
- (3) minimum service requirements;
- (4) organizational characteristics of qualified entities; and
- (5) qualified entity certification.

#### § 300.4 Qualified entities.

(a) Each qualified entity shall:

- (1) Maintain and operate a network of qualified entity participants seeking to securely exchange patient information.
- (2) Connect to the statewide infrastructure to allow qualified entity participants to exchange information with qualified entity participants of other qualified entities.

- (3) Submit to regular audits of qualified entity functions and activities by the New York State Department of Health as necessary to ensure the quality, security, and confidentiality of data in the SHIN-NY.
- (4) Ensure that data from qualified entity participants is only made available through the SHIN-NY in accordance with applicable law.
- (5) Enter into agreements with qualified entity participants that supply patient information to, or access patient information from, the qualified entity. A qualified entity must be the “business associate,” as defined in 42 USC § 17921, of any qualified entity participant that supplies patient information and is a health care provider, and must be a qualified service organization of any qualified entity participant that supplies patient information and is an alcohol or drug abuse program required to comply with federal regulations regarding the confidentiality of alcohol and substance abuse patient records.
- (6) Allow participation of all health care providers in the geographical area served by the qualified entity that are seeking to become qualified entity participants, list the names of such qualified entity participants on its website, and make such information available at the request of patients.
- (7) Submit reports on health care provider participation and usage, system performance and data quality, in a format determined by the New York State Department of Health.
- (8) Adopt policies and procedures to provide patients with access to their own patient information that is accessible directly from the qualified entity, except as prohibited by law.

(9) Implement policies and procedures to provide patients with information identifying qualified entity participants that have obtained access to their patient information using the qualified entity, except as otherwise prohibited by law.

(b) Each qualified entity shall have procedures and technology:

(1) to exchange patient information for patients of any age, consistent with all applicable law regarding minor consent patient information;

(2) to allow patients to deny access to specific qualified entity participants; and

(3) to honor a minor's consent or revocation of consent to access minor consent patient information.

(c) Each qualified entity shall provide the following minimum set of core services to qualified entity participants:

(1) Allow qualified entity participants to search existing patient records on the network.

(2) Make available to qualified entity participants and public health authorities a clinical viewer to securely access patient information.

(3) Permit secure messaging among health care providers.

(4) Provide tracking of patient consent.

(5) Provide notification services to establish subscriptions to pre-defined events and receive notifications when those events occur.

(6) Provide identity management services to authorize and authenticate users in a manner that ensures secure access.

(7) Support public health reporting to public health authorities.

(8) Deliver diagnostic results and reports to health care providers.

(d) The New York State Department of Health shall certify qualified entities that demonstrate that they meet the requirements of this section to the satisfaction of the New York State Department of Health. The New York State Department of Health may, in its sole discretion, select a certification body to review applications and make recommendations to the New York State Department of Health regarding certification. The New York State Department of Health shall solely determine whether to certify qualified entities. To be certified, a qualified entity must demonstrate that it meets the following requirements:

(1) The qualified entity is capable of supporting and advancing the use of health information technology in the public interest and has a board of directors and officers with such character, experience, competence and standing as to give reasonable assurance of its abilities in this respect.

(2) The qualified entity has the capability and infrastructure to operationalize the requirements in this section.

(3) The qualified entity has technical infrastructure, privacy and security policies and processes in place to: manage patient consent for access to health information; support the authorization and authentication of users who access the system; audit system use; and implement remedies for breaches of patient information.

(e) The New York State Department of Health shall periodically require qualified entities to demonstrate continued compliance with the certification standards required pursuant to subdivision (d) of this section through a process of audit and re-certification by the New York State Department of Health or a certification body designated by the New York State Department of Health.

(f) The New York State Department of Health may, as it deems appropriate, audit qualified entities to ensure ongoing compliance with criteria and standards.

§ 300.5 Sharing of Patient Information.

(a) General standard. Qualified entity participants may only exchange patient information as authorized by law and consistent with their participation agreements with qualified entity participants. Under subdivision six of section 18 of the Public Health Law, individuals who work for a qualified entity are deemed personnel under contract with a health care provider that is a qualified entity participant. As such, a qualified entity participant may disclose to such a qualified entity necessary patient information without a written authorization from the patient of the qualified entity participant. Qualified entity participants may, but shall not be required to, provide patients the option to withhold patient information, including minor consent patient information, from the SHIN-NY. Except as set forth in subdivision (b)(2) or (c) of this section, a qualified entity shall only allow access to patient information by qualified entity participants with a written authorization from:

(1) the patient; or

(2) when the patient lacks capacity to consent, from:

(i) another qualified person under section 18 of the Public Health Law;

(ii) a person with power of attorney whom the patient has authorized to access records relating to the provision of health care under General Obligations Law Article 5, Title 15;

or

(iii) a person authorized pursuant to law to consent to health care for the individual.

(b) Written authorization.



(1) Written authorizations must specify to whom disclosure is authorized.

(i) Patient information may not be disclosed to persons who, or entities that, become qualified entity participants subsequent to the execution of a written authorization unless:

(a) the name or title of the individual or the name of the organization are specified in a new written authorization; or

(b) the patient's written authorization specifies that disclosure is authorized to persons or entities becoming qualified entity participants subsequent to the execution of the written authorization and the qualified entity has documented that it has notified the patient, or the patient has declined the opportunity to receive notice, of the persons or entities becoming qualified entity participants subsequent to the execution of the written authorization.

(ii) Any written authorization shall remain in effect until it is revoked in writing or explicitly superseded by a subsequent written authorization. A patient may revoke a written authorization in writing at any time by following procedures established by the qualified entity.

(2) A minor's parent or legal guardian may authorize the disclosure of the minor's patient information, other than minor consent patient information.

(3) Minor consent patient information.

(i) In general, a minor's minor consent patient information may be disclosed to a qualified entity participant if the minor's parent or legal guardian has provided authorization for that qualified entity participant to access the minor's patient information through the SHIN-NY. Such access shall be deemed necessary to provide appropriate care or treatment to the minor. However, if federal law or regulation requires the minor's

authorization for disclosure of minor consent patient information or if the minor is the parent of a child, has married or is otherwise emancipated, the disclosure may not be made without the minor's authorization.

(ii) In no event may a qualified entity participant disclose minor consent patient information to the minor's parent or guardian without the minor's authorization.

(4) Minor consent patient information includes, but is not limited to patient information concerning:

(i) treatment of such patient for sexually transmitted disease or the performance of an abortion as provided in section 17 of the Public Health Law;

(ii) the diagnosis, treatment or prescription for a sexually transmitted disease as provided in section 2305 of the Public Health Law;

(iii) medical, dental, health and hospital services relating to prenatal care as provided in section 2504(3) of the Public Health Law;

(iv) an HIV test as provided in section 2781 of the Public Health Law;

(v) mental health services as provided in section 33.21 of the Mental Hygiene Law;

(vi) alcohol and substance abuse treatment as provided in section 22.11 of the Mental Hygiene Law;

(vii) any patient who is the parent of a child or has married as provided in section 2504 of the Public Health Law or an otherwise legally emancipated minor;

(viii) treatment that a minor has a Constitutional right to receive without a parent's or guardian's permission as determined by courts of competent jurisdiction;

(ix) Treatment for a minor who is a victim of sexual assault as provided in section 2805-i of the Public Health Law;

(x) Emergency care as provided in section 2504(4) of the Public Health Law.

(c) Access without written authorization. A qualified entity shall, where permitted by law, allow access to patient information without written authorization when:

(1) Prior consent has already been obtained for the disclosure as required by subdivision 23 of section 6530 of the Education Law, and no provision of law requires any additional written authorization.

(2) Disclosure to the individual entity accessing the patient information is:

(i) required by law; or

(ii) authorized by law:

(a) to a public health authority for public health activities;

(b) to a health oversight agency for health oversight activities; or

(c) to a federally designated organ procurement organization for purposes of facilitating organ, eye or tissue donation and transplantation.

(3) The health care provider treating the patient, a person acting at the direction of such health care provider, or other professional emergency personnel has documented that an emergency condition exists and the patient is in immediate need of medical attention, and an attempt to secure consent would result in delay of treatment which would increase the risk to the patient's life or health.

§ 300.6 Participation of health care facilities.

(a) One year from the effective date of this regulation, general hospitals as defined in subdivision ten of section two thousand eight hundred one of the Public Health Law, and two years from the effective date of this regulation, all health care facilities as defined in paragraph (c) of subdivision one of section eighteen of the Public Health Law, including

those who hold themselves out as urgent care providers, utilizing certified electronic health record technology under the federal Health Information Technology for Economic and Clinical Health Act (HITECH), must become qualified entity participants in order to connect to the SHIN-NY through a qualified entity, and must allow private and secure bi-directional access to patient information by other qualified entity participants authorized by law to access such patient information. Bi-directional access means that a qualified entity participant has the technical capacity to upload its patient information to the qualified entity so that it is accessible to other qualified entity participants authorized to access the patient information and that the qualified entity participant has the technical capacity to access the patient information of other qualified entity participants from the qualified entity when authorized to do so.

(b) The New York State Department of Health may waive the requirements of subdivision (a) of this section for health care facilities that demonstrate, to the satisfaction of the New York State Department of Health:

(1) economic hardship;

(2) technological limitations or practical limitations to the full use of certified electronic health record technology that are not reasonably within control of the health care provider; or

(3) other exceptional circumstances demonstrated by the health care provider to the New York State Department of Health as the Commissioner may deem appropriate.

## **SUMMARY OF THE REGULATORY IMPACT STATEMENT**

### **Statutory Authority:**

Public Health Law Section 206(18-a)(d) authorizes the Commissioner of Health to make rules and regulations to promote the development of a self-sufficient Statewide Health Information Network for NY (SHIN-NY) to enable widespread, non-duplicative interoperability among disparate health information systems, including electronic health records (EHRs), personal health records (PHRs) and public health information systems while protecting patient privacy and ensuring data security. The Department of Health is exercising this authority in conjunction with its authority under Public Health Law Articles 28, 36, 40, 44 and 47 to regulate health care facilities as defined in Public Health Law section 18.

### **Purpose of Regulation:**

This regulation will establish requirements for qualified entities and qualified entity participants in the SHIN-NY to allow them to securely exchange information across the state.

- Qualified Entities (QEs) (including RHIOs), through participation agreements with providers and patient consent, would implement a minimum set of core services. The QEs must also comply with federal and State laws, including laws regarding the confidentiality of alcohol and drug abuse treatment records under 42 CFR Part 2, confidential HIV-related information under PHL Article 27-F and mental health records under Mental Hygiene Law Article 33.
- The regulations would allow for the exchange of health information about minors

of any age in a way that complies with current state and federal laws and regulations related to minor consented services.

- The department would create a certification process for QEs/RHIOs that ensures standard criteria are met for providing services to its members and that the number of QEs is sufficient to provide access to health information exchange services statewide.

### **Benefits of Regulation:**

The regulation is intended to support the triple aim of improving the patient care experience (including quality and cost), improving the health of populations, and reducing the per capita cost of health care through the broad adoption of health information exchange by:

- increasing patient record availability to health care providers across the state;
- establishing the core set of health information exchange (HIE) services that provide clinical and administrative value to the healthcare system and are available to all providers and all patients in New York State; and
- reducing barriers for EHR integration with HIE services.

### **State and Local Cost:**

To date, the development of the SHIN-NY and expansion of EHR adoption has been funded through a combination of federal and state funds distributed through grant programs, as well as private contributions from participating health plans, providers and other stakeholders. Currently, over 170 hospitals and over 8200 primary care providers

qualify for “meaningful use” incentives under Medicaid and Medicare. In addition, through HEAL NY funding, it is expected that over 7800 primary and specialty care providers were supported to have adopted EHRs and be connected to the SHIN-NY by the end of 2013. Over 80% of hospitals and over 75% of Federally Qualified Health Centers (FQHCs) in New York State participate in RHIOs.

Investment in the operation of the SHIN-NY will also generate a substantial return through the elimination of wasted expenditures and promoting better quality health care at a lower cost. Three studies conducted in Rochester by the Health Information Technology Evaluation Collaborative (HITEC), an academic research consortium under contract with the State Department of Health to perform evaluation activities for the HEAL NY Program, identified improved quality and reduction in duplicative testing and in readmission rates for a two year study period for events in 2009-2010. Use of the Rochester RHIO by five Emergency Departments (EDs) resulted in 6 averted admissions per 100 patients who came to the ED, resulting in \$9 million projected savings annually across the adult community. Extrapolating the cost savings across the state would result in an annual savings of \$52 million. During the same study period, image exchange use through the Rochester RHIO within 90 days following an initial imaging procedure reduced the probability of repeat imaging by 35%. Finally, use of the Rochester RHIO after hospital discharge resulted in a 55% reduction in readmission within 30 days. These highly significant findings with important financial implications further demonstrate the value of the SHIN-NY.

An 18-month study in the Buffalo region looked at the number of multiple CT scans ordered for the same body part, for the same patient, over a six-month period.

During the period, 2,763 CT scans were deemed to be potentially unnecessary, duplicative tests. 90% of the potentially duplicative tests were ordered by physicians who never or infrequently access the local health information exchange. By local calculations, that amounts to a potential additional cost of \$1.3 million over a six-month period for one test in one region of the state.

**Costs to Regulated Entities:**

The proposed regulation will require that health care facilities connect to the SHIN-NY.

Average interface costs for hospitals are \$75,000 while interface costs for physician practices vary but generally average \$5000 – 10,000 per practice. Interface costs for other types of facilities, such as nursing homes, home care agencies and hospice would fall in between physician practices and hospitals, depending on the size and complexity. Some RHIOs have established this functionality for their participants, and therefore, there are reduced associated interface costs for their participants, which include physician practices. In some regions of the State, health plans have absorbed the interface costs for their network providers because they see the value of having their physicians connected to the SHIN-NY. Only health care providers, regulated by the Department of Health, using certified EHR technology need to comply with these requirements. Currently, adoption of certified EHR technology for health care facilities outside of hospitals and FQHCs is low because they are not eligible to receive meaningful use incentive payments.



**Local Government Mandates:**

The State Enterprise Health Information Exchange as part of the SHIN-NY is designed to streamline how providers interact with the many public health information systems that currently exist, to decrease reporting burdens, promote bidirectional information exchange, and advance public health priorities. Health care facilities operated by local governments will be required to comply with these regulations in the same manner as other health care facilities. Should local health departments need to make expenditures to comply with the regulatory requirements, they have opportunities to request funding through Article 6 Local Assistance Grant Program, and possibly other sources. Additionally, local agencies could seek a waiver to connect to their RHIO if funding is not available.

**Paperwork:**

Entities that wish to become QEs will need to submit an application for review by DOH to determine if the criteria outlined in the regulation have been met as well as meeting other criteria as may be required under the QE certification process.

**Duplication:**

This regulation will not conflict with any state or federal rules.

**Alternatives:**

The Department established a statewide collaboration process to establish a governance and policy framework to allow health information sharing among disparate

providers to improve quality, improve efficiency and reduce costs of health care on a statewide basis while ensuring the patient privacy and ensuring data security of patient information.

While other states have different models for health information exchange, and NY considered the approaches and models used in other states through its statewide collaborative process, based on the size, complexity and diversity of New York and the resources that were available, the State Department of Health determined that this model was the best approach to allow for statewide health information exchange.

**Federal Standards:**

This rule aligns with current federal laws and regulations governing the adoption of interoperable exchange of health information and meaningful use requirements under the HITECH provisions of ARRA, as well as federal standards regarding the exchange of certain alcohol and drug abuse patient records under 42 CFR Part 2.

**Compliance Schedule:**

Since RHIOs or QEs are largely operational in NYS and the majority of hospitals and federally qualified health centers are already participants, and the number of physicians practices participating continues to grow and the infrastructure for the SHIN-NY is already in development, the estimated time period needed for regulated persons or entities to achieve compliance with the rule is practicable.

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## REGULATORY IMPACT STATEMENT

### **Statutory Authority:**

Public Health Law § 206(18-a)(d) authorizes the Commissioner to make such rules and regulations as may be necessary to implement federal policies and disburse funds as required by the American Recovery and Reinvestment Act of 2009 and to promote the development of a self-sufficient Statewide Health Information Network for New York (SHIN-NY) to enable widespread, non-duplicative interoperability among disparate health information systems, including electronic health records, personal health records, health care claims, payment and other administrative data and public health information systems, while protecting patient privacy and ensuring data security. Such rules and regulations shall include, but not be limited to requirements for organizations covered by 42 USC 17938 or any other organizations that exchange health information through the SHIN-NY.

### Meaning of “implement federal policies”

The federal government, through the Office of the National Coordinator for Health Information Technology (ONC) within the Department of Health and Human Services (HHS), has been promoting and subsidizing the adoption of health IT for many years. According to the ONC-Coordinated Federal Health IT Strategic Plan: 2008-2012 (June 3, 2008), upon publication of Executive Order 13335 on April 27, 2004, President George W. Bush set a target for the majority of Americans to have access to electronic health records (EHRs) by 2014. Under EO 13335 (3 CFR 13335), ONC is charged with directing “the nationwide implementation of interoperable health information technology

in both the public and private health care sectors that will reduce medical errors, improve quality, and produce greater value for health care expenditures.”

Meaning of “disburse funds as required by the American Recovery and Reinvestment Act of 2009”

The American Recovery and Reinvestment Act (ARRA) of 2009 (P.L. 111-5) includes within it the Health Information Technology for Economic and Clinical Health (HITECH) Act (HITECH is ARRA Division A, Title XIII-Health Information Technology and ARRA Division B, Title IV-Medicare and Medicaid Health Information Technology).

Under HITECH, HHS has provided and is continuing to provide billions of dollars for:

- Medicare and Medicaid incentive payments to health care providers that adopt “meaningful use” of certified electronic health record (EHR) technology. 42 USC §§ 299b-31, 299b-33, 1395w-4, 1395w-23, 1395ww, 1396b; 42 CFR Part 495.
- Grants to states to promote health IT. New York State received a federal grant to prepare and submit to the federal government a statewide health IT plan to develop health information exchange across health care systems and to move New York State toward the meaningful use of certified EHR technology. 42 USC § 300jj-33. These regulations implement that plan.
- The creation and funding of health IT Regional Extension Centers (RECs) to assist health care providers in the selection, acquisition, implementation and meaningful use of certified EHR technology to improve health care quality and

outcomes. Two RECs in New York have received federal grants. 42 USC § 300jj-32.

Meaning of “the development of a self-sufficient statewide health information network for New York (SHIN-NY)”

On the State level, New York is creating a Statewide Health Information Network for New York (SHIN-NY). Under the Health Care Efficiency and Affordability Law for New Yorkers (HEAL NY) Capital Grant Program (PHL § 2818) Phases 1, 5, 10, 17 and 22, New York promoted broad adoption of EHRs and other health IT tools and is subsidizing the operations of Regional Health Information Organizations (RHIOs) that facilitate health information exchange between disparate providers and health systems. The creation of the SHIN-NY and the expenditure of federal and State funds for health IT is being coordinated by DOH’s Office of Quality and Patient Safety (OQPS). The Legislature established the OQPS Bureau of Health Information Exchange (referred to in the law as “the office of Health e-Links New York”) “to enhance the adoption of an interoperable regional health information exchange and technology infrastructure that will improve quality, reduce the cost of health care, ensure patient privacy and security, enhance public health reporting including bioterrorism surveillance and facilitate health care research in the state of New York” (L. 2006, ch. 57, Part G, § 1), and the Legislature has since then appropriated money in the Chapter 54 budget appropriation laws to fund the office of Health e-Links (or “health e-link”). In the 2014-2015 budget, the Legislature appropriated \$55 million for the SHIN-NY (L. 2014, ch. 54), and in the 2015-2016 budget, the Legislature appropriated \$45 million for the SHIN-NY.

Meaning of “organizations covered by 42 USC 17938”

Federal regulations implementing the privacy and security provisions of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 are in 45 CFR Parts 160 and 164, and HITECH made a number of amendments to those federal regulations. One such amendment is a section of HITECH codified in 42 USC § 17938 (“Business associate contracts required for certain entities”). Under 42 USC § 17938: “Each organization, with respect to a [HIPAA-]covered entity, that provides data transmission of protected health information to such entity (or its business associate) and that requires access on a routine basis to such protected health information, such as a Health Information Exchange Organization, Regional Health Information Organization, E-prescribing Gateway, or each vendor that contracts with a covered entity to allow that covered entity to offer a personal health record to patients as part of its electronic health record, is required to enter into a written contract (or other written arrangement) described in section 164.502(e)(2) of title 45, Code of Federal Regulations and a written contract (or other arrangement) described in section 164.308(b) of such title, with such entity and shall be treated as a business associate of the covered entity for purposes of the provisions of this subtitle and subparts C and E of part 164 of title 45, Code of Federal Regulations, as such provisions are in effect as of the date of enactment of this title [enacted Feb. 17, 2009].”

Prior to the enactment of HITECH, on December 15, 2008, ONC had already published a guidance document called “The HIPAA Privacy Rule and Electronic Health Information Exchange in a Networked Environment.” That guidance made clear the federal government’s view that under HIPAA, RHIO participants may disclose health information to RHIOs without any authorization from patients provided that the RHIOs

enter into appropriate “business associate” agreements with the RHIO participants.

<http://www.hhs.gov/ocr/privacy/hipaa/understanding/special/healthit/>;

<http://www.hhs.gov/ocr/privacy/hipaa/understanding/special/healthit/introduction.pdf>; 45

CFR § 164.502(e). 42 USC § 17938 codified this guidance into law.

In 2010, the federal Substance Abuse and Mental Health Services Administration (SAMHSA) likewise issued guidance (which was supplemented on December 8, 2011) explaining that under 42 CFR Part 2, RHIO participants may disclose alcohol and substance abuse patient records to RHIOs without patient consent provided that the RHIOs enter into appropriate Qualified Service Organization agreements with the RHIO participants. <http://www.samhsa.gov/sites/default/files/faqs-applying-confidentiality-regulations-to-hie.pdf>; December 8, 2011, FAQs (available upon request); 2 CFR § 2.12(c)(4).

This regulation implements federal policies, including the federal policies effected by the HITECH provisions of ARRA to enable widespread interoperability among disparate health information systems, while protecting patient privacy and ensuring data security. These regulations include the requirements for organizations such as RHIOs, which under 42 USC § 17938 make it possible, without patient authorization, to exchange patient information among disparate health care providers so long as those organizations comply with federal requirements for business associates and qualified service organizations.

Public Health Law Sections 201, 206(1), 2800, 2803, 2816, 3600, 3612, 4000, 4010, 4400, 4403, 4700 and 4712 authorize the Commissioner to make such rules and regulations as may be necessary to effectuate the provisions and purposes of Public



Health Law Articles 28, 36, 40, 44 and 47 and provide additional authority for the Commissioner to create and make use of the SHIN-NY.

**Legislative Objectives:**

This regulation will establish formal requirements for operation of the SHIN-NY in order to advance health information technology adoption and use statewide for the public good. The Department would regulate people and entities in New York that exchange health information using the SHIN-NY, including Regional Health Information Organizations (RHIOs) and other such health IT entities.

**Needs and Benefits:**

This regulation facilitates the operation of a statewide interoperable health information infrastructure that will provide clinicians and consumers with access to health information in a timely, secure, efficient, and effective way.

**Benefits of consistent policy implementation:**

As the use of health information technology expands, the regulation will formalize a common policy framework across the entire health care system to maximize the use and benefits of the SHIN-NY. The SHIN-NY enables delivery of appropriate care at the appropriate time in a coordinated, patient-centered manner. RHIOs and QEs facilitate access to the SHIN-NY through participation agreements and technical services to connect health care providers to the network. A certification process has been established by the State Department of Health for QE designation. In order to qualify to

become a QE, a set of minimum criteria must be met. Consistent implementation of statewide policies through the regulatory process leads to a common approach to education and training of providers and consumers and can lead to reduction in costs and creation of efficiencies across the state. The regulation will further promote adoption, usage and sustainability of health information exchange organizations and the SHIN-NY by:

- Increasing patient record availability on a statewide basis
- Establishing the core set of HIE services that provide clinical and administrative value to the healthcare system
- Reducing barriers for EHR integration with HIE services
- Increasing participation of all stakeholders including payers
- Creating opportunities for emerging health care payment, delivery and access reforms through new models of care such as health homes, patient centered medical homes and Accountable Care Organizations, among others.

In addition, HITECH established a program for incentive payments to Medicaid providers who demonstrate “meaningful use” of certified EHR technology with the ultimate goal of promoting health care quality and care coordination through state health information exchange (HIE) activities. Providers that achieve NCQA Patient Centered Medical Home designation qualify for meaningful use incentive payments. This regulation will expand access to and use of the SHIN-NY to additional segments of the broader health care system (e.g., mental health, alcohol and substance abuse and social services agencies) to improve health, improve health care and reduce costs. The

Department of Health needs clear regulatory authority to apply these policies more broadly.

**State and Local Cost:**

To date, the development of the SHIN-NY and expansion of EHR adoption has been funded through a combination of federal and state funds distributed through grant programs, as well as private contributions from participating health plans, providers and other stakeholders. Currently, over 170 hospitals and over 8200 primary care providers qualify for “meaningful use” incentives under Medicaid and Medicare. In addition, through HEAL NY funding, it is expected that over 7800 primary and specialty care providers were supported to have adopted EHRs and be connected to the SHIN-NY by the end of 2013. Over 80% of hospitals and over 75% of Federally Qualified Health Centers (FQHCs) in New York State participate in RHIOs.

Investment in the operation of the SHIN-NY will generate a substantial return through the elimination of wasted expenditures and promoting better quality health care at a lower cost. Three studies conducted in Rochester by the Health Information Technology Evaluation Collaborative (HITEC), an academic research consortium under contract with the State Department of Health to perform evaluation activities for the HEAL NY Program, identified improved quality and reduction in duplicative testing and in readmission rates for a two year study period for events in 2009-2010. Use of the Rochester RHIO by five Emergency Departments (EDs) resulted in 6 averted admissions per 100 patients who came to the ED, resulting in \$9 million projected savings annually across the adult community. Extrapolating the cost savings across the state would result

in an annual savings of \$52 million. During the same study period, image exchange use through the Rochester RHIO within 90 days following an initial imaging procedure reduced the probability of repeat imaging by 35%. Finally, use of the Rochester RHIO after hospital discharge resulted in a 55% reduction in readmission within 30 days. These highly significant findings with important financial implications further demonstrate the value of the SHIN-NY.

An 18-month study in the Buffalo region looked at the number of multiple CT scans ordered for the same body part, for the same patient, over a six-month period. During the period, 2,763 CT scans were deemed to be potentially unnecessary, duplicative tests. 90% of the potentially duplicative tests were ordered by physicians who never or infrequently access the local health information exchange. By local calculations, that amounts to a potential additional cost of \$1.3 million over a six-month period for one test in one region of the state.

Across the country, states have used similar studies to project the value of statewide HIE. Based on estimates of 85% provider and patient participation in its statewide HIE, Rhode Island forecasted an annual savings of \$95 per person.<sup>1</sup> In a similar study of fully operational statewide HIE in Maine that factored in the total operational costs, researchers projected significant, but more modest net savings of \$35 per person per year.<sup>2</sup>

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<sup>1</sup> Boston Consulting Group. *Rhode Island Quality Institute Business case for Health Information Exchange*. December 5, 2009.

<sup>2</sup> Center for Health Policy and Research. *The Impact of Electronic Health Information Exchange (HIE) Services in Maine: Avoidable Service and Productivity Savings Estimates Related to HealthInfoNet Services*. November 2008.

In addition to savings associated with reduction in unnecessary and duplicative testing, readmissions, and adverse drug events, participation in the SHIN-NY will also generate savings by minimizing the number of interfaces health care organizations need to access data. Currently, physician practices, hospitals, laboratories, public health agencies, and others must create and maintain costly and complex interfaces with every organization they wish to exchange data. In this point-to-point data exchange environment, a typical hospital with 10 interfaces can spend as much as \$200,000 in one-time development fees, and \$40,000 per year in maintenance fees.<sup>3</sup> The SHIN-NY and its QEs, serving as utilities and consolidating services and interfaces, have been and will continue to reduce the per unit connectivity cost for all participants.

The proposed regulation will require that health care facilities defined in PHL Section 18 that utilize certified EHRs, connect to the SHIN-NY through a QE and allow private and secure bi-directional access to patient information by other QE participants authorized by law to access such patient information.

Costs for facilities operated by State and local governments will be equivalent to costs for other regulated facilities.

**Costs to Regulated Entities:**

The proposed regulation will require that health care facilities defined in PHL Section 18 that utilize certified EHRs, including urgent care centers, connect to the

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<sup>3</sup> Delaware Health Information Network. *Final Report: Delaware Health Information Network Evaluation Analysis*. August 2011.

SHIN-NY through a QE and allow private and secure bi-directional access to patient information by other QE participants authorized by law to access such patient information.

Average interface costs for hospitals are \$75,000 while interface costs for physician practices vary but generally average \$5000 – \$10,000 per practice. Interface costs for other types of facilities, such as nursing homes, home care agencies and hospice would fall in between physician practices and hospitals, depending on the size and complexity. Some RHIOs have established this functionality for their participants, thereby reducing associated interface costs for their participants, which include physician practices. In some regions of the State, health plans have absorbed the interface costs for their network providers because they see the value of having their physicians connected to the SHIN-NY. Only health care providers using certified EHR technology need to comply with these requirements. Currently, adoption of certified EHR technology for health care facilities outside of hospitals and FQHCs is low because they are not eligible to receive meaningful use incentive payments.

This requirement, to connect a certified EHR to the SHIN-NY, may be waived for health care facilities that meet criteria established by the commissioner, such as economic hardship, technological limitations that are not reasonably in the control of the provider or other exceptional circumstances demonstrated by the provider to the department.

The Department will develop a fair process for health care providers to demonstrate that they meet waiver criteria and for the Department to give such providers a waiver or extension of time to connect to the SHIN-NY.

The regulation is being put forth as a “public good” model. That is, a certain set of baseline services, both technical and administrative, will be made available to all providers within New York State, at no charge. The basic technical services will include: patient record look-up; provider and public health clinical viewer; secure messaging; consent management; notifications and alerts; identity management and security; public health reporting integration; and results delivery.

**Local Government Mandates:**

Health facilities operated by local governments will be required to comply with these regulations in the same manner as other facilities. Should local health departments need to make expenditures to comply with the regulatory requirements, they have opportunities to request funding through the Public Health Law Article 6 Local Assistance Grant Program, and possibly other sources.

Only health care providers using certified EHR technology need to comply with these requirements. This requirement, to connect a certified EHR to the SHIN-NY, may be waived for health care facilities that meet certain criteria, such as economic hardship, technological limitations that are not reasonably in the control of the provider or other exceptional circumstances demonstrated by the provider to the department.

**Paperwork:**

Entities that wish to become QEs will need to submit an application for review by DOH to determine if the criteria outlined in the regulation have been met as well as meeting other criteria as may be required under the QE certification process.

Any entity seeking certification as a QE, regardless the entity's organizational structure, origin or type, will be subject to the full certification process. This certification process incorporates criteria that fall into four broad categories including: organizational characteristics; operational requirements; policies and procedures; and technical requirements. QEs would be subject to recertification and would also be subject to ongoing monitoring and enforcement activities between full certifications. This will ensure that patient information is made available to all providers participating in a patient's care in a secure and confidential manner.

**Duplication:**

This regulation will not conflict with any state or federal rules.

**Alternatives:**

The Department used the statewide collaborative process to solicit comments from a variety of stakeholders to develop recommendations on regulations and its policy guidance. A series of summits and input opportunities were incorporated into the development process. In January of 2013 a summit of stakeholders, which included RHIO Executive Directors, Members of RHIO Board of Directors, the Board of Directors of the New York eHealth Collaborative, representatives for NYS DOH, NYC DOHMH and other stakeholders was conducted. The goal of the session was to establish the roles and responsibilities of Qualified Entities. Subsequent to the summit, a series of workgroups were launched to further define requirements and responsibilities.



While other states have different models for health information exchange, and NY considered the approaches and models used in other states through its statewide collaborative process, based on the size, complexity and diversity of New York and the resources that were available, the State Department of Health determined that the current model was the best approach. The State Department of Health has convened and considered the recommendations of the workgroup established by Public Health Law § 206(18-a)(b), including the workgroup's interim report under § 206(18-a)(b)(iii). To date, the State Department of Health has acted in a manner that is consistent with the recommendations of the workgroup; however, in the event that the Department acts in a manner inconsistent with the recommendations of the workgroup, it shall provide the reasons therefor, as required by § 206(18-a)(d).

**Federal Standards:**

This rule aligns with current federal laws and regulations governing the adoption of interoperable exchange of health information and meaningful use requirements under the HITECH provisions of ARRA including the Electronic Health Record Incentive program. This rule also aligns with the SAMHSA federal standards regarding the exchange of certain alcohol and drug abuse patient records under 42 CFR Part 2.

**Compliance Schedule:**

Two years from the effective date of this regulation (or one year for general hospitals), health care facilities utilizing certified electronic health record technology under HITECH must become qualified entity participants in order to connect to the

SHIN-NY through a qualified entity. Since RHIOs or QEs are largely operational in NYS and the majority of hospitals and federally qualified health centers are already participants, and the number of physician practices participating continues to grow and the infrastructure for the SHIN-NY is already in development, the estimated time period needed for regulated persons or entities to achieve compliance with the rule is two years (one year for general hospitals) from the time the rule becomes effective. Two years from the time the rule becomes effective (one year for general hospitals), health care facilities utilizing certified health record technology under HITECH must allow private and secure bi-directional access to patient information by other QE Participants authorized by law to access such patient information.

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## **REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS**

The proposed rule will not have a substantial adverse impact on small businesses or local governments. Small businesses such as physician practices, that are not regulated by the Department, that adopt certified electronic record technology in order to qualify for meaningful use incentives, would not be required to exchange patient health information among disparate providers to facilitate care coordination and appropriate follow up. Although this exchange is encouraged, it is strictly optional for these practitioners in private practice.

Local health departments that operate health facilities including Article 28 facilities, including outpatient departments of hospitals, diagnostic and treatment centers, free-standing ambulatory surgery centers and nursing homes, as well as home care services agencies, hospices and health maintenance organizations would be required to connect to the SHIN-NY would be impacted by the regulation if those facilities use certified electronic health record technology. Average interface costs for hospitals are \$75,000 while interface costs for physician practices vary but generally average \$5000 – \$10,000 per practice. Interface costs for other types of facilities, such as nursing homes, home care agencies and hospice would fall in between physician practices and hospitals, depending on the size and complexity. Costs of connecting the SHIN-NY could be offset by funds from the meaningful use incentive program. A connection to the SHIN-NY satisfies one requirement of the meaningful use incentive program and will allow providers at these facilities to access Medicaid or Medicare Meaningful Use incentive payments. The meaningful use incentive program allows all individual eligible

professionals who meet meaningful use requirements to apply for incentive payments of up to \$43,720 over a five year period. The Department of Health, with the New York eHealth Collaborative, has implemented an additional incentive program, with support from the Centers for Medicare and Medicaid Services (CMS), to allow meaningful use providers to receive an additional incentive payment of up to \$30,000 to help defray the cost of connecting to the SHIN-NY. It is anticipated that the incentive program will continue with additional funding from CMS. Additionally, any facility that is required to connect to the SHIN-NY under this regulation may request that this requirement be waived for its facilities based on economic or technical constraints.

Accessing the SHIN-NY to perform required local health department surveillance and case investigation activities has actually been documented to result in increased efficiency and decreased costs for the local health department. Through the statewide collaboration process, local governments have the opportunity to participate in SHIN-NY policy development including providing input on draft regulations. The SHIN-NY policy committee includes representatives from the local public health agencies.

Ensuring that clinical data are available in a safe, secure way supports the goals of increasing the quality of care, increasing population health and reducing healthcare costs. Hospitals that connect to the SHIN-NY have been shown to decrease the number of tests and imaging studies thus reducing costs.

**Cure Period:**

Chapter 524 of the Laws of 2011 requires agencies to include a “cure period” or other opportunity for ameliorative action to prevent the imposition of penalties on the party or parties subject to enforcement when developing a regulation or explain in the Regulatory Flexibility Analysis why one was not included. This regulation creates no new penalty or sanction. Hence, a cure period is not required.

## **RURAL AREA FLEXIBILITY ANALYSIS**

The proposed rule will not have a direct adverse impact on rural areas. Operation of the SHIN-NY and expanded use of certified EHR technology should improve health care, increase efficiency, reduce duplicative testing and reduce overall costs for underserved populations in the state, including rural areas.

## **JOB IMPACT STATEMENT**

The proposed rule should not have any adverse impact on jobs and employment opportunities, but may increase the number of health IT jobs available in the state. The development and operation of the SHIN-NY will most likely result in opportunities for the development of new applications of health IT tools and services and may result in new health IT jobs in New York State. It has been estimated that the SHIN-NY, and related initiatives that use the data from the SHIN-NY has the potential to create 1,500 health technology jobs across New York State over the next five years.

## Summary of Express Terms

The following summarizes the proposed regulations pertaining to children with disabilities attending a children's camp.

Pursuant to the proposed amendments, the following requirements, which previously pertained only to camps with 20 percent or more campers with a developmental disability, will now apply to any camp enrolling campers with a disability, beginning October 1, 2016:

- For campers who cannot independently manipulate a wheelchair or adaptive equipment, camps must provide at least 1:2 supervision;
- Staff that have direct care responsibilities of campers with disabilities must receive training relevant to the specific needs of the campers in their charge;
- Camps must obtain and implement, as appropriate, care and treatment plans for campers with disabilities that have such plans as well as obtain other available information relevant to the care and specific needs of a camper with disabilities including pre-existing medical conditions, allergies, modified diets, and activity restrictions;
- During swimming activities, camps must provide one counselor for each camper who is non-ambulatory or has a disability that may result in an increased risk for an emergency in the water;
- For campers with developmental disabilities, camps must provide one counselor for every five campers during swimming activities;



- Camps must obtain parent/guardian’s written permission to allow campers with developmentally disabilities to participate in swimming activities;
- Camps must develop procedures and training for handling seizures or aspiration of water by campers with developmental disabilities that may occur during swimming activities;
- All lavatories and showers used by campers with physical disabilities must be equipped with specialized features and grab bars;
- Lavatories and showers used by campers with a disability, who are unable to moderate water temperature safely, shall have a water temperature not greater than 110 degrees Fahrenheit;
- Buildings housing non-ambulatory campers shall have ramps to facilitate access.
- Non-ambulatory campers may not have housing above ground level; and
- Exterior paths must be constructed and maintained, as appropriate for the camp population served, to provide for safe travel during inclement weather.

The amendments also define a “Camp for Children with Developmental Disabilities.” Such camps would be immediately required to adhere to the following additional requirements, pursuant to the legislation that established the Justice Center, in addition to immediately complying with the provisions above:

- Reportable incident is defined to include abuse, neglect and other significant incidents specified in section 488 of Social Services Law. Camp staff must report all reportable

incidents to the Justice Center Vulnerable Persons' Central Registry and the permit-issuing official;

- A definition of a personal representative was added to be consistent with section 488 of Social Services Law;
- Prior to hiring camp staff, camps must verify that candidates are not on the Justice Center's staff exclusion list or on the Office of Children and Family Services State Central Registry of Child Abuse and Maltreatment;
- All camp staff must obtain mandated reporter training and review and acknowledge an understanding of the Justice Center's code of conduct;
- Camps must ensure that immediate protections are in place following an incident to prevent further risk or harm to campers;
- Camps must notify the victim, any potential witnesses, and each camper's personnel representative (as appropriate) that the camper may be interviewed as part an abuse or neglect investigation;
- Camps must cooperate fully with reportable incident investigations and provide/disclose all necessary information and access to conduct investigations;
- Reportable incident investigations procedures are established;
- Camps must promptly obtain an appropriate medical examination of a physically injured camper with a developmental disability;

- Unless a waiver is granted, camps must convene a Facility Incident Review Committee to review the camp's responses to a reportable incident including making recommendations for improvement, reviewing incident trends, and making recommendations to reduce reportable incidents;
- Camps must implement any corrective actions identified as the result of a reportable incident investigation.

Note that, for organizational reasons, these amendments repeal section 7-2.25 in its entirety, and replace it with a new section 7-2.25. Although reorganized, some provisions have been left substantially unchanged, including certain provisions relating to camp directors and health directors.

Pursuant to the authority vested in the New York State Department of Health by Public Health Law Section 225, Subpart 7-2 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to be effective immediately upon publication in the New York State Register, to read as follows:

Subdivision (b)(2)(ix) of section 7-2.1 is amended to read as follows:

(ix) implementation of the medical requirements of the camp safety plan not under the supervision of a camp health director; at [camps for the developmentally disabled] Camps for Children with Developmental Disabilities, as defined in section 7-2.2(d-1) of this Subpart, medication is not under the supervision of licensed or certified personnel;

Subdivision (d-1) of section 7-2.2 is added to read as follows:

(d-1) Camp for Children with Developmental Disabilities shall mean a children's camp with 20% or more enrollment of campers with a developmental disability as defined by subdivision (d) of this section.

Subdivision (c) of section 7-2.9 is amended to read as follows:

(c) Showers with water under pressure heated to between [90 and 100] 110 and 120 degrees Fahrenheit, and one shower head for each 20 occupants or less, shall be provided.

Subdivisions (a) and (b) of section 7-2.24 are amended to read as follows:

(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. For any variance request relating to the requirements of section 7-2.25(b) of this Subpart, the permit-issuing official shall consult with and obtain approval from the State Department of Health, prior to granting or denying the variance.

(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. For any waiver request relating to the

requirements of section 7-2.25(b) of this Subpart, the permit-issuing official shall consult with and obtain approval from the State Department of Health, prior to granting or denying the variance.

Section 7-2.25 (Additional requirements for camper with camper enrollments of 20 percent or more developmentally disabled campers) is repealed and replaced to read as follows:

7-2.25 Additional requirements for camps enrolling campers with disabilities.

(a) Effective October 1, 2016, the following requirements shall apply to all camps enrolling a child with a physical or developmental disability, except that any Camp for Children with Developmental Disabilities as defined in section 7-2.2 of this Subpart shall comply with this section upon the effective date of this Subpart:

(1) Personnel and Supervision.

(i) The ratio of counselors to campers who use a wheelchair, adaptive equipment or bracing to achieve ambulation, but who do not possess, for whatever reason, the ability to fit, secure or independently manipulate such devices satisfactorily to achieve ambulation, shall be 1:2.

(ii) Camp staff providing direct care of a camper with a disability shall be trained on the specific needs of the campers in their charge.

(2) Medical Requirements.

(i) A camp operator shall obtain existing individual treatment, care, and behavioral plans for campers with a disability. Camp staff shall implement adequate procedures to protect the health and safety of a camper based on the plan provided and, when necessary, in consultation with an individual's parent, guardian and/or clinical team.

(ii) The confidential medical history for a camper with a disability shall, in addition to the requirements of section 7-2.8(c)(1) of this Subpart, include:

*(a)* Any restrictions, allergies, medications, special dietary needs, and other pre-existing medical, physical or psychological conditions and illnesses.

*(b)* The camper's physician's name, address and telephone number.

(iii) Modified diets and other special needs related to a camper's disability shall be identified for each camper prior to arrival at camp, planned for, provided for in accordance with supplied directions, and reviewed by the designated camp health director.

(3) Recreational Safety.

(i) The minimum counselor-to-camper ratio during swimming pool and bathing beach activities shall be one counselor for each camper who is non-ambulatory or has a disability identified by the camper's parents, guardian, physician or residential care

provider that may result in an increased risk of an emergency in the water, such as uncontrolled epilepsy.

(ii) The minimum counselor-to-camper ratio during swimming pool and bathing beach activities shall be one staff member for every five (5) campers with a developmental disability not designated in subparagraph (i) of this paragraph.

(iii) No camper with a developmental disability can participate in swimming activities unless a written permission statement signed by the camper's parent, guardian or residential care provider is on file at the camp.

(iv) The camp safety plan approved under section 7-2.5(n) of this Subpart shall contain a procedure to address the handling of seizures and aspiration of water for campers with developmental disabilities. All bathing beach and swimming pool staff shall be trained to implement the procedure prior to the date the camp begins operation. In-service training using this procedure shall be conducted and documented every two weeks after the commencement of the camp's operation or as otherwise approved by the permit-issuing official in the camp's safety plan.

(4) Toilets, privies, lavatories, showers. All lavatories and showers used by a camper with a physical disability shall be equipped with specialized fixtures, grab bars or other controls appropriate for the camper's disability. Lavatories and showers used by campers with physical, intellectual or developmental disabilities, who are unable to moderate



water temperature safely, shall have a water temperature not greater than 110 degrees Fahrenheit.

(5) Sleeping Quarters.

(i) Buildings housing campers who are non-ambulatory or use a wheelchair shall have ramps constructed in accordance with the Uniform Code to facilitate access and egress.

(ii) Non-ambulatory campers shall not have their sleeping accommodations above the ground floor.

(6) Location; grounds. Exterior paths of travel shall be free of encumbrances and provide an appropriate surface for movement during inclement weather as appropriate for the camp population being served.

(b) Children's Camps for Children with Developmental Disabilities. In addition to the requirements listed in subdivision (a), the following requirements shall apply to all Children's Camps for Children with Developmental Disabilities, as defined as defined in section 7-2.2 of this Subpart:

(1) Definitions. The following definitions apply to this subdivision:

(i) *Camp staff* shall mean a director, operator, employee or volunteer of a children's camp; or a consultant, employee or volunteer of a corporation,

partnership, organization or government entity which provides good or services to a children's camp pursuant to contract or other arrangement that permits such person to have regular or substantial contact with individuals who are cared for by the children's camp.

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

(iii) *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.

(iv) *Reportable incidents* shall include the following:

(a) *Abuse and Neglect* shall mean those actions by camp staff that satisfies the definitions of “physical abuse”, “sexual abuse”, “psychological abuse”, “deliberate use of restraints”, “use of aversive conditioning”, “obstruction of reports of reportable incidents”, “unlawful use or administration of controlled substance” and “neglect” all as defined in section 488 of Social Services Law.

(b) *Significant Incident* shall mean an incident, other than an incident of abuse or neglect as defined by subparagraph (a) of this section that because of its severity or the sensitivity of the situation may result in, or has the reasonably foreseeable potential to result in, harm to the health, safety, or welfare of a camper with a developmental disability. A significant incident shall include but not limited to: (1) conduct between campers with developmental disabilities that would constitute abuse, as defined in this

Section, if it had been conducted by a camp staff member; or (2) conduct by a camp staff member which is inconsistent with the individual treatment plan for a camper with a developmental disability, generally accepted treatment practices and/or applicable federal or state laws, regulations or policies, and impairs or creates a reasonably foreseeable potential to impair the health, safety or welfare of a camper with a developmental disability. Such conduct shall include but is not limited to: actions incorporated within the definitions of “unauthorized seclusion,” “unauthorized use of time-out,” “administration of a prescribed or over-the-counter medication, which is inconsistent with a prescription or order issued by a licensed, qualified health care practitioner, and which has an adverse effect,” and “inappropriate use of restraints,” as defined in section 488 of the Social Services Law.

(v) Personal Representative shall mean a camper’s parent, guardian, or person authorized under state, tribal, military or other applicable law to act on behalf of a camper with a developmental disability in making health care decisions.

(2) Personnel and Supervision.

(i) The camp director, who may also be the camp operator, shall possess a Bachelor's Degree from an accredited program in the field of physical education, recreation, education, social work, psychology, rehabilitation or related human services fields and shall present evidence of specialized training or one year of

experience in treating or working with individuals with a developmental disability.

(ii) A camp director does not have to meet the minimum requirements of paragraph (i) of this subdivision if:

(a) the individual was a camp director for a camp for children with developmental disabilities during each of the three camping seasons preceding the 1986 camping season;

(b) conditions at the camp did not threaten the health or safety of campers during that person's tenure as camp director; and

(c) the individual otherwise meets the minimum qualifications for a camp director, as set forth in section 7-2.5 of this Subpart.

(iii) The camp director shall not be on the Justice Center Staff Exclusion List (SEL) consistent with paragraph 6 of subdivision b of this section.

(iv) The camp director shall develop a written staff training program appropriate to the specific needs of the campers with developmental disabilities enrolled in the camp.

(v) There shall be at least one counselor in addition to the driver in any vehicle transporting campers with developmental disabilities or as provided in the camp safety plan approved under section 7-2.5(n) of this Subpart.

(3) Medical Requirements. The camp health director shall be a physician, physician's assistant, registered nurse or licensed practical nurse and shall be on-site for the period the camp is in operation.

(4) Reporting. In addition to reporting incidents as required by Part 5 of this Title and by sections 7-2.8(d), 7-2.5(n)(3) and 7-2.6(f)(4) of this Subpart, all camp staff shall immediately report any reportable incident, as defined in section 7-2.25(b)(1)(iv) of this Subpart, involving a camper with a developmental disability, to the permit-issuing official and to the Justice Center's Vulnerable Person's Central Register (VPCR). Such report shall be provided in a form and manner as required by the Department and Justice Center.

(5) Immediate Protections and Notifications.

(i) Immediately upon notification of abuse, neglect or significant incident as defined by section 7-2.25(b)(1)(iv), the camp operator or designee shall ensure appropriate actions are taken to address the immediate physical and psychological needs of the camper(s), implement protections to ensure the safety and mitigate further risk to campers, and document such actions and implementations.

(ii) The camp director or designee shall notify a camper with a developmental disability and the camper's personal representative that the camper is an alleged victim or potential witness of an incident of abuse or neglect. Alleged victims

shall be notified within 24 hours and potential witnesses shall be notified within 48 hours of the permit-issuing official reporting, to the camp director or designee, that an incident of abuse or neglect has been accepted by the Justice Center for investigation. There shall be no notification of a personal representative if the alleged victim or potential witness objects to such notification or if providing such notification would compromise the investigation, violate relevant confidentiality laws, be contrary to court order, or otherwise contrary to the best interests of the alleged victim or the potential witness.

(iii) Camp staff shall document in writing that notice was given or that a diligent effort to make such notification was made for each camper.

(6) Camp Staff Screening, Training, and Code of Conduct.

(i) 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 (SEL) established pursuant to section 495 of the Social Services Law. If such person is not on the Justice Center's Staff Exclusion List (SEL), the operator shall also consult the Office of Children and Family Services State Central Registry of Child Abuse and Maltreatment as required by section 424-a of the Social Services Law. Such screening is in addition to the requirement that the operator similarly verify that a

prospective camp staff is not on the sexual abuse registry, as required by section 7-2.5(l) of this Subpart.

(ii) A camp operator shall ensure that camp staff receive training regarding mandated reporting and their obligations as mandated reporters as defined by Article 11 of Social Services Law. A camp operator shall ensure that the telephone number for the Justice Center's VPCR hotline for the reporting of reportable incidents is conspicuously displayed in areas accessible to mandated reporters and campers.

(iii) The camp operator shall ensure that all camp staff are provided with a copy of the code of conduct established by the Justice Center pursuant to section 554 of 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 shall be acknowledged and the recipient shall further acknowledge that he or she has read and understands such code of conduct.

(7) Disclosure of Information.

(i) 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 Department, 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 (b)(4) of this Subpart.

(ii) 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.

(8) Incident Management.

(i) 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 shall be provided in a timely manner so as to support completion of the investigation subject to the time limits set forth in this subdivision.



(ii) Unless delegated by the Justice Center to the Department, an allegation of abuse or neglect as defined in section 7-2.25(b)(1)(iv)(a) of this Subpart, shall be investigated by the Justice Center. With regard to an alleged significant incident, as defined in section 7-2.25(b)(1)(iv)(b) of this Subpart, the permit-issuing official shall initiate a prompt investigation of the allegation, unless the Justice Center agrees that it will undertake such investigation. An investigation conducted by the permit-issuing official shall commence no later than five business days after notification of such an incident. 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:

(a) 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 clause may be altered if, and only to the extent necessary to, comply with an applicable collective bargaining agreement.

*(b)* All evidence must be adequately protected and preserved.

*(c)* 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.

*(d)* 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.

*(e)* 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.

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

(iii) At the conclusion of an investigation of an alleged reportable incident, the camp operator shall:

*(a)* Assess the need for corrective actions;

*(b)* Report corrective actions plans to the permit-issuing official within 45 days of the conclusion of an investigation from the Justice Center or permit-issuing official; and

*(c)* Implement corrective actions identified by the camp, or required by the permit issuing official or the Justice Center. Corrective action plans shall be implemented as soon as possible but within ninety (90) days of the completion of an investigation unless the camp has closed for the season. If closed for the season, corrective action plans shall be implemented when the camp reopens.

(iv) Incident Review Committee.

(a) The camp shall maintain a facility incident review committee, in accordance with 14 NYCRR Part 704. The incident review committee shall be 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 committee 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 committee shall meet each year in which there is a reportable incident. When the incident review committee is responsible for approving or developing corrective action plans, the committee shall meet within 45 days of the conclusion of an investigation, unless an extension for such plans has been granted by the Justice Center.

*(b)* Pursuant to paragraph (f) of subdivision one of section 490 of the Social Services Law and 14 NYCRR Part 704, 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 shall file an application with the permit-issuing official and provide sufficient documentation and information to demonstrate that compliance would present undue hardship, that granting an exemption would not create an undue risk of harm to campers' health and safety and specify an alternative process to ensure appropriate review and evaluation of reportable incidents. The permit-issuing official shall consult with the Department and shall not grant or deny an application for an exemption unless it first obtains department approval for the proposed decision. An operator shall meet all terms of an approved exemption(s). An exemption shall remain in effect until revoked by the permit-issuing official. A camp operator shall immediately notify the permit-issuing official when conditions, upon which the incident review committee exemption was granted, have changed.

(9) In addition to the requirements specified by subdivisions (d) and (g) of the 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.

## **Summary of Regulatory Impact Statement**

### **Statutory Authority:**

The Public Health and Health Planning Council (PHHPC) is authorized by section 225(4) of the Public Health Law (PHL) to establish, amend and repeal sanitary regulations known as the State Sanitary Code (SSC), subject to the approval of the Commissioner of Health. Article 13-B of the PHL authorizes the PHHPC to prescribe standards and establish regulations 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 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). This legislation amended Article 11 of Social Service Law to include children's camps for children with developmental disabilities, and it required the Department of Health to promulgate regulations pertaining to incident management.

### **Needs and Benefits:**

The following requirements, which previously pertained only to camps with 20 percent or more campers with a developmental disability, will now apply to any camper with a disability, as of October 1, 2016:

- For campers who cannot independently manipulate a wheelchair or adaptive equipment,

campers must provide at least 1:2 supervision;

- Staff providing direct care of campers with disabilities must be trained on the needs of the campers in their charge;
- Camps must obtain health information and existing care/treatment plans and implement adequate procedures to protect the safety and health of camper with disabilities;
- During swimming activities, camps must provide one counselor for each camper who is non-ambulatory or has a disability that might result in unusual emergencies in the water. For campers with developmental disabilities, camps must provide one counselor for every five campers and obtain parent/guardian's written permission to allow for swimming participation;
- Non-ambulatory campers cannot have housing above ground level.
- Provisions for adaptive equipment, ramps and accessible design are included for lavatories, showers, and buildings. A maximum water temperature is established for lavatories and showers.

To implement Article 11, the Department of Health proposes these amendments to 10 NYCRR Subpart 7-2, relating to "Children's Camp for Children with Developmental Disabilities". The amendments define a Children's Camp for the Developmentally Disabled as a children's camp with camper enrollments of 20 percent or more campers with a developmental disability. In addition to immediately complying with the requirements above, the amended regulations would immediately require these camps to comply with the following:



- Reportable incidents are defined and required to be reported by camp staff to the Justice Center and permit-issuing official;
- Camps must implement immediate protections following an incident to prevent further risk or harm to campers;
- Camps must notify the victim, potential witnesses, and each camper's personnel representative that the camper may be interviewed as part of an abuse or neglect investigation;
- Camps must verify staff are not on the Justice Center's Staff Exclusion List (SEL) prior to hiring. After this verification, the operator must consult the Office of Children and Family Services (OFCS) State Central Registry of Child Abuse and Maltreatment (SCR);
- Camp staff must receive mandated reporter training and acknowledge an understanding of the Justice Center's code of conduct;
- Camps need to cooperate with investigations, including providing access and disclosing necessary information;
- Camps must convene a Facility Incident Review Committee to review the camp's response to a reportable incident and make recommendations to reduce reportable incidents.

**Compliance Costs:****Cost to Regulated Parties:**Costs to Camps for Children with Developmental Disabilities:

Costs to regulated parties are difficult to estimate due to variation in staff salaries and time needed to investigate incidents. Reporting incidents should take less than half an hour; assisting with investigations will range from several hours to two staff days. The Department estimates that the total staff costs range from \$120 to \$1600 for each investigation. Expenses should be minimal statewide as less than 55 Camps for Children with Developmental Disabilities operate each year, with an average of six camps reporting a total of 18 incidents per year.

There will be minimal expense for determining if potential employees are on the SEL and SCR. An entry level staff person earning the minimum wage of \$8.75/hour should be able to compile the information for 100 employees within six to eight hours. OCFS requires a \$25.00 screening fee for new or prospective employees and no fee for volunteers.

Camps will be required to: disclose certain information to the Justice Center and to the permit issuing official charged with investigating reportable incidents; ensure immediate protections are in place for victims; and notify the victims and any witnesses that they may be interviewed as part of an investigation. Costs associated with these activities include staff time for locating information, contacting camper's parent/guardians and expenses for copying materials. The typical cost should be under \$100 per incident.

Costs associated with mandated reporting training are minimal as training materials will be provided to the camps and will take about one hour to review during routine staff training. The telephone number for the Justice Center reporting hotline must be conspicuously posted for campers and staff. Costs associated with posting is limited to making and posting copies in appropriate locations.

Camp operators must provide each camp staff member or volunteer with the code of conduct established by the Justice Center. The code must be provided at the time of initial employment and annually thereafter. The employee must acknowledge they received, read, and understand the code. The cost of providing the code, and obtaining and filing the required employee acknowledgment should be minimal. Staff should need less than 30 minutes to review the code.

Camps will be required to establish and maintain a facility incident review committee to review 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 and the amount of time needed for the committee to meet. An incident review committee will be required to meet to fulfill its duties if any reportable incidents occur. Because most camps only operate during the summer season, it is expected that the incident review committee will meet no more than once a year. The cost is estimated to be \$450.00 dollars per meeting. The regulations provide

opportunity for a camp to seek an exemption, which may be granted based on the duration of the camp season and other factors.

Camps are now required to obtain a medical examination of any camper physically injured during a reportable incident. Because a medical examination is an expected standard of care in response to such injuries, there will be no additional cost.

Costs to camps enrolling campers with a disability:

Certain regulations, which previously pertained only to camps with 20 percent or more campers with a developmental disability, will now apply to any camp that enrolls one or more campers with a disability. The cost to affected parties is difficult to estimate due to variation in salaries and the unknown number of campers with a disability attending camps.

Camps will be required to provide at least: 1:2 supervision for campers who cannot independently manipulate a wheelchair or other adaptive equipment; 1:1 supervision during swimming for each camper who is non-ambulatory or has a disability that may result in an increased risk of an emergency in the water; and 1:5 supervision for campers with a developmental disability during swimming. Entry level staff person earning the minimum wage of \$8.75/hour should be able to comply with the supervision requirements. The expense for camps will vary depending on the number of campers with these disabilities and the length of time the campers are in attendance.

Camps will be required to obtain and follow existing care/treatment plans and other available information relevant to the care of a camper with disabilities, such as pre-existing medical conditions, allergies, modified diets, and activity restrictions. Staff providing direct care of these campers must be trained on the specific needs of each camper. Costs to obtain existing health and care information are expected to be minimal, since camps currently collect health information. Costs to provide staff training will vary based on needs of individual campers, but are expected to be minimal as they currently provide staff training in other areas.

Camps will need to obtain parent or guardian's written permission to allow campers with developmental disabilities to participate in swimming activities. The cost of obtaining permission slips should be minimal, as it is limited to copying, distributing, and filing with other materials from parents/guardians.

**Cost to State and Local Government:**

State agencies and local governments operating camps will have the same costs described in the section entitled "Cost to Regulated Parties."

The regulation imposes requirements on local health departments (LHDs) for receiving incident reports, investigating incidents, and oversight of corrective actions. 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. The cost to investigate an incident, including report

completion, is estimated to range from \$400 to \$1600.

**Cost to the Department of Health:**

There will be costs associated with printing and distributing the amended Code. There will be minimal costs for printing and distributing training materials, as most information will be distributed electronically. LHDs will likely include copies of training materials in routine correspondence to camps.

**Local Government Mandates:**

Camps operated by local governments must comply with the requirements imposed on camps operated by other entities, as described in the section entitled “Cost to Regulated Parties.” Local governments serving as permit issuing officials will face additional reporting and investigation requirements, as described in the section entitled “Cost to State and Local Government.” The proposed amendments otherwise do not impose new responsibilities on local governments.

**Paperwork:**

The paperwork associated with the amendment includes the completion and submission of incident report forms to the LHD and Justice Center. Camps will be required to provide records necessary for LHD investigation of incidents, and to retain documentation regarding whether prospective employees were found on the SEL or SCR. Camps enrolling campers with a disability will be required to obtain health care related documents/information and permission

slips for swimming and document in-service training for aquatic staff.

**Duplication:**

This regulation does not duplicate any existing federal, state, or local regulation.

**Alternatives Considered:**

The amendments to the code that relate to Camps for Children with Developmental Disabilities are mandated by law. No alternatives were considered for these requirements.

The Department considered not imposing additional requirements on camps that enroll less than 20% of campers with a disability; however, this option was rejected because the requirements are viewed as necessary to protect campers with disabilities attending camp.

The Department also considered imposing all of the requirements for Camps for Children with Development Disabilities on all children's camps with one or more qualifying campers; however, this option was rejected due to the burdensome costs associated with implementing the requirements. The State Camp Safety Advisory Council also expressed concern that applying the regulations to all camps enrolling a child with a developmental disability could be burdensome and have unintended consequences. The Department received correspondences from two State Senators, who expressed concern that expanding the regulations to all children's camps would have unintended financial consequences that could impact access.

Public comments were delivered by municipal organizations, children's camps and camp organizations, all of which argued in favor of keeping the 20 percent threshold. The Justice Center conveyed agreement with the Department's application of the additional requirements to camps serving a population of 20 percent or more children with developmental disabilities.

**Federal Standards:**

No current federal law governs the operation of children's camps.

**Compliance Schedule:**

The proposed amendments will be effective upon publication of the Notice of Adoption in the State Register. For Camps for Children with Developmental Disabilities, compliance with all requirements will be immediately required. For camps serving a population of less than 20 percent of children with developmental disabilities, the requirements pertaining to such camps will be effective October 1, 2016.

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## **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 authorizes the PHHPC to prescribe standards and establish regulations for children's camps 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 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 amended Article 11 of Social Service Law to include children's camps for children with developmental disabilities, and it required 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.

### **Needs and Benefits:**

In order to better protect and provide for the needs of campers with disabilities that attend

children's camps with less than 20 percent of the population having a developmental disability, the following requirements now apply to any camp that enrolls a camper with a disability:

- For campers who cannot independently manipulate a wheelchair or adaptive equipment, camps must provide at least 1:2 supervision;
- Staff that have direct care responsibilities of campers with disabilities must receive training relevant to the specific needs of the campers in their charge;
- Camps must obtain and implement, as appropriate, care and treatment plans for campers with a disability that have such plans as well as obtain other available information relevant to the care and specific needs of a camper with disabilities including pre-existing medical conditions, allergies, modified diets, and activity restrictions;
- During swimming activities, camps must provide one counselor for each camper who is non-ambulatory or has a disability that may result in an increased risk for an emergency in the water;
- For campers with developmental disabilities, camps must provide one counselor for every five campers during swimming activities;
- Camps must obtain parent/guardian's written permission to allow campers with developmentally disabilities to participate in swimming activities;
- Camps must develop procedures and training for handling seizures or aspiration of water by campers with developmental disabilities that may occur during swimming activities;
- All lavatories and showers used by campers with a physical disability must be equipped with specialized features and grab bars;

- Lavatories and showers used by campers with disabilities, who are unable to moderate water temperature safely, shall have a water temperature not greater than 110 degrees Fahrenheit.
- Buildings housing non-ambulatory campers shall have ramps to facilitate access.
- Non-ambulatory campers may not have housing above ground level; and
- Exterior paths must be constructed and maintained, as appropriate for the camp population served, to provide for safe travel during inclement weather.

The Justice Center legislation amended Article 11 of Social Services Law to include overnight, summer day and traveling summer day camps for children with developmental disabilities as facilities that must comply with the Justice Center requirements. This included mandating regulations regarding incident management procedures and other requirements consistent with Justice Center guidelines and standards.

To implement Article 11 of Social Services Law, the Department of Health defined “Children’s Camp for Children with Developmental Disabilities” in Subpart 7-2 of the State Sanitary Code. The amendment defines a Children’s Camp for Children with Developmental Disabilities as a children’s camp with enrollment of 20 percent or more campers with a developmental disability. The amendments further require these camps to comply with staff screening, staff training and incident management procedures mandated by the Justice Center legislation. The Department’s proposal includes the following:

- Reportable incident is defined to include abuse, neglect and other significant incidents

specified in section 488 of Social Services Law. Camp staff must report all reportable incidents to the Justice Center Vulnerable Persons' Central Registry and the permit-issuing official;

- A definition of a personal representative was added to be consistent with section 488 of Social Services Law;
- Prior to hiring camp staff, camps must verify that candidates are not on the Justice Center's staff exclusion list or on the Office of Children and Family Services State Central Registry of Child Abuse and Maltreatment;
- All camp staff must obtain mandated reporter training and review and acknowledge an understanding of the Justice Center's code of conduct;
- Camps must ensure that immediate protections are in place following an incident to prevent further risk or harm to campers;
- Camps must notify the victim, any potential witnesses, and each camper's personnel representative (as appropriate) that the camper may be interviewed as part an abuse or neglect investigation;
- Camps must cooperate fully with reportable incident investigations and provide/disclose all necessary information and access to conduct investigations;
- Camps must promptly obtain an appropriate medical examination of a physically injured camper with a developmental disability;
- Unless a waiver is granted, camps must convene a Facility Incident Review Committee to review the camp's responses to a reportable incident including making recommendations

for improvement, reviewing incident trends, and making recommendations to reduce reportable incidents;

- Camps must implement any corrective actions identified as the result of a reportable incident investigation.

Additionally, unrelated to requirements for camps with children with disabilities, the requirement for shower water temperature at children's camps is made consistent with Part 1226 (Property Maintenance Code) of 19 NYCRR Chapter XXXIII.

### **Compliance Costs:**

#### **Cost to Regulated Parties:**

##### Costs to Camps for Children with Developmental Disabilities:

The amendments impose additional requirements on children's camp operators for reporting and cooperating with Department of Health and Justice Center investigations at Camps for Children with Developmental Disabilities. 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 45 and 55 Camps for Children with Developmental Disabilities operate each year, with a three-year average of six camps reporting 18 incidents per year. Accordingly, any individual camp will be very unlikely to

experience costs related to reporting or investigation.

Each Camp for Children with Developmental Disabilities 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 \$8.75/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 for Children with Developmental Disabilities 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. An entry level staff person earning the minimum wage of \$8.75/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. There is no charge for volunteers.

For each reportable incident, Camps for Children with Developmental Disabilities will be

required to disclose information pertaining to reportable incidents to the Justice Center and to the permit issuing official investigating the incident. They will also be required to ensure immediate protections are in place for the victim and notify the victim and any witnesses that they may interviewed as part of the investigation. Costs associated with this include staff time for locating information, contacting camper's parent/guardians 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, the typical cost should be under \$100.

Camps for Children with Developmental Disabilities 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 for Children with Developmental Disabilities 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 operator of a Camp for Children with Developmental Disabilities 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 for Children with Developmental Disabilities 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. An incident review committee will be required to meet to fulfill its duties if any reportable incidents occur. Because most camps only operate during the summer season, it is expected that the incident review committee will meet no more than once a year. 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.



Camps for Children with Developmental Disabilities 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 required for such injuries; therefore, this will not be an increased cost.

Costs to camps enrolling campers with a disability:

Certain regulations which previously only pertained to camps with 20 percent or more campers with a developmental disability will now apply to camps that enroll one or more campers with a disability. The cost to affected parties is difficult to estimate due to variation in salaries for camp staff and the unknown and varying number of campers with a disability attending camps.

Camps will be required to provide at least one staff for ever two campers who cannot independently manipulate a wheelchair or other adaptive equipment. Camps will also be required to provide one on one supervision during swimming for each camper who is non-ambulatory or has a disability identified by the camper's parent, guardian, physician or residential care provider that may result in an increased risk of an emergency in the water. One camp staff person will be required for each five campers swimming with a developmental disability. Entry level staff person earning the minimum wage of \$8.75/hour should be able to meet the minimum counselor qualification to provide supervision. The expense for camps will vary depending on the number of campers with these types of disabilities and the length of time the campers are in attendance.

Camps will be required to obtain and follow care and treatment plans for campers when they exist, and obtain other available information relevant to the care and specific needs of a camper with disabilities such as information on pre-existing medical conditions, allergies, modified diets, and activity restrictions. Staff providing direct care of these campers will be required to receive any relevant training to provide for the safe care of such campers. The cost to obtain existing health and care information is expected to be minimal, since camps currently collect health information. The cost to provide staff training will vary based on the needs of individual campers, but is expected to be a minimal additional cost to camp operators, as they are currently required to provide staff training in other areas.

Camps will need to obtain parent's or guardian's written permission to allow campers with developmentally disabilities to participate in swimming activities. The cost of obtaining permission slips should be minimal, as it would be limited to copying, distributing, and filing with other materials sent to and received from parents or guardians.

**Cost to State and Local Government:**

State agencies and local governments that operate Camps for Children with Developmental Disabilities and camps enrolling campers with a disability will have the same costs described in the section entitled "Cost to Regulated Parties." Currently, it is estimated that municipalities operate nine summer day camps that meet the definition of a Camp for Children with Developmental Disabilities.

The regulation includes additional requirements on local health departments for receiving incident reports, investigations of reportable incidents, oversight of corrective actions and providing a copy of the resulting report to the Department. 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 typical estimate of \$50 an hour for health department staff conducting these tasks, an investigation lasting between one and four staff days, and an eight hour day, the cost to investigate an incident will range from \$400 to \$1600. Since the inception of the Justice Center, an average of 18 incidents per year have been reported within an average of six different local health departments.

**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:**

Camps for Children with Developmental Disabilities and camps enrolling campers with a disability 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 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. Camps enrolling campers with a disability will be required to obtain health care related documents/information and permission slips for swimming. Camps will also be required to document in-service training for aquatic staff that oversee swimming pertaining to seizures and aspiration of water.

**Duplication:**

This regulation does not duplicate any existing federal, state, or local regulation for children’s camps.

**Alternatives Considered:**

The amendments relating to Camps for Children with Developmental Disabilities are mandated by law. No alternatives were considered for these requirements.

The Department considered not imposing additional requirements on camps that have less than 20 percent of the children enrolled with a developmental disability; however, this option was rejected because the additional requirements are viewed as necessary to protect campers with disabilities attending camp.

The Department also considered applying all of the requirements for Camps for Children with Developmental Disabilities to all children's camps with one or more qualifying campers; however, this option was rejected due to the costs associated with implementing the requirements. The New York State Camp Safety Advisory Council expressed concern that applying the regulations to all camps with a child with a developmental disability could be burdensome and have unintended consequences such as a camp not admitting a child into the program. The Department also received correspondences from two State Senators, who indicated that expanding the emergency regulations to all children's camps, in addition to those that meet the 20 percent threshold, would have unintended financial consequences that could impact access.

Similarly, public comments were delivered by municipal organizations, children's camps and camp organizations, all of which argued in favor of keeping the 20 percent threshold for Camps for Children with Developmental Disabilities. Finally, the Justice Center conveyed

agreement with the Department's application of the additional requirements to camps serving a population of 20 percent or more children with developmental disabilities.

**Federal Standards:**

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

**Compliance Schedule:**

The proposed amendments are to be effective upon publication of the Notice of Adoption in the State Register. For Camps for Children with Developmental Disabilities, compliance with all requirements will be immediately required. For camps serving a population of less than 20 percent of children with developmental disabilities, the requirements pertaining to such camps will be effective October 1, 2016.

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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 approximately 2,510 regulated children's camps (533 overnight and 1977 summer day camps) operating in New York State. Any such camp that enrolls a camper with a disability will be affected by the proposed rule. Municipalities (towns, villages, cities and school districts) operate approximately 295 summer day camps and no overnight camp. Most of the remaining camps are believed to be small businesses.

Of the estimated 49 Children's Camps for Children with Development Disabilities (21 overnight camps and 28 summer day camps) that will be affected by the proposed rule, approximately nine summer day camps and none of the overnight camps are operated by municipalities (towns, villages, and cities). Most of the remaining Children's Camps for Children with Development Disabilities are believed to be small businesses.

Regulated children's camps representing small business include those owned or operated by corporations, hotels, motels and bungalow colonies, non-profit organizations (e.g., Girl/Boy Scouts of America, Cooperative Extension, YMCA) and others. The proposed amendments would affect these camps if they enroll children with disabilities. 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 for Children with Developmental Disabilities are now explicitly required to obtain an appropriate medical examination of a camper physically injured from a reportable incident; however, a medical examination has always been expected for such injuries, so this is not a new required service.



**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 Small Businesses and 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” and “Paperwork” 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 for Camps for Children with Developmental Disabilities are mandated by law. No alternatives were considered.

Amendments for camps that have less than 20 percent of the campers with developmental disabilities are believed to be what is minimally necessary to protect this vulnerable population. Requirements for camps serving a population of less than 20 percent of children with developmental disabilities will be effective October 1, 2016. This will allow camps to adequately prepare for and implement these requirements.

**Small Business and Local Government Participation:**

The regulations were discussed at several State Camp Safety Advisory Council meetings which are open to the public and attended by camp operators, local health department staff and other local government officials. However, due to the need to have regulations in place by the 2016 camping season with adequate time for camps to prepare for the new requirements, no formal outreach was conducted.

## **Rural Area Flexibility Analysis**

### **Types and Estimated Number of Rural Areas:**

There are approximately 2,510 regulated children's camps (533 overnight and 1,977 summer day camps) operating in New York State. Any of these camps that enrolls a camper with a disability will be affected by the proposed rule. There are an estimated 412 day camps and 402 overnight camps operating in the 44 counties that have population less than 200,000. There are an additional 395 day camps and 97 overnight camps in the nine counties identified to have townships with a population density of 150 persons or less per square mile.

Of the approximate 814 camps operating in the 44 counties that have populations less than 200,000, there are 9 summer day and 13 overnight Camps for Children with Development Disabilities. There are an additional 5 day camps and 4 overnight camps in the 9 counties identified as having 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 operators 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 for the Children with Development Disabilities are now explicitly required to obtain an appropriate medical examination of a camper physically injured from a reportable incident; however a medical examination has always been expected for such injuries, so this is not an additional service.

**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 beyond requirements already imposed by the Americans with Disabilities Act.

**Minimizing Adverse Economic Impact on Rural Area:**

The amendments for Camps for Children with Developmental Disabilities are mandated by law. No alternatives were considered. No impacts are expected to be unique to rural areas.

Amendments for camps that have less than 20 percent of the campers with developmental disabilities are necessary to protect this vulnerable population. The Department has sought to strike a balance between protecting this vulnerable population and ensuring that costs are feasible. Amendments for camps that have less than 20 percent of the campers with developmental disabilities are believed to be what is minimally necessary to protect this vulnerable population.

Requirements for camps serving a population of less than 20 percent of children with developmental disabilities will be effective October 1, 2016. This will allow camps to adequately prepare for and implement these requirements.

**Rural Area Participation:**

The regulations were discussed at several State Camp Safety Advisory Council meetings which are open to the public and attended by camp operators from rural areas. However, due to the need to have regulations in place by the 2016 camping season with adequate time for camps to prepare for the new requirements, no formal outreach was conducted.

## **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 adverse impact on the number of jobs and employment opportunities at children's camps, because it does not result in a decrease in current staffing level requirements.



**Project # 151302-C  
Crouse Hospital**

**Program: Hospital  
Purpose: Construction**

**County: Onondaga  
Acknowledged: June 22, 2015**

**Executive Summary**

**Description**

Crouse Hospital, a 466-bed (main site), voluntary not-for-profit, Article 28 acute care hospital located at 736 Irving Avenue, Syracuse (Onondaga County), requests approval to relocate and expand their emergency department (ED), and to relocate their Prompt Care urgent care services to the main hospital building. The ED will be expanded from the current under 8,000 square feet to new space that is approximately 16,000 square feet located on the second floor of the main building. Upon completion of the new ED, the urgent care services will be relocated from across the street to the old ED space, and all urgent and emergency care services will be housed in the main hospital building at 736 Irving Avenue. The space formerly occupied by Prompt Care will be vacant upon completion of this project. There will be no change in beds or services as a result of the project.

Crouse Hospital provides care to patients from a 15-county upstate region and is designated as a Regional Stroke Center. The Hospital anticipates an increase in their daily ED census due to the impact of the Affordable Care Act, expansion of their Neuroscience Services, and their planned designation as a Center of Excellence. This project parallels improvements Crouse Hospital made to their Neuroscience Services under CON #141055, which added hybrid operating rooms and imaging in close proximity to the proposed new ED location. The applicant indicated that this project will enable the hospital to better meet demand for both emergency and neuroscience services, result in better patient outcomes due to workflow

efficiencies, and allow Crouse to obtain Center of Excellence designation for Neuroscience Services.

**OPCHSM Recommendation  
Contingent Approval**

**Need Summary**

No changes in beds or services are being proposed. This project will renovate and expand the current emergency department and integrate it with the urgent care center. The applicant believes this will improve process efficiency and patient care within the two units: This project is necessitated by the increasing emergency department utilization at Crouse Hospital.

**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 \$42,410,216 will be met with \$12,900,216 in accumulated funds and Tax Exempt Bonds through the Onondaga Civic Development Corp. of \$29,510,000 at 5.5% over a 25-year amortization after a 30-month period of interest only payments during the construction stage. The applicant indicated they will cover losses from operations.

### Incremental Budget

Revenues:	\$5,330,487
Expenses:	<u>\$6,828,521</u>
Gain(Loss):	(\$1,498,034)

### Emergency Department Budget

Revenues:	\$32,292,627
Expenses:	<u>24,190,072</u>
Gain(Loss):	\$8,102,555



## 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 bond resolution, acceptable to the Department of Health. Included with the submission must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
3. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-02 to include, but not limited to, the following outstanding items:
  - a. REU Treatment room 2021 still does not provide the clear floor area required by FGI guidelines (+113 s.f. vs. 120 s.f. req'd). This room also does not provide the door maneuverability clearance required by ADAAG standards.
  - b. Handicap push button / paddle automatic door operators are proposed in lieu of meeting the 18" door maneuverability clearance required by ADAAG. This issue remains as the door operators are located within the deficient latch side clearance area, still placing the user within the inward swing area of the door. The door operators should be relocated, placing the user out of the swing area of the door, or the 18" pull clearance provided (e.g. Patient Restrooms 2118, 2119, 2278, etc.)
  - c. DOH has been informed by the facility that the facility has elected to propose ante room access to proposed air-borne infection isolation (All) room(s). The SHC plans are to reflect this and associated revisions.
  - d. Per the 2010 ADA Standards for Accessible Design (ADAAG), 404.3.2 Maneuvering Clearance, clearances at power-assisted doors and gates shall comply with 404.2.4. Clearances at automatic doors and gates without standby power and serving an accessible means of egress shall comply with 404.2.4. Compliance with this standard is still required for doors proposed to use push button door operators in lieu of meeting the required door maneuvering clearances. [AER]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the start of construction. [AER]
3. Construction must start on or before April 9, 2016 and construction must be completed by November 1, 2018, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Council Action Date

**December 10, 2015**

## Need Analysis

### Analysis

Crouse Hospital had an overall utilization of 64.7% in 2014. A bed chart is provided below.

<b>Bed Category</b>	<b>Certified Beds</b>
Intensive Care	30
Maternity	53
Medical/Surgical	295
Neonatal Continuing Care	7
Neonatal Intensive Care	41
Neonatal Intermediate Care	9
Pediatric	31
<b>Total</b>	<b>466</b>

The goal of this project is to improve efficiency within the emergency and urgent care departments of the Hospital and to expand the emergency department. The applicant states that ED utilization has been increasing, and the applicant expects further ED utilization to be driven by the Hospital's planned expansion of its stroke treatment and neuroscience program. SPARCS data for ED utilization at Crouse Hospital from 2010 through 2014 is provided below. Total ED discharges have increased by 21% from 2010, indicating an increasing demand for emergency services at Crouse Hospital.

<b>Year</b>	<b>Treat and Admit</b>	<b>Treat and Release</b>	<b>All ED Discharges</b>
2010	10,214	23,655	33,869
2011	10,581	27,274	37,855
2012	10,220	29,278	39,498
2013	9,380	30,164	39,544
2014	9,623	31,389	41,012

### Conclusion

No change to existing beds or services is being proposed. This renovation to the ED and urgent care divisions of Crouse Hospital will provide patients with a modern and streamlined experience, and will enable the Hospital to meet increasing demand for emergency services.

### Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Project Proposal

Crouse Hospital (Crouse), an existing not-for-profit hospital located at 736 Irving Avenue in Syracuse (Onondaga County), is seeking approval to relocate and expand its emergency department (ED) and relocate its urgent care service to the old emergency department space.

Crouse Hospital proposes to expand its ED from less than 8,000 square feet to a new space on Irving Avenue that is approximately 16,000 square feet. Crouse Hospital will relocate the walk-in Prompt Care (urgent care) service from across the street (739 Irving Avenue, Syracuse) to space now used by the emergency department.

Each year the hospital's emergency services treats over 72,000 patients in its ED and Prompt Care setting (directly across the street). Currently, patients receive emergency services care in an ED that was constructed in 1972. The facility is outdated, inefficiently configured, and undersized given that patient volumes have been steadily increasing. Over the past eight years (from 2006 through 2014), the hospital sustained a 47.5% increase in volume. Crouse anticipates further increases in the EDs daily census due to the Affordable Care Act and expansion of their Neuroscience Services. The hospital serves a 15 county area and is the hospital of choice for EMS providers as 98% of EMS crews are back in service within 20 minutes of arrival.

This project will integrate services, allowing a designation change from an urgent care clinic to a fast-track part of the ED. Patients presenting to Crouse Hospital Emergency Services Department will be quickly triaged. The new proposed space offers care in four distinct areas: The Rapid Evaluation Unit, The Internal Disposition Area, the main Emergency Services Area and the Clinical Decision Unit. The workflow for the new department is designed to enhance efficiencies. The project also includes improvements to neuroscience services by adding hybrid operating rooms and imaging in close proximity to the emergency department.

Staffing is expected to increase by 21.0 FTEs in year one of the completed project as additional staff will be needed for the anticipated increased capacity and volume.

#### Compliance with Applicable Codes, Rules and Regulations

The 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 \$42,410,216 broken down as follows:

New Construction	\$19,702,479
Renovation & Demolition	6,243,712
Design Contingency	490,406
Construction Contingency	3,322,846
Fixed Equipment	2,072,677
Architect/Engineering Fees	3,829,297
Other Fees	494,707
Moveable Equipment	2,074,075
Financing Costs	1,412,831
Interim Interest Expense	2,533,217
Application Fee	2,000
Processing Fee	<u>231,969</u>
Total Project Cost	\$42,410,216

New Construction costs include \$3,284,920 related to shell space included under CON #091046. The total project cost approved for CON #091046 was reduced by \$3,284,920 to reflect a disallowance of the shell space which is now being incorporated into Article 28 space and is allowable for reimbursement purposes.

Project costs are based on a construction start date of April 19, 2016, and a 30-month construction period.

The applicant's financing plan appears as follows:

Cash:	
Related to shell space (previously paid)	\$3,284,216
Additional Equity per this CON	<u>\$9,615,296</u>
Total Accumulated Funds	\$12,900,216
Financing:	
Tax Exempt Bonds, Onondaga Civic Development Corp., 5.5%, 27.5-years (30-months interest only payment followed by a 25- year amortization)	<u>29,510,000</u>
Total	\$42,410,216

#### Operating Budget

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

	<u>Years One and Three</u>
Inpatient Revenue:	
Commercial Fee-For-Service	\$409,518
Commercial Managed Care	15,494
Medicare Fee-For-Service	847,442
Medicare Managed Care	354,643
Medicaid Fee-For-Service	105,446
Medicaid Managed Care	286,641
Private Pay/Other	<u>63,698</u>
Total Inpatient Revenue	\$2,082,882
Outpatient Revenue:	
Commercial Fee-For-Service	\$638,516
Commercial Managed Care	24,158
Medicare Fee-For-Service	1,321,322
Medicare Managed Care	552,955
Medicaid Fee-For-Service	164,410
Medicaid Managed Care	446,927
Private Pay/Other	<u>99,317</u>
Total Outpatient Revenue	\$3,247,605
Total Revenue	\$5,330,487
Expenses:	
Operating	\$3,420,888
Capital	<u>3,407,633</u>
Total	\$6,828,521
Net Income	(\$1,498,034)
Inpatient Discharges	1,936
Visits	12,854

The applicant's Emergency Department budget presented below indicates the applicant has sufficient resources to cover the incremental losses from the submitted budget.

	<u>Years One and Three</u>
Revenues	\$32,292,627
Expenses	<u>24,190,072</u>
Net Income	\$8,102,555

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

<u>Inpatient</u>	<u>Years One and Three</u>
Commercial Fee-For-Service	19.7%
Commercial Managed Care	0.7%
Medicare Fee-For-Service	40.7%
Medicare Managed Care	17.0%
Medicaid Fee-For-Service	5.1%
Medicaid Managed Care	13.7%
Private Pay/Other	3.0%

<u>Outpatient</u>	<u>Years One and Three</u>
Commercial Fee-For-Service	29.9%
Commercial Managed Care	1.2%
Medicare Fee-For-Service	10.4%
Medicare Managed Care	4.8%
Medicaid Fee-For-Service	7.5%
Medicaid Managed Care	39.1%
Private Pay/Other	7.0%

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

#### Capability and Feasibility

The total project cost of \$42,410,216 will be satisfied via cash equity of \$12,900,216, with the remaining balance of \$29,510,000 to be financed through the Onondaga Civic Development Corp. BFA Attachment A is the certified financial statements of Crouse Hospital for 2013-2014 and their internal financial statements as of July 31, 2015, which indicates the availability of sufficient resources for this project.

The submitted incremental budget projects net losses for the first and third years of \$1,498,034. The applicant has indicated that Crouse Hospital will absorb the losses from ongoing operations. Revenues are based on prevailing payment methodologies and current payment rates. The budget appears reasonable. The certified and internal financial statements presented as BFA Attachment A indicate the availability of sufficient resources to absorb the projected losses. As shown, Crouse Hospital has maintained positive working capital and positive net asset position for all periods and had an average net gain of \$13,408,623 for 2013-2014 and \$1,480,439 as of July 31, 2015.

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

#### Recommendation

**From a financial perspective, contingent approval is recommended.**

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## Attachments

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BFA Attachment A Crouse Hospital's 2013-2014 certified financial statements and internal financial statements as of July 31, 2015



**Project # 152083-C  
University Hospital**

**Program: Hospital  
Purpose: Construction**

**County: Suffolk  
Acknowledged: August 21, 2015**

**Executive Summary**

**Description**

Stony Brook University Hospital (SBUH), a 603-bed academic medical center located at 101 Nicolls Rd, Stony Brook (Suffolk County), requests approval to certify Southampton Hospital (SH), a 125-bed community hospital located at 240 Meeting House Lane, Southampton (Suffolk County), as a division of SBUH through an Integration and Affiliation Agreement (IAA). Upon approval by the Public Health and Health Planning Council and execution of the IAA between Southampton Hospital Association (SHA), the owner and operator of SH, and the State University of New York (SUNY), SBUH will operate SH under SBUH's operating certificate and Medicare and Medicaid provider numbers. SHA will continue to own all of its fixed operating assets and associated medical facilities, and will transfer all non-fixed operating assets to SBUH. SBUH, or a to-be-formed subsidiary, will lease the real property from SHA, paying rent sufficient to pay the annual debt service on SHA's outstanding long term bonds, estimated by the applicant at \$35,000,000, and additional costs associated with ownership and maintenance of the building or fixed assets including, but not limited to, taxes and insurance. SBUH will be responsible for the maintenance of the facility and capital improvements.

In association with the IAA, SUNY will lease certain employees from SHA through a to-be-formed, single-member limited liability company, to be registered as a Professional Employer Organization (PEO) under the laws New York State (NYS). Under the PEO agreement, SBUH will maintain the employment of individuals in good standing and employed at SH, or

otherwise employed by SHA in connection with SH operations, and will provide the PEO with all funds needed to make payments consistent with the compensation and benefits plans, as well as the collective bargaining rights and union memberships in place prior to the Execution Date. SBUH will pay an additional 0.5% to the PEO as a fee for services provided.

There will be no change in authorized services or number or type of beds as a result of this application.

SBUH is working to develop Stony Brook Medicine, a network of regional hospitals, primary care providers, specialists, nursing homes and rehabilitations centers. The goals of the network are as follows:

- To create a population-based health management system in Suffolk County aimed at improving the health of target populations, reducing the cost of care, and improving the patients' experience of care;
- To maintain and enhance healthcare services on the South Fork of Long Island, while advancing SBUH clinical, research and education missions; and
- To bring together Suffolk County's tertiary academic medical center and the South Fork region's only hospital in a private/public partnership as envisioned by the Berger Commission's Acute Care Recommendations.

It is noted that, in July 2008, SH entered into an affiliation agreement with SBUH to promote professional development through educational opportunities for physicians, managers and staff.

Anticipated financial benefits include: Medicaid Disproportionate Share (\$4.5 million), opportunity for new surgical growth (150 cases per year, \$3 million), South Fork Radiation and Infusion Cancer Center (\$1.5 million), malpractice savings, combined materials management savings, and the elimination of stand-alone consulting and contracted services agreements. The applicant projects total potential benefit of affiliation at \$11,250,000 without accounting for the benefits of shifting low case mix volume to a lower cost community hospital.

OPCHSM Recommendation  
Contingent Approval

Need Summary

The applicant states that the primary goals of this project are to improve efficiency and quality of care within Suffolk County. The absorption of Southampton Hospital would allow a larger pool of medical resources and services to be distributed more efficiently according to a more centralized plan.

No changes to beds or services are being proposed.

Program Summary

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

Financial Summary

There is no purchase price associated with this application. Total project costs for consulting and other legal fees are estimated at \$3,688,448 to be paid from accumulated funds.

The applicant has submitted an incremental operating budget, in 2015 dollars, for the first year subsequent to the change in operator, which is summarized below:

Budget

Revenues	\$155,978,031
Expenses	<u>145,109,775</u>
Excess of Revenues over Expenses	\$10,868,256

Enterprise Budget

Revenues	\$1,291,912,558
Expenses	<u>1,275,070,654</u>
Excess of Revenues over Expenses	\$16,841,904



## 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. A copy of the check must be uploaded into NYSECON upon submission of the fee. [PMU]
2. Completion of CON 151221. [PMU]
3. Submission of an executed Integration and Affiliation Agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed Lease Agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed Professional Employment Agreement, acceptable to the Department of Health. [BFA]
6. Submission of a photocopy of the fully executed Integration and Affiliation Agreement between Stony Brook University Hospital and the Southampton Hospital Association, acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date

**December 10, 2015**

## Need Analysis

### Analysis

Bed charts and utilization data are provided below for both facilities. This change in ownership is not expected to have an immediate impact on utilization. No changes to beds or services are being proposed.

<b>Table 1: Bed Chart Source: HFIS 2015</b>	<b>Southampton Hospital</b>	<b>Stony Brook Hospital</b>
Bone Marrow Transplant		10
Burns Care		6
Coronary Care	6	10
Intensive Care	8	50
Maternity	19	36
Medical / Surgical	89	355
Neonatal Continuing Care		10
Neonatal Intensive Care		20
Neonatal Intermediate Care		16
Pediatric	3	38
Pediatric ICU		12
Psychiatric		40
<b>Total</b>	<b>125</b>	<b>603</b>

<b>Table 2: Southampton Hospital Occupancy</b>						
<b>Service Category</b>	<b>Current Beds</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
<b>Med/Surg</b>	103	44.4%	43.4%	43.5%	41.5%	41.2%
<b>Pediatric</b>	3	11.5%	9.9%	10.8%	10.7%	9.1%
<b>Obstetric</b>	19	28.9%	26.1%	24.7%	26.2%	27.3%
<b>All Inpatient</b>	<b>125</b>	<b>42.0%</b>	<b>40.9%</b>	<b>40.7%</b>	<b>39.5%</b>	<b>40.0%</b>

<b>Table 3: Stony Brook University Hospital Occupancy Source: SPARCS, July 2015</b>						
<b>Service Category</b>	<b>Current Beds</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
<b>Med/Surg</b>	431	83.0%	86.5%	91.1%	88.1%	87.7%
<b>Pediatric</b>	50	42.6%	46.3%	41.2%	41.9%	46.3%
<b>Obstetric</b>	36	111.9%	107.6%	104.6%	102.0%	105.0%
<b>General Psychiatric</b>	40	96.8%	92.6%	92.8%	83.6%	106.7%
<b>High-Risk Neonates</b>	46	69.6%	65.4%	62.2%	57.3%	65.8%
<b>All Inpatient</b>	<b>603</b>	<b>81.7%</b>	<b>83.7%</b>	<b>86.1%</b>	<b>83.0%</b>	<b>85.6%</b>

### Conclusion

This change in ownership is not expected to have an impact on services provided by either facility or utilization of those services. However, it is anticipated that it will set the groundwork for a more efficient and responsive healthcare system in Suffolk County.

### Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Project Proposal

Stony Brook University Hospital (SBUH), an existing 603-bed hospital located in Stony Brook (Suffolk County), requests approval to become the operator of Southampton Hospital (SHH), a single Article 28 operating certificate number and single Medicare provider number.

Stony Brook University Hospital aims to create a regional, population-based health management program that will improve the health of target populations; reduce the cost of care; and improve patients' experience of care. Stony Brook Medicine aims to do this by developing a system of regional hospitals, primary care providers, specialists, nursing homes and rehabilitation centers with a mission grounded in the principles of population-based health management.

The following six (6) extension clinics are included in the SBUH acquisition:

- Westhampton Primary Care, Westhampton Beach (PFI 5757)
- David E. Rogers MD Center, Southampton (PFI 5729)
- Sports Rehab Westhampton, Westhampton (PFI 6425)
- Shinnecock Health Center, Southampton (PFI 7741)
- Southampton Hospital Regional Dialysis Center, Hampton Bays (PFI 7882)
- Southampton Hospital Radiology at Hampton Bays, Hampton Bays (PFI 9450)

The change in ownership will not impact the complement of beds or services that are currently offered by Southampton Hospital. Staffing is anticipated to increase by 130.3 FTEs in the first year of operation and by 232.7 FTEs by the third year of operation.

### Compliance with Applicable Codes, Rules and Regulations

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

### Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

### Integration and Affiliation Agreement

The applicant has provided a draft Integration and Affiliation Agreement, which is summarized below:

Purpose:	Lease of property, plant and equipment constituting SH to SUNY through SBUH and transfer of operations and non-fixed assets of SH to SUNY and integrated into SBUH.
Terms:	SHA agrees to transfer the following to SBUH through SUNY: accounts receivable, including agency receivables, will be assigned to SBUH; other receivables, excluding receivables customarily belonging to the SH Foundation, will be assigned to SBUH for use in the SH Operations; inventory will be transferred to SUNY for SBUH's use in operating the Hospital and Related Healthcare Facilities; prepaid expenses, excluding those belonging to the SH Foundation, will be transferred to a SUNY-designated SBUH account; goodwill; accounts payable and accrued expenses.
Governance:	From the Closing Date, and throughout the lease term, a joint advisory committee composed of eight members (five appointed by SHA and three appointed by SBUH).

Closing:	Due at Closing: business associate agreements for each as a covered entity and SHA PEO as a business associate, an exchange of executed copies of all agreements included in the list of exhibits associated with the Agreement and resolutions authorizing the transaction; delivery of a UCC lien search to SUNY showing no liens against the facilities, certificates, keys, inventory and rights to accounts receivables and offer documents, as specified in the agreement; and SHA transferring to SUNY their right, title and interests in Meeting House Lane Medical Practice, P.C.
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At closing, SHA is required to provide evidence that Peconic Health Corporation, d/b/a East End Health Alliance, has been removed from the role of active parent and co-operator of SH and has relinquished their governance powers and rights. PHHPC approval to disestablish Peconic Health Corporation as the active parent and co-operator of SH was previously processed under CON #151221.

SBUH has submitted an affidavit, which is acceptable to the Department of Health, in which they agree, notwithstanding any agreement, arrangement or understanding between SBUH and SHA to the contrary, to be liable and responsible for any Medicaid overpayments made to SHA and/or surcharges, assessments or fees due to SHA pursuant to Article 28 of the Public Health Law with respect to the period of time prior to SBUH acquiring its interest, without releasing SHA of its liability and responsibility.

#### Lease Agreement

In association with the IAA a draft lease has been submitted to lease the real property, the terms of which are summarized below:

Premises:	Property, plant and equipment constituting SH and the related health care facility premises.
Landlord:	The Southampton Hospital Association
Lessee:	State University of New York acting through its SBUH
Term:	30 years
Rent:	Landlord's payment obligations under the SHA Bonds; assumed liabilities; amounts payable by Tenant to SHA PEO; costs incurred by Landlord on behalf of the current SH or new SH; and reasonable continuing expenses of Landlord not related to the hospital operations. Rent is payable in immediately available funds prior to the date payments to third parties are due from Landlord or, if to be reimbursed, the Tenant shall reimburse the Landlord within fifteen days after receipt of a proper invoice from the Landlord.
Provisions:	Utilities, Taxes, Repairs and Insurance

A new SH is presently being planned and, unless the landlord and tenant agree otherwise, the Lease agreement will terminate upon the date that SHA completes construction and SUNY has fully opened for business. If constructed, the new SH will be located on land owned by SUNY and will be leased by SUNY to SHA pursuant to a Ground Lease and then leased by SHA to SUNY and operated by SUNY pursuant to a new lease. Prior to commencement of construction, the parties will negotiate, in good faith, a new lease that will contain provisions similar to the current Lease with respect to term, termination, remedies and enforcement rights.

#### Professional Employer Agreement

In association with the IAA and material to the above Lease Agreement, a draft agreement has been submitted for SUNY to lease certain employees from SHA through a to-be-formed, single-member limited liability company to be registered as a PEO under the laws of NYS. The terms of the PEO are as follows:

Worksite Employees:	Certain of SHA's employees to provide the same services at the Premises, as defined by the IAA, that such employees were providing immediately prior to the IAA's Closing Date.
Employer:	SHA PEO, Southampton Hospital Association's to-be-formed single member LLC to be registered as a Professional Employer Organization.
Client:	State University of New York through SBUH
Term:	30 years

Payment:	The client will provide SHA PEO with all funds needed to make the payments consistent with compensation and benefits plans and collective bargaining rights and union memberships in place prior to the Execution Date, maintain the insurance, and take all other actions required under the terms of the above-referenced lease. SBUH will pay an additional 0.5% to the PEO as a fee for services provided and pay for the following accrued liabilities: all accrued payroll and related withholdings liabilities remaining on SHA's balance sheet as of the Closing Date; all actuarially determined additional funding obligations; all obligations of SHA under SHA's 403(b) plan and any other benefit plans; and accrued and unused vacation, personal days, accrued sick days and other paid time off remaining on SHA's balance sheet as of the Closing Date.
Additional conditions:	The employment of the SHA PEO Employees shall at all times be subject to the terms and conditions set forth in any applicable collective bargaining agreements; SHA PEO shall obtain, keep and maintain, without limitation, substantially the same insurance coverages that SHA had for itself; and SHA PEO agrees to secure and provide required workers' compensation and disability insurance coverage

#### Total Project Cost and Financing

Total project costs are estimated at \$3,688,448, broken down as follows:

Planning Consultant Fees	\$861,358
Other Fees (Legal, Environment Assessment)	2,804,925
Application Fees	2,000
Additional Processing Fees	<u>20,165</u>
Total	\$3,688,448

The applicant will financing the above from accumulated funds

There is no construction associated with this project. BFA Attachment A is the 2013 and 2014 certified financial statements of Stony Brook University Hospital, which indicates the availability of sufficient resources to fund the project.

#### Operating Budget

The applicant has submitted an operating budget for the combined SBUH/SHH operations, in 2015 dollars, for the first year of operation, as summarized below:

Revenues	
Operating Revenues	\$1,234,707,358
Other Operating Revenues	<u>57,205,200</u>
Total Revenues	\$1,291,912,558
Expenses	
Operating	\$1,201,134,992
Capital	<u>73,935,662</u>
Total Expenses	\$1,275,070,654
Excess of Revenues over Expenses	\$16,841,904
Utilization	
Inpatient (Discharges)	44,100
Outpatient (Visits)	703,745

Utilization for the combined SBUH/SHH operations by payor source for inpatient and outpatient is as shown:

	<u>Inpatient</u>	<u>Outpatient</u>
Medicaid Fee For Service	4.6%	3.5%
Medicaid Managed Care	16.5%	13.0%
Medicare Fee For Service	29.2%	28.0%
Medicare Managed Care	6.2%	3.7%
Commercial Fee For Service	23.4%	19.3%
Commercial Managed Care	11.6%	24.0%
Private Pay	5.8%	4.4%
Charity Care	0.4%	0.6%
All Other	2.3%	3.5%

The following is noted with respect to the submitted budget:

- Revenues are based on the historical experience of SH and SBUH, incorporating projected inpatient and outpatient volume increases between the current year and year one. Volume by payor is projected to increase approximately 1% annually for inpatient admissions and 2% annually for outpatient visits.
- Other operating revenue includes: VA Agreement Income, Facility Rental Income, Grants, Donations, Interest Income and Assisted Parking Income.
- The applicant projects \$3,133,011 in expense in year one to service the debts associated with SHA's bonds, as required by the IAA.
- Year one budget projections included a reduction from the current year (2014) of \$3.8 million in non-operating revenue due to removing SH's Electronic Medical Record Grant income, and removal of \$10.8 million in Interim Access Assurance Funding SBUH received in 2014.
- All Other utilization includes OMH related services.

#### Capability and Feasibility

There are no issues of capability associated with this application.

The submitted budget indicates an excess of revenues over expenses of \$16,841,904 during the first year for the combined SBUH/SHH operations.

BFA Attachment A is the 2013 and 2014 certified financial statements of Stony Brook University Hospital. As shown, the entity had a positive working capital position and an average positive net asset position for the period shown. The entity shows an operating loss in both 2013 and 2014. However, when non-operating revenues are added, including New York State appropriations, the facility achieved an average excess of revenues over expenses of \$8,072,000.

BFA Attachment B is the 2013 and 2014 certified financial statements of the Southampton Hospital Association and Affiliates. As shown, the entity had a positive working capital position and an average positive net asset position for the period shown. The entity shows an average excess of revenues over expenses of \$6,621,071.

BFA Attachment C is the internal financial statements of Stony Brook University Hospital as of June 30, 2015. As shown, the entity has a positive working capital position and a positive net asset position. The entity shows a deficiency of revenue over expenses. However, after transfers from New York State the entity shows \$8,108,000 in net income.

BFA Attachment D is the internal financial statements of the Southampton Hospital Association and Affiliates as of June 30, 2015. As shown, the entity has a positive working capital position and a positive net asset position. The entity shows a \$3,203,865 deficiency of revenue over expenses. The applicant indicated that the operating loss is due to the seasonality of SHA's business as the peak season summer months are not captured by this financial statement. The applicant anticipates that the loss will be corrected with revenues received in the summer months of 2015.

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

Recommendation

**From a financial perspective, contingent approval is recommended.**

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## Attachments

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- BFA Attachment A Stony Brook University Hospital, Certified Financial Statements 2013-2014
- BFA Attachment B Southampton Hospital Association and Affiliates, Certified Financial Statements 2013-2014
- BFA Attachment C Stony Brook University Hospital, Internal Financial Statement as of June 30, 2015
- BFA Attachment D Southampton Hospital Association and Affiliates, Internal Financial Statement as of June 30, 2015
- BFA Attachment E Organizational Chart Post Integration and Affiliation



**Project # 152093-C  
Adirondack Medical Center-Saranac Lake Site**

**Program: Hospital  
Purpose: Construction**

**County: Franklin  
Acknowledged: August 20, 2015**

**Executive Summary**

**Description**

Adirondack Medical Center, a not-for-profit Article 28 hospital, requests approval to construct a 36,000 square foot, two-level building addition on its Saranac Lake Campus. This project encompasses three major elements: a new surgical suite with six operating rooms, one of which will be a Hybrid Operating Room, and three procedures rooms; a replacement MRI suite; and new central sterile processing area.

**Financial Summary**

Total project cost of \$19,704,621 will be met with \$4,706,878 of equity from operations, and a bank loan of \$14,997,743 at an interest rate of 4% for a ten-year term. The operating budget is as follows:

Revenues	\$2,795,708
Expenses	<u>2,169,012</u>
Excess of Revenues/Expenses	\$626,696

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

The expansion and renovation will help treat the anticipated volume increase and address higher acuity cases. According to the applicant, it will also compliment on-going physician recruitment efforts.

**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.



## 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 an executed loan commitment, acceptable to the Department. [BFA]
3. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-02 SHC Hospitals. [AER]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Submission of final construction documents in accordance with 10 NYCRR Section 710.7. [AER]
3. Construction must start on or before April 15, 2016 and construction must be completed by August 1, 2017, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates.

Council Action Date

**December 10, 2015**

# Need Analysis

## Project Overview

Adirondack Medical Center (AMC) a 95-bed Hospital located at 2233 State Rt. 86, Saranac Lake, is seeking approval to construct a two-level addition to include six new operating rooms, one of which will be a hybrid operating room. The current site has four ORs. Once this project is complete the current four ORs will no longer be used, for a net of 2 additional operating rooms.

## Analysis

A bed chart for Adirondack Medical Center- Saranac Lake is provided for reference below. None of these services would be affected by this project. Saranac Lake's overall utilization for 2014 was 32.3 percent.

**Table 1: Adirondack Medical Center- Saranac Lake**

Bed Category	Certified Beds
Intensive Care	8
Maternity	7
Medical/Surgical	65
Pediatric	3
Psychiatric	12
<b>Total</b>	<b>95</b>

HFIS, October 2015

The Hospital has four existing operating rooms. In 2014, the Hospital performed over 4,000 surgeries. The applicant projects 1,294 incremental surgeries in Year 3, for a total of 5,206 surgeries, or 868 surgeries per OR. One of these new ORs will be constructed as a hybrid OR with high-quality imaging equipment to allow AMC to perform more complex procedures. AMC will have the ability to attract and recruit additional physicians to the area to care for the community and address this need. Orthopedic and colorectal surgeons at AMC utilize the two-room model in order to remain as efficient as possible and ensure they can continue to treat patients in and out of the hospital. The addition of two operating rooms will ensure this efficiency is obtained more frequently as volume grows.

AMC is actively recruiting surgeons. The facility expects that each new physician will generate approximately 300 cases per year. The incremental surgery totals were calculated factoring in the expected number of physician recruitments.

**Table2: Amb/Surg Visits for the existing facility**

Year	Inpatient	AmSurg	Total
2010	1,187	2,293	3,480
2011	1,318	2,672	3,990
2012	1,329	2,589	3,918
2013	1,362	2,716	4,078
2014	1,234	2,785	4,019

## Conclusion

This project will help with physician recruitment to an underserved area while providing the necessary resources for the community. The additional ORs will accommodate the anticipated volume increase.

## Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Project Proposal

This CON has three major elements: a new surgical suite with six operating rooms (one of which will be constructed as a Hybrid Operating Room with high-quality imaging equipment for more complex procedures) and three procedure rooms; a replacement MRI suite and the purchase of an advanced MRI system; and a new central sterile processing area.

Adirondack Medical Center aims to modernize the facility in an effort to provide efficient care, address projected need based on population changes, accommodate existing surgeons in growing their practices and to retain, attract and recruit additional surgeons to the area. Further, it is hoped that growth and responsible capacity expansion will ensure that AMC is positioned for continued success.

Other than staffing, which is expected to increase by 2.40 FTEs in the first year after completion and by 4.30 FTEs by the third year of operation, there are no projected changes in authorized services or the number or type of beds as a result of this construction project.

### 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.

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.

### Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

### Total Project Cost and Financing

Total project cost, which is for new construction, renovations and the acquisition of moveable equipment, is estimated at \$19,704,621, further broken down as follows:

New Construction	\$8,198,320
Renovation and Demolition	3,711,760
Site Development	17,160
Design Contingency	1,191,008
Construction Contingency	781,092
Architect/Engineering Fees	1,055,600
Construction Manager Fees	56,582
Other Fees (Consultant)	30,000
Moveable Equipment	3,815,938
Financing Costs	299,955
Interim Interest Expense	437,434
CON Fee	2,000
Additional Processing Fee	<u>107,772</u>
Total Project Cost	\$19,704,621

Project costs are based on a construction start date of April 15, 2016 and a fifteen-month construction period.

The applicant's financing plan appears as follows:

Equity	\$4,706,878
Bank Loan (4% interest rate for a ten-year term)	14,997,743

#### Operating Budget

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

<u>Outpatient Services*</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,271,216	\$2,795,708
Expenses		
Operating	\$35,475	\$490,354
Capital	<u>1,780,591</u>	<u>1,678,658</u>
Total Expenses	<u>\$1,816,066</u>	<u>\$2,169,012</u>
Excess of Revenues over Expenses	(\$544,850)	\$626,696
Utilization: (Visits)	762	1,294
Cost Per Visit	\$2,383.29	\$1,676.21

\*No incremental inpatient service costs are anticipated.

The first year incremental loss will be offset from operations.

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

	<u>Year One</u>	<u>Year Three</u>
Medicaid Fee-For-Service	3.54%	3.55%
Medicaid Managed Care	10.63%	10.59%
Medicare Fee-For-Service	32.55%	32.46%
Medicare Managed Care	6.43%	6.41%
Commercial Fee-For-Service	40.42%	40.49%
Commercial Managed Care	.66%	.62%
Other	5.77%	5.88%

The following is noted with respect to the submitted budget:

- Year One reimbursement rate assumptions are based the actual experience of Adirondack Medical Center in 2014 and 2015. Assumptions for Year Three include an additional 5% per year increase to account for inflation, anticipated Medicare rate changes, and improved managed care contract negotiated rates.
- Expense assumptions are based on the actual 2014 and 2015 experience of the facility and projected incremental expenses needed to serve the incremental patient volume. Incremental operating expenses are minimal because purchased services will be reduced by \$470,976 due to the applicant no longer leasing a mobile MRI unit. Depreciation and interest expense are based on the proposed capital costs and financing for this project
- Utilization assumptions are based on the historical experience of the hospital and projected increases due to the new MRI Suite and physician/surgeon recruitment strategies that are expected to generate 300 to 900 new cases per year over the next five year. Conservative estimates were included in this application.

#### Capability and Feasibility

Project cost of \$19,704,621 will be met as follows: Equity of \$4,706,878 from operations, and a bank loan of \$14,997,743 at an interest rate of 4% for a ten-year term. BFA Attachment A, the 2013-2014 certified financial statements of Adirondack Medical Center, indicates the applicant has sufficient funds for the

equity contribution. The applicant provided a letter of interest for the financing from Siemens Financial Services, Inc. at the above terms.

The submitted budget indicates incremental revenues over expenses of (\$544,850) and \$626,696 during the first and third years, respectively. The applicant indicated that the first year loss will be offset from operations. Revenues are based on current reimbursement methodologies. The submitted budget appears reasonable.

BFA Attachment A is the 2013 and 2014 certified financial statements of Adirondack Medical Center. As shown, the entity had an average positive working capital position and an average positive net asset position from 2013 through 2014. Also, the entity achieved average income from operations of \$1,919,450 for the period.

BFA Attachment B is the internal financial statements of Adirondack Medical Center (income statement) and Adirondack Health Saranac Lake, NY (balance sheet) as of July 31, 2015. The balance sheet includes the Uihlein Living Center skilled nursing home facility. The applicant indicated that they plan to sell the nursing home in the near future (currently under review per CON #151252). As shown on Attachment B, the entity had a positive working capital position and a positive net asset position through July 31, 2015. Also, the hospital achieved an operating income of \$1,265,315 through July 31, 2015.

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 - 2013 and 2014 certified financial statements of Adirondack Medical Center         |
| BFA Attachment B | Financial Summary - July 31, 2015 internal financial statements of Adirondack Health Saranac Lake, NY |



**Project # 152035-C  
NYU Hospitals Center**

**Program:** Hospital  
**Purpose:** Construction

**County:** Kings  
**Acknowledged:** July 20, 2015

**Executive Summary**

**Description**

NYU Hospitals Center (NYUHC), a 1,069-bed not-for-profit hospital located in New York County, requests approval to construct a replacement division in the Cobble Hill neighborhood of Brooklyn at the former site of the closed Long Island College Hospital (LICH). The new 160,000 square foot replacement facility, to be located at 70 Atlantic Avenue, Brooklyn (Kings County), will include two medical/surgical inpatient beds, the relocated off-campus emergency department (ED) currently in operation at 83 Amity Street, Brooklyn, and other Article 28 and Non-Article 28 medical programs. There will be no increase in total certified beds as the two inpatient beds will be provided via a relocation of two existing medical/surgical unit beds.

In October 2014, NYUHC began providing off-campus ED services at the site of the former LICH hospital, pursuant to an agreement with SUNY. The agreement provided that, following demolition and remediation of adjacent premises, SUNY would deed the cleared site to NYUHC at no cost and NYUHC would construct a four-story building on the site, to include ED and other medical services.

The Article 28 component of this project includes the following:

- The relocation of the ED services at 83 Amity Street to the newly constructed facility, and certification of two medical/surgical beds at the new site. The new ED will occupy 19,202 square feet on the first floor and will provide ten patient bays and twelve private flex patient spaces (including four observation rooms, four

treatment rooms, an isolation room, an OB/GYN room, a bariatric room and a psychiatric room), in addition to the two inpatient beds. The ED will have radiology support including two x-ray rooms and a CT room.

- Certification of multi-specialty ambulatory surgery services occupying 20,665 square feet on the third floor consisting of four Class C operating rooms, a sterile core, and two endoscopy procedure rooms.
- A Cancer Center occupying 13,891 square feet on the fourth floor for phlebotomy and infusion services that will contain twenty patient positions for infusions and two fast track positions. A rapid-response Laboratory and Pharmacy will also be situated on this floor.
- A Diagnostic Imaging Center occupying 14,944 square feet in the cellar level of the building to include general x-ray modalities in support of the other services in the building, as well as mammography, bone density, nuclear cardiology and an echo stress testing room.

**OPCHSM Recommendation  
Contingent Approval**

**Need Summary**

The continuation of emergency services and the addition of ambulatory surgery services is expected to help reduce the travel to Manhattan and reduce overburdened Brooklyn Hospital visits.

### 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 \$125,366,629 for the Article 28 component will be met via equity of \$25,116,840 from operations and a \$100,249,789 line of credit at an interest rate of LIBOR plus 1% (approximately 1.85% as of 9/30/2015). The Non-Article 28 component totaling \$27,968,156 will be met via equity from operations. The facility's operating budget is as follows:

Revenues	\$53,166,292
Expenses	<u>46,390,145</u>
Excess of Revenues over Expenses	\$6,776,147

## 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. A copy of the check must be uploaded into NYSECON. [PMU]
2. Submission of an acceptable assumed name. [HSP]
3. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-02. [DASNY]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
7. Construction must start on or before January 1, 2016 and construction must be completed by December 31, 2017, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates.

Council Action Date

**December 10, 2015**



## Need Analysis

### Project Overview

NYU Hospitals Center (NYUHC), an 844-bed hospital located at 550 First Ave. New York, NY 10016, is seeking approval to construct a replacement division in the Cobble Hill neighborhood of Brooklyn at the former site of the closed Long Island College Hospital (LICH). The new 160,000 square foot facility will relocate the existing off-campus emergency department located at 83 Amity Street, Brooklyn, to 70 Atlantic Avenue, Brooklyn, 11201 (Kings County). The new ED will provide 10 patient bays as well as 12 private flex patient spaces that include 4 observation rooms, 4 treatment rooms (eye and safe room), an isolation room, an OB/GYN room, a Bariatric room with a ceiling mounted lift from the bed to the bathroom, and a psychiatric room. In addition, there will be two medical/surgical in-patient beds, transferred from the main hospital division. Other patient spaces include a resuscitation room, two triage patient rooms, and a decontamination room. The ED will have radiology support including two (2) X-ray rooms and a CT room.

### Analysis

<b>NYU Hospitals Center (TISH) 550 First Ave</b>			
<b>Bed Category</b>	<b>Existing Beds</b>	<b>Proposed change</b>	<b>Beds after project completion</b>
Bone Marrow Transplant	6		6
Coronary Care	6		6
Intensive Care	37		37
Maternity	36		36
Medical / Surgical	443	-2	441
Neonatal Intensive Care	7		7
Neonatal Intermediate Care	18		18
Pediatric	39		39
Pediatric ICU	9		9
Physical Medicine and Rehabilitation	139		139
Psychiatric	22		22
Special Use	82		82
<b>Total</b>	<b>844</b>	<b>-2</b>	<b>842</b>

The two beds above will be transferred to the subject site.

The applicant's projections show:

- 1<sup>st</sup> year - 36,500 total visits
- 2<sup>nd</sup> year - 39,055 total visits
- 3<sup>rd</sup> year - 41,789 total visits

If the facility meets the above projections, by Year 3 they will be treating 1,741 visits per ED bay.

The Cobble Hill site has been open less than a year, so existing ED visit data is limited. Analysis of SPARCS data leads to an estimation of 13,166 visits in 2015. This volume is expected to be moved to the new site and, per the applicant, growth is expected to come from the following:

- Additional physician offices in the community which will drive volume towards this ED
- The walk-in entrance will be facing Atlantic Avenue as opposed to the current Amity Street Entrance, thus increasing visibility for walk-in patients. Currently, about 40% of the volume is from ambulances.

## Conclusion

NYUHC expects to provide the services to Brooklyn residents that had been offered by the former Long Island College Hospital. Additional volume will come from patients at their Clinical Cancer Center, Joint Disease facility, and extension clinics.

## Recommendation

**From a need perspective, approval is recommended.**

# Program Analysis

## Project Proposal

NYU Hospitals Center seeks approval to construct a replacement division with two medical/surgical beds through the relocation of the current off-campus emergency department (ED) and the addition of Primary Care, Other Medical Specialties and Multi-Specialty Ambulatory Surgery services at 70 Atlantic Avenue, in the Cobble Hill neighborhood of Brooklyn (Kings County), at the former site of Long Island College Hospital (LICH).

The project has been designed to address the current and future healthcare needs of Brooklyn residents who have been affected by the closure of LICH and other Brooklyn hospitals. The Article 28 projects include:

- relocating the off-campus ED that is currently in operation at 83 Amity Street in Brooklyn and certifying a two inpatient bed hospital division with emergency services in 19,000+ square feet of the first floor. The new ED will provide 10 patient bays and 12 private flex patient spaces (including 4 observation rooms, 4 treatment rooms, an isolation room, an OB/GYN room, a Bariatric room and a psychiatric room);
- certifying multi-specialty ambulatory surgery services on the third floor which will consist of four Class C Operating Rooms and two endoscopy procedure rooms;
- a Cancer Center on the fourth floor that will include both phlebotomy and infusion services with 20 patient positions for infusion and two fast track positions;
- a pharmacy located adjacent to the (Cancer Center's) infusion bays for quick medication turnaround;
- a rapid-response lab (STAT lab); and
- a Diagnostic Imaging Center (cellar level) that will provide general x-ray modalities in support of the other services in the building as well as mammography, bone density, nuclear cardiology, nuclear camera, and an echo stress room.

It is anticipated the project will result in an additional 53.5 FTEs in the first year and 105.5 FTEs by year three.

## 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.

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.

## Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

### Total Project Cost and Financing

Total project cost for the Article 28 space, which is for new construction and the acquisition of moveable equipment, is estimated at \$125,366,629 further broken down as follows:

New Construction	\$77,128,768
Design Contingency	7,452,055
Construction Contingency	3,726,027
Fixed Equipment	2,317,023
Planning Consultant Fees	6,551,074
Architect/Engineering Fees	4,868,533
Construction Manager Fees	1,490,411
Other Fees (Consultant)	1,101,216
Moveable Equipment	11,532,553
Telecommunications	4,482,000
Interim Interest Expense	4,029,236
CON Fee	2,000
Additional Processing Fee	<u>685,733</u>
Total Project Cost	\$125,366,629

Project costs are based on a construction start date of December 15, 2015, with a twenty-month construction period. The project also includes the construction of Non-Article 28 space for physician offices for a total cost of \$27,968,156. The Non-Article 28 component will be funded via equity from operations.

The applicant's financing plan for the Article 28 and Non-Article 28 appears as follows:

Equity	
Article 28	\$25,116,840
Non-Article 28 Space	<u>\$27,968,156</u>
Total Equity Contribution	\$53,084,996
Financing	
Line of credit (LIBOR plus 1% (approximately 1.85% as of 9/30/2015))	100,249,789

### Operating Budget

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

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$26,979,222	\$53,166,292
Expenses		
Operating	\$18,958,957	\$37,924,684
Capital	<u>5,826,228</u>	<u>8,465,461</u>
Total Expenses	\$24,785,185	\$46,390,145
Excess of Revenues over Expenses	<u>\$2,194,037</u>	<u>\$6,776,147</u>
Utilization (visits) *	16,098	32,307
Cost Per Visit	\$1,539.64	\$1,440.37

\* No incremental discharges are anticipated as the two inpatient beds are a relocation of existing beds.

Expense and utilization assumptions are based on the historical experience of the hospital. Utilization broken down by payor source during the first and third years is as follows:

	<u>Year One</u>	<u>Year Three</u>
Medicaid Fee For Service	5.98%	5.97%
Medicaid Managed Care	40.12%	40.12%
Medicare Fee For Service	8.52%	8.52%
Medicare Managed Care	4.82%	4.82%
Commercial Fee For Service	27.30%	27.30%
Commercial Managed Care	2.71%	2.71%
Private Pay	6.00%	5.99%
Other	4.55%	4.57%

#### Capability and Feasibility

Total project cost of \$125,366,629 for the Article 28 space will be met with \$25,116,840 equity from operations and a \$100,249,789 line of credit at an interest rate of LIBOR plus 1% (approximately 1.85% as of 9/30/2015). The applicant will also be constructing Non-Article 28 space totaling \$27,968,156. The applicant will finance the Non-Article 28 space via equity from operations. BFA Attachment A presents the 2013 and 2014 certified financial statements of NYU Hospitals Center, which indicates the availability of sufficient funds for the equity contribution.

The submitted budget indicates an incremental excess of revenues over expenses of \$2,194,037 and \$6,776,147 during the first and third years of operation, respectively. Revenues are based on current reimbursement rates. The submitted budget appears reasonable.

BFA Attachment A shows that the entity had an average positive working capital position and an average positive net asset position from the period 2013 through 2014. Also, the entity achieved an average income from operations of \$158,530,500 from 2013 through 2014.

BFA Attachment B is internal financial statements of NYU Hospitals Center as of the May 31, 2015. As shown, the entity had a positive working capital position and a positive net asset position for the period ending May 31, 2015. Also, the entity incurred an income from operations of \$167,596,000 through May 31, 2015.

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

#### Recommendation

**From a financial perspective, approval is recommended.**

## Attachments

- BFA Attachment A Financial Summary - 2013 and 2014 certified financial statements of NYU Hospitals Center
- BFA Attachment B Financial Summary - May 31, 2015 internal financial statements of NYU Hospitals Center



Project # 132127-C

Four Seasons Nursing and Rehabilitation Center

**Program:** Residential Health Care Facility  
**Purpose:** Construction

**County:** Kings  
**Acknowledged:** September 9, 2013

## Executive Summary

### Description

Four Seasons Nursing and Rehabilitation Center (Four Seasons) is an existing, 270-bed residential health care facility (RHCF) located at 1555 Rockaway Parkway, Brooklyn, 11236, in Kings County. Four Seasons seeks approval to expand its existing 20-bed ventilator-dependent (vent) unit to 30-beds. The 10-bed expansion would be accomplished through the conversion of 10 RHCF beds, for no net increase in the facility's overall bed capacity.

The facility was previously approved to operate 10 additional ventilator beds via an emergency approval due to Superstorm Sandy. The emergency approval expired on March 6, 2014, and on May 1, 2014 the applicant was instructed to cease ventilator admissions until they reached their 20-bed certified capacity.

Under 10 NYCRR §709.17, the need methodology for long-term ventilator beds, there is no need for additional long-term ventilator beds in the New York City Region.

### OPCHSM Recommendation

Disapproval on the basis of Need

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Disapproval on the basis of Need**

Council Action Date

**September 24, 2015 – EPRC deferred consideration until next meeting**

**December 10, 2015**

# Need Analysis

## Analysis

Four Seasons Nursing and Rehabilitation Center received emergency DOH approval on November 6, 2012 to temporarily certify 10 long-term ventilator beds to serve ventilator-dependent residents displaced from other facilities by Superstorm Sandy. Approval of the additional beds was for one year, with a required submission of a CON application for consideration of permanent certification. The applicant was granted one extension which expired on March 6, 2014. On May 1, 2014, with the emergency over, the Commissioner of Health denied a further extension, and the facility was notified they were to reduce their vent bed capacity, through patient attrition, until they were back to their original certified vent capacity of 20 beds.

The need methodology for long-term ventilator beds set forth in 10 NYCRR Section 709.17 became effective in 2005. At that time, the methodology specified that hospital inpatient discharges with the Federal DRG 475 should be used as a base patient population to calculate RHCF ventilator bed need. However, the definitions of the Federal DRGs changed in 2007, causing discharges previously coded as 475 to fall under DRGs 541, 542, and 565 (DRGs 541 and 542 had already existed to identify certain inpatients who required mechanical ventilation). The Federal DRG definitions changed again in 2008, causing ventilator patients to be reclassified and coded under DRGs 003, 004, and 207. These codes remain current and have been used since 2008 to determine the need for long-term ventilator beds. The specific DRG definitions under the 2005, 2007 and 2008 iterations are as follows:

### **2005 ventilator code definitions:**

- **475** – Respiratory system diagnosis with ventilator support
- **541** – Tracheotomy with mechanical ventilation greater than 96 hours, or pulmonary diagnosis excluding face, mouth and neck diagnosis with major operating room procedure
- **542** – Tracheotomy with mechanical ventilation greater than 96 hours, or pulmonary diagnosis excluding face, mouth and neck diagnosis without major operating room procedure

### **2007 ventilator code definitions:**

- **541** – Tracheotomy with mechanical ventilation greater than 96 hours, or pulmonary diagnosis excluding face, mouth and neck diagnosis with major operating room procedure
- **542** – Tracheotomy with mechanical ventilation greater than 96 hours, or pulmonary diagnosis excluding face, mouth and neck diagnosis without major operating room procedure
- **565** – Respiratory system diagnosis with ventilator support greater than 96 hours

### **2008 ventilator code definitions:**

- **003** – Tracheotomy with mechanical ventilation greater than 96 hours, or pulmonary diagnosis excluding face, mouth and neck diagnosis with major operating room procedure
- **004** – Tracheotomy with mechanical ventilation greater than 96 hours, or pulmonary diagnosis excluding face, mouth and neck diagnosis without major operating room procedure
- **207** – Respiratory system diagnosis with ventilator support greater than 96 hours

The five boroughs of New York City, which include Kings County, are treated as a single region for purposes of calculating vent bed need under section 709.17. The application of the need methodology based on current long-term ventilator bed capacity and employing the 2008 DRGs as described above shows an actual bed capacity in the region considerably in excess of that deemed to be needed under section 709.17, as shown in Table 1:

<b>Table 1: New York City Region Vent Bed Need</b>					
<b>Region</b>	<b>Existing Vent Beds</b>	<b>Approved Vent Beds<sup>1</sup></b>	<b>Total Resources</b>	<b>2014 Vent Bed Need</b>	<b>Remaining Need</b>
New York City	683	24	707	533	-174

The overall occupancy for RHCF ventilator beds in the New York City Region is shown in Table 2:

<b>Table 2: New York City Region Vent Bed Occupancy</b>				
<b>Region</b>	<b>Certified and Operational Vent Beds</b>	<b>Current Occupancy</b>	<b>Scatter Beds<sup>2</sup></b>	<b>Scatter Occupancy</b>
New York City	683	84.3%	191	81.2%

The following tables show the number of certified RHCF ventilator beds and occupancy for each county in the New York City Region:

<b>Table 3: Bronx County Vent Bed Occupancy</b>				
<b>Facility Name</b>	<b>Certified Vent Beds</b>	<b>Current Occupancy</b>	<b>Scatter Beds</b>	<b>Scatter Occupancy</b>
Eastchester Rehabilitation and Health Care Center	16	100.0% (9/16/15)	24	95.8%
Fieldston Lodge Care Center	10	100.0% (10/7/15)	0	
Split Rock Rehabilitation and Health Care Center	27	92.6% (10/28/15)	0	
Daughters of Jacob Nursing Home Company Inc	24	70.8% (12/31/14)	4	0.0%
Concourse Rehabilitation and Nursing Center, Inc	22	100.0% (6/24/15)	18	94.4%
Wayne Center for Nursing & Rehabilitation	40	95.0% (10/28/15)	14	64.3%
St Barnabas Rehabilitation & Continuing Care Ctr	22	100.0% (9/30/15)	0	
<b>Bronx County Total</b>	<b>161</b>	<b>93.2%</b>	<b>60</b>	<b>81.7%</b>

<sup>1</sup> Beds approved but not yet operational.

<sup>2</sup> Unlike certified ventilator beds, scatter beds are not located in a distinct unit within a facility and, therefore, may not conform to the requirements for long-term ventilator programs under 10 NYCRR Section 713.11 or the physical environment standards for long-term care programs for ventilator dependent residents under Sections 713-3.5 and 713-4.5.



In addition to Four Seasons, five other RHCs in Kings County operate certified long-term ventilator beds, whose occupancy and distance/travel time from Four Seasons are shown in Table 4:

<b>Table 4: Kings County Vent Bed Occupancy</b>					
<b>Facility Name</b>	<b>Distance/Time</b>	<b>Certified Vent Beds</b>	<b>Current Occupancy</b>	<b>Scatter Beds</b>	<b>Scatter Occupancy</b>
Four Seasons Nursing and Rehabilitation Center	0.0	20	95.0% (11/4/15)	21	85.7%
Schulman and Schachne Institute for Nursing And Rehabilitation	1.4 mi/9 mins	28	100.0% (11/3/15)	0	
Rutland Nursing Home	2.9 mi/16 mins	30	76.7% (10/28/15)	20	100.0%
Concord Nursing Home	4.8 mi/26 mins	17	64.7% (9/9/15)	0	
Palm Gardens Center for Nursing and Rehabilitation	5.2 mi/25 mins	53	69.8% (11/3/15)	0	
Lutheran Augustana Center for Extended Care & Rehabilitation	15.6 mi/37 mins	12	100.0% (10/28/15)	0	
<b>Kings County Total</b>		<b>160</b>	<b>81.3%</b>	<b>41</b>	<b>92.7%</b>

<b>Table 5: New York County Vent Bed Occupancy</b>				
<b>Facility Name</b>	<b>Certified Vent Beds</b>	<b>Current Occupancy</b>	<b>Scatter Beds</b>	<b>Scatter Occupancy</b>
Isabella Geriatric Center Inc	36	80.6% (11/4/15)	0	
Henry J. Carter Skilled Nursing Facility	20	100.0% (8/12/15)	0	
<b>New York County Total</b>	<b>56</b>	<b>87.5%</b>	<b>0</b>	

<b>Table 6: Queens County Vent Bed Occupancy</b>				
<b>Facility Name</b>	<b>Certified Vent Beds</b>	<b>Current Occupancy</b>	<b>Scatter Beds</b>	<b>Scatter Occupancy</b>
Rockaway Care Center	20	50.0% (10/28/15)	0	
Cliffside Rehab& Residential Health Care Center	38	76.3% (10/28/15)	0	
Long Island Care Center Inc	10	100.0% (10/28/15)	0	
Promenade Rehab and Health Care Center	20	60.0% (11/3/15)	8	0.0%
Resort Nursing Home	10	100.0% (10/28/15)	30	76.7%
Franklin Center for Rehabilitation and Nursing	12	100.0% (10/28/15)	0	
Silvercrest	80	96.3% (6/3/15)	10	100.0%
The Pavilion at Queens for Rehab & Nursing	20	25.0% (10/28/15)	20	75.0%
<b>Queens County Total</b>	<b>210</b>	<b>78.6%</b>	<b>68</b>	<b>70.6%</b>

<b>Table 7: Richmond County Vent Bed Occupancy</b>				
<b>Facility Name</b>	<b>Certified Vent Beds</b>	<b>Current Occupancy</b>	<b>Scatter Beds</b>	<b>Scatter Occupancy</b>
New Vanderbilt Rehabilitation and Care Center	28	67.9% (4/1/15)	0	
Silver Lake Specialized Rehaband Care Center	40	95.0% (10/28/15)	22	90.9%
Richmond Center for Rehab & Specialty Healthcare	28	89.3% (10/28/15)	0	
<b>Richmond County Total</b>	<b>96</b>	<b>85.4%</b>	<b>22</b>	<b>90.9%</b>

In addition to the above there is a total 24 ventilator beds approved but not-yet-operational in the Region:

<b>Table 8: Approved Vent Beds</b>				
<b>CON</b>	<b>Facility Name</b>	<b>Approved Vent Beds</b>	<b>County</b>	<b>Projected Completion Date</b>
092036	Ditmas Park	20	Kings	12/15/2017
092166	Eastchester Rehabilitation and Health Care Center	4	Bronx	6/30/2016

In 2011, the Department determined a need for 109 long-term ventilator RHCf beds in the New York City Region and subsequently conducted a competitive solicitation, the results of which are shown in Table 9:

<b>Table 9: 2011 Vent Bed Competitive Review Results</b>					
<b>CON</b>	<b>Facility Name</b>	<b>Vent Beds Requested</b>	<b>Approved Vent Beds</b>	<b>Operational</b>	<b>Disapproved Vent Beds</b>
031039	Bronx Center for Rehab & Health Care	16			16
062217	Fieldstone Lodge Care Center	5			5
062380	Cliffside Rehab & Residntl Health Care Ctr	20			20
071010	Long Island Care Center	30			30
071126	Wayne Center for Nursing and Rehab <sup>3</sup>	22	22	22	
082176	Lutheran Augustana Ctr for Extended Care	22			22
091021	Four Seasons Nursing & Rehab Center	10	10	10	
091039	Palm Gardens Center for Nursing & Rehab	15	15	15	
092002	Promenade Rehab and Health Care Center	20			20
092131	Silvercrest Center for Nursing and Rehab	32	32	32	
092166	Eastchester Rehab and Health Care Ctr <sup>4</sup>	4	4	0	
101016	Fort Tyron Center for Rehab and Nursing	15			15
101087	Dr. William O Benenson Rehab Pavilion	10	10	10	
111070	Isabella Geriatric Center, Inc.	16	16	16	
111174	Sheepshead Nursing and Rehab Center	20			20
		<b>257</b>	<b>109</b>	<b>105</b>	<b>148</b>

<sup>3</sup> Wayne Center for Nursing and Rehab received temporary approval for 22 long-term ventilator beds in 2013.

<sup>4</sup> CON No. 092166 for Eastchester Rehab and Health Care Center listed in Table 9 is the same CON project for the facility listed in Table 8.

In response to the 2011 competitive solicitation for long-term ventilator RHCf beds, 19 applications were received. Two applicants failed to respond with updated information and two formally withdrew their applications, leaving 15 applications eligible for review. Criteria for approval included but was not limited to RHCfS with previous experience operating certified long-term ventilator bed units. All of the approved long-term ventilator beds were conversions of existing RHCf beds. The Department is fully committed to release a competitive solicitation for the approval of additional long-term ventilator RHCf beds if future need is determined.

#### Conclusion

The Department determines that need is fully met and that there continues to be adequate access to certified long-term ventilator RHCf beds in the New York City region for the foreseeable future. The absence of need for additional, certified long-term ventilator beds in the New York City region as a whole is reinforced by the current occupancy rate of 84.3% in the New York City Region (Table 2) and the current occupancy of 81.3% in Kings County (Table 4).

Based on these circumstances, the Department concludes that there is no need for additional ventilator beds at Four Seasons Nursing and Rehabilitation Center.

#### Recommendation

**From a need perspective, disapproval is recommended**



**Project # 152099-E  
Westfield Memorial Hospital**

**Program:** Hospital  
**Purpose:** Establishment

**County:** Chautauqua  
**Acknowledged:** August 21, 2015

**Executive Summary**

**Description**

Westfield Memorial Hospital (WMH), a four-bed not-for-profit Article 28 hospital located at 189 E. Main Street, Westfield (Chautauqua County), is requesting approval for indefinite life status. This rural acute care hospital has one extension clinic, WMH Chautauqua Clinic, located at 21 Roberts Avenue in Chautauqua.

Per the 2006 Commission on Health Care Facilities in the 21<sup>st</sup> Century (Berger Commission), WMH was mandated to downsize all 32 inpatient beds and convert to an ambulatory care center under a diagnostic and treatment center licensure. CON #101136 approved Saint Vincent Health System (SVHS), a Pennsylvania-based not-for-profit health system, to become the active parent and co-operator of WMH, for a five-year limited life and the last of the 32 beds previously operated by WMH were decertified. However, in order to maintain some level of emergency and acute care services to the affected area, the approval was to maintain a hospital certification and the transfer of four medical/surgical beds from existing resources in the region to WMH.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

The Hospital has met all the conditions of approval related to CON 101136. The Hospital currently employs 2.4 physician FTEs, and has submitted quarterly reports through the second quarter of 2015 which have been verified with SPARCS data.

**Program Summary**

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

**Financial Summary**

There are no project costs associated with this application. The budget is as follows:

Revenues:	\$8,271,726
Expenses:	<u>9,734,574</u>
Net Income (Loss):	(\$1,462,848)

SVHS has provided capital contributions for ongoing support of WMH's operations and will continue to do so in the future.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a photocopy of proof of the adoption of the Amended and Restated bylaws of the St. Vincent Health System, acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date

**December 10, 2015**

# Need Analysis

## Project Description

Westfield Memorial Hospital is located within a Health Professional Shortage Area (HPSA) and a Medically Underserved Area. The Hospital operates one extension clinic, a primary care center located at 21 Roberts Avenue, Chautauqua.

Westfield Memorial Hospital has low inpatient utilization and functions primarily as an emergency department and an ambulatory surgery center. The closest acute care facility with Medical/Surgical beds is 26 minutes travel time away, which can increase dramatically during the winter. Westfield Memorial Hospital is certified to provide the following services:

Ambulatory Surgery - Multi Specialty	Medical Services - Other Medical Specialties
Clinic Part Time Services	Medical Services - Primary Care
Clinical Laboratory Service	Medical Social Services
Coronary Care	Medical/Surgical
Emergency Department	Radiology – Diagnostic

## Analysis

Inpatient utilization data is provided in Table 1 below. Occupancy of the four Medical/Surgical beds at the Hospital is very low and declining. However, these beds are used primarily as ambulatory surgery recovery beds and for patient observation. The applicant reported 31 patients with observation status in 2013 and 98 patients with observation status in 2014. This increase offsets the decline in inpatient occupancy at this short-stay inpatient facility.

<b>Table 1: Inpatient Utilization Statistics</b>					
	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
<b>Occupancy</b>	32.7%	28.5%	26.1%	19.9%	4.5%
<b>Discharges</b>	179	141	115	98	18
<b>Average Length of Stay</b>	2.7	3.0	3.3	3.0	3.6

Source: SPARCS, Sept 2015

Outpatient utilization numbers are given in Table 2 below.

<b>Table 2: Outpatient Visits</b>	
<b>Year</b>	<b>Visits</b>
2011	4,491
2012	2,147
2013	3,738
2014	5,064

Source: SPARCS, Sept 2015

The Hospital operates primarily as an ambulatory care center, providing outpatient and ambulatory surgery services. Surgical utilization data is provided in Table 3 below.

<b>Table 3: Westfield Hospital Surgical Discharges</b>			
<b>Year</b>	<b>Inpatient</b>	<b>Ambulatory</b>	<b>Total</b>
<b>2010</b>	8	1,366	1,374
<b>2011</b>	12	1,082	1,094
<b>2012</b>	8	1,054	1,062
<b>2013</b>	2	941	943
<b>2014</b>	0	939	939

Source: SPARCS, Sept 2015

As a remote hospital in a Medically Underserved Area, Westfield Memorial Hospital maintains a 24/7 Emergency Department, which is staffed by either a physician or a physician's assistant. The Hospital maintains ground and air transfer capabilities. Emergency Department utilization numbers are provided in Table 4 below. The applicant states that implementation of Electronic Health Records and a new staffing plan in 2013-2014 caused a temporary decline in utilization. The applicant expects the trend of declining utilization to reverse in 2015, and levels to remain around 7,500 patients annually. The Hospital has been working to reduce preventable ED visits and avoidable inpatient admissions, which has caused some of the decline in utilization since 2011.

<b>Year</b>	<b>Treat and Admit</b>	<b>Treat and Release</b>	<b>All ED Discharges</b>
<b>2010</b>	133	8,064	8,197
<b>2011</b>	97	8,820	8,917
<b>2012</b>	92	8,439	8,531
<b>2013</b>	90	7,368	7,458
<b>2014</b>	11	7,049	7,060

Source: SPARCS, Sept 2015

Travel times to the closest hospitals with Medical/Surgical beds are provided in Table 5 below. Westfield Memorial Hospital is located in a remote area which experiences harsh winters with lake effect snow. These travel times can increase dramatically during the winter. The remoteness of the facility supports indefinite life as an ambulatory center with inpatient capacity.

<b>Name</b>	<b>City</b>	<b>Distance (miles)</b>	<b>Time (minutes)</b>
<b>Brooks Memorial Hospital</b>	Dunkirk	18.2	26
<b>Woman's Christian Association</b>	Jamestown	27.1	37
<b>TLC Health Network Lake Shore Hospital</b>	Irving	45.1	50

Source: HFIS and Google Maps, Sept 2015

The applicant remains committed to serving individuals requiring care regardless of the source of payment or the ability to pay. The applicant reports that 2.2% of its services are provided as charity care.

#### Conclusion

Westfield Memorial Hospital is located in a HPSA and a MUA, with the nearest emergency department 26 minutes away in good driving conditions. The Hospital satisfied the contingencies in the approval of CON 101136, and has continued to maintain ED staffing levels and submit timely utilization reports to the Department. The Hospital is committed to providing care to at-risk populations within its service area regardless of ability to pay. Continuation of the current level of service is recommended in order to ensure access for the residents of Chautauqua County.

#### Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

#### Program Proposal

Westfield Memorial Hospital (WMH), an existing Article 28 4-bed hospital, located at 189 East Main Street in Westfield (Chautauqua County), is requesting permission to convert to indefinite life following a five-year limited life. Westfield Memorial Hospital operates an emergency department, a full range of outpatient services and four medical surgical beds. The hospital is located in a rural community where accessing the next closest acute care facility requires a 35-40 minute drive (during ideal weather

conditions) and can exceed 90 minutes travel time during extreme winter conditions. There are no anticipated changes in services. WMH will continue to offer the community health care services that addresses urgent and emergent health care issues as well as provides preventive medical care.

#### 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.

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.

#### Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

#### Operating Budgets

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

	<u>Year One</u>	<u>Year Three</u>
Inpatient Revenues:		
Medicare Fee-For-Service	\$31,222	\$29,913
Medicare Managed Care	12,642	12,113
Commercial Fee-For-Service	820	786
Commercial Managed Care	<u>18,781</u>	<u>17,994</u>
Total Inpatient Revenues	\$63,465	\$60,806
Inpatient Expenses:		
Operating	\$119,779	\$94,974
Capital	<u>15</u>	<u>10</u>
Total Inpatient Expenses	\$119,794	\$94,984
Outpatient Revenues:		
Medicare Fee-For-Service	\$1,728,913	\$1,656,488
Medicare Managed Care	731,730	701,078
Medicaid Fee-For-Service	116,755	111,864
Medicaid Managed Care	525,298	503,294
Commercial Fee-For-Service	1,717,684	1,645,730
Commercial Managed Care	1,721,763	1,649,638
Private Pay	33,938	32,516
Other	<u>793,136</u>	<u>759,912</u>
Total Outpatient Revenues	\$7,369,217	\$7,060,520



Outpatient Expenses:		
Operating	\$8,377,243	\$8,674,626
Capital	<u>974,263</u>	<u>964,964</u>
Total Outpatient Expenses:	\$9,351,506	\$9,639,590
Total Revenues	\$7,432,682	\$7,121,326
Total Expenses	<u>9,471,300</u>	<u>9,734,574</u>
Total Net Patient Income (Loss):	(\$2,038,618)	(\$2,613,248)
Other Operating Revenues:		
EHR Incentive <sup>(1)</sup>	\$305,834	\$819,488
Investment Income	54,000	62,473
Grant Income <sup>(2)</sup>	878	102,675
Other <sup>(3)</sup>	<u>40,731</u>	<u>40,719</u>
Total Other Operating Revenue	\$401,443	\$1,025,355
Non-Operating Revenues <sup>(4)</sup>	<u>\$53,446</u>	<u>\$125,045</u>
Total Net Income (Loss)	<u>(\$1,583,729)</u>	<u>(\$1,462,848)</u>
Inpatient Discharges	31	31
Outpatient Visits	22,377	22,448

- (1) The Electronic Health Care Record Incentive program (EHR) was provided to WMH and successfully implemented. These funds are less in the first year budget since WMH pays back a portion of these funds to SVHS.
- (2) Grant income is derived from various sources such as: monies received from contracted payments with state agencies, reimbursements from WNH Foundation/Auxiliary, and NY Small Rural Hospital Improvement Fund. These funds are less in the first year budget since WMH pays back a portion of these funds to SVHS.
- (3) Other Income is from rental of its specialty suite, purchase discounts, and other miscellaneous income.
- (4) Non-Operating revenues represent the interest and dividends received on investments and unrealized gains/losses in the investment balance based on market performance.

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

<u>Inpatient</u>	<u>Year One</u>	<u>Year Three</u>
Medicare Fee-For-Service	64.7%	64.5%
Medicare Managed Care	11.8%	12.9%
Commercial Fee-For-Service	5.9%	6.5%
Commercial Managed Care	17.6%	16.1%
<u>Outpatient</u>	<u>Year One and Year Three</u>	
Medicare Fee-For-Service	23.2%	
Medicare Managed Care	9.0%	
Medicaid Fee-For-Service	2.2%	
Medicaid Managed Care	13.2%	
Commercial Fee-For-Service	25.7%	
Commercial Managed Care	22.8%	
Private Pay	2.1%	
Other*	1.1%	
Charity Care	0.7%	

\*Other Outpatient visits represent no fault, workmen's compensation and other governmental insurance carriers.

Expense and utilization assumptions are based on the historical experience of WMH. Inpatient services are a small component with inpatient discharges, as budgeted, representing 97 inpatient days. The

applicant indicated that approximately 46% of WMD's revenue comes from the ED and the loss from operations can be attributed mainly to the staffing of the ED 24/7 and triaging ED patients for transfer to higher levels of care.

#### Capability and Feasibility

There are no project costs associated with this application. The submitted budget indicates a net loss from operations before operating and non-operating revenues of \$2,038,618 and \$2,613,248 for the first and third years, respectively. Revenue is based on the historical experience of the operation and on current reimbursement rates. The active parent of Westfield Memorial Hospital, Saint Vincent Health System, has provided capital contributions for ongoing support of its operations and has indicated they will continue to do so in the future. A letter from the Senior Vice President & Chief Financial Officer of SVHS has been submitted stating that SVHS is committed to assisting in the ongoing financial operations of WMH. Additional operating plans of management and the Hospital's Board of Directors include:

- Business plans for new programs to make use of space previously used for discontinued services to generate additional sources of patient service revenue.
- Implementing operational efficiencies in service support and delivery functions to reduce operating costs.

The budget appears reasonable.

BFA Attachment B, a 2013-2014 financial summary of WMH, indicates that the Hospital has maintained positive working capital, net assets and experienced a net loss from operations before other income of \$1,608,259 for 2014. BFA Attachment C, a financial summary of WMH as of June 30, 2105, indicates that the Hospital has maintained positive working capital, net assets and experienced a net loss from operations of \$552,699 for the period. SVHS is committed to assisting in the ongoing financial operations of WMH. BFA Attachment D, a 2014 financial summary of Highmark Health Consolidated, indicates the corporation has maintained positive working capital and net assets and maintained a net income of \$9,669,000, before taxes, for 2014. SVHS has maintained positive working capital, net assets and net operating income of \$6,408,000 for 2014.

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

#### Recommendation

**From a financial perspective, approval is recommended.**

## Attachments

BFA Attachment A	Organizational Chart- Saint Vincent Health System
BFA Attachment B	Financial Summary for Westfield Memorial Hospital, 2013-2014
BFA Attachment C	Financial Summary for Westfield Memorial Hospital, as of June 30, 2015
BFA Attachment D	Financial Summary- Highmark Health Consolidated Financials, 2014
BFA Attachment E	Pro Forma Balance Sheet

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 10<sup>th</sup> day of December, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application for an indefinite life for CON # 101136 , and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

152099 E

Westfield Memorial Hospital

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of proof of the adoption of the Amended and Restated bylaws of the St. Vincent Health System, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



**Project # 152029-E  
FedCare**

**Program:** Diagnostic and Treatment Center    **County:** New York  
**Purpose:** Establishment    **Acknowledged:** July 24, 2015

**Executive Summary**

**Description**

FedCare, Inc. (FedCare), a New York not-for-profit corporation, requests approval to become the established operator of an Article 28 diagnostic and treatment center (D&TC) currently operated as an extension clinic site of Ambulatory Surgery Center of Brooklyn, LLC. The extension clinic is housed in leased space at 344 West 51<sup>st</sup> Street, New York (New York County) and is licensed to provide Medical Services - Primary Care. There will be no change in services as a result of this application. The medical services are provided under contract with the New York City Human Resources Administration's (NYC HRA) WeCare welfare to work program. The contract and the lease will be transferred to FedCare through respective assignment and assumption agreements.

Effective April 1, 2015, Ambulatory Surgery Center of Brooklyn, LLC received Department of Health approval to become the interim operator of WeCare Medical Assessment Unit (WeCare MAU), a D&TC previously operated by FECS ProCareHealth Services, Inc. (ProCare). Due to FECS' bankruptcy proceedings, the operation had to be transferred to a more financially viable provider to ensure uninterrupted continuation of services.

The sole member and passive parent of FedCare, Inc. is Fedcap Rehabilitation Services, Inc.

**OPCHSM Recommendation  
Contingent Approval**

**Need Summary**

There are no changes in services. The number of projected visits in Year 1 is 8,604. Approval of this project will allow for the seamless transition of services for the population in need.

**Program Summary**

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

**Financial Summary**

There are no project costs or purchase price associated with this application.

<b>Budget:</b>		<u>Year One</u>	<u>Year Three</u>
	Revenues	\$2,679,150	\$3,792,660
	Expenses	\$2,642,379	3,323,568
	Net Income	\$36,771	\$469,092

## 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 consulting agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of a photocopy of the applicant's executed proposed by-laws, which is acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant's executed consulting and administrative services agreement, which is acceptable to the Department. [CSL]

**Approval conditional upon:**

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

**December 10, 2015**

## Need Analysis

### Analysis

The service area includes New York County. Areas of New York County are designated as a Medical Underserved Area/Population as follows (Source-HRSA):

#### Medically Underserved Areas/Populations:

- Medicaid Eligible – Greater New York Service Area

The number of projected visits is 8,604 in Year 1 and 12,180 in Year 3.

There will not be any changes to the services offered due to the change in ownership.

### Conclusion

As there are no changes in services, there is no impact on need.

### Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Project Proposal

Establish FedCare Inc., a not-for-profit corporation, as the new operator of an existing Article 28 diagnostic and treatment center extension clinic located at 344 West 51st Street, New York (New York County), which is currently operated by Ambulatory Surgery Center of Brooklyn, LLC.

The existing diagnostic and treatment center has a contract with the New York City Human Resources Administration's WeCARE welfare to work program. Under this contract, the center provides medical and mental health assessment services to WeCARE clients. There are no programmatic changes and/or construction anticipated as a result of this proposal. The center does anticipate an increase in staffing by 20.2 FTEs in the first year and 26.2 FTEs by the third year of operation.

### Character and Competence

The proposed Directors of FedCare, Inc. are:

Christine McMahon  
Joseph Giannetto  
Kenneth Brezenoff

Ms. McMahon and Messrs. Giannetto and Brezenoff each work for Fedcap Rehabilitation Services, Inc. as President/CEO, Chief Operating Officer (COO), and General Counsel, respectively. Ms. McMahon holds a Master of Health Administration degree and more than 25 years of experience in social and mental-health services in New York and New England. Previously, she served as Senior Vice President and COO of a northeast Easter Seals region. Mr. Giannetto served over 20 years as an officer of the NYC Police Department where he held several key operational and management positions to include Detective Division Commander and Precinct Commander. He was appointed First Deputy Commissioner of the NYC Taxi and Limousine Commission in 1997, where he acted as Chief Operating and Administration Officer, establishing policy in all planning, operations and management functions. Upon retirement from the Police Department in 2001, he founded Lorden Associates, a ground-transportation management and consulting company. Prior to joining Fedcap, Mr. Brezenoff worked for a financial services company in a variety of capacities to include Senior Vice President for Corporate Affairs and New Markets Tax Credits. He also worked for several years at law firms in New York and prior to law school, spent three years at MetroPlus, a division of the New York City Health & Hospitals Corporation.

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 U.S. Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Disclosure information was similarly submitted and reviewed for the Medical Director. Dr. Myron Seidman is a board-certified Internist licensed by the State of New York since 1978. Since November 2012, he has been employed as a physician at Fedcap Rehabilitation Services where he currently serves as the Acting Medical Director. Dr. Seidman has had many years of experience working in other health care facilities in titles such as Staff Physician and Deputy Medical Director.

Mr. Brezenoff disclosed that he has been named as a defendant in a civil tort action currently in the discovery phase in Superior Court of New Jersey, Essex County. Specifically, the plaintiff alleges injuries from a slip and fall on a sidewalk located between two properties which included his residence.

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.

#### Conclusion

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

#### Recommendation

**From a programmatic perspective, contingent approval is recommended.**

## Financial Analysis

#### Assignment and Assumption Agreement - Operations

The applicant submitted an executed Assignment and Assumption Agreement for the assignment of the NYC HRA WeCare contract, as shown below:

Date:	January 30, 2015
Assignor:	Federation Employment and Guidance Service, Inc. d/b/a FECS
Assignee:	Fedcap Rehabilitation Services, Inc. (Fedcap)
Assets Transferred:	All rights and obligations under the WeCare Agreement with NYCHRA Effective April 1, 2015.
Excluded Assets and Liabilities:	N/A

#### Assignment and Assumption Agreement - Real Estate

The applicant submitted an executed Assignment and Assumption Agreement for the assignment of the lease, as shown below:

Date:	March 30, 2015
Assignor:	Federation Employment and Guidance Service, Inc.
Assignee:	Fedcap Rehabilitation Services, Inc.
Assets Transferred:	All of the assignor's rights, title and interest in, to and under the lease
Excluded Assets:	N/A
Liabilities:	N/A



Lease Assigned:	344 West 51 <sup>st</sup> Street, New York, NY
Lease Terms, Payments & Provisions:	\$40,224.47 per month with an annual increase of 2%; Triple net lease

#### Lease Agreement

The applicant submitted the original executed lease agreement for the clinic site, as shown below:

Date:	June 29, 2012
Premises:	9,279 sq. ft. located on the ground floor of 344 West 51 <sup>st</sup> Street, New York, NY
Lessor:	Rossmil Associates LP
Lessee:	Federation Employment and Guidance Service, Inc.
Term:	8 years and 6 months
Rental:	\$463,950 for year one with an annual 2% increase

The applicant indicated that the lease arrangement will be an arm's length lease arrangement. The applicant submitted letters from two NYS licensed realtors attesting to the rent reasonableness.

#### Consulting Agreement

The applicant submitted a draft consulting agreement, the terms are shown below:

Date:	To Be Determined
Facility:	FedCare, Inc. located at 344 West 51 <sup>st</sup> street, New York, NY
Consultant:	Fedcap Rehabilitation Services, Inc.
Services Provided:	Billing and collection; Accounting and financial; Quality and utilization controls; Complete software support; Discount pricing services on all supplies, inventory and drugs necessary for the facility's operations.
Term:	3 years with indefinite 1 year renewals.
Fee:	\$320,000 (year 1), \$360,000 (year 2) and \$400,000 (year 3); Fee will be capped at \$400,000 going forward.

#### Operating Budget

The applicant submitted an operating budget, in 2015 dollars, for Years One and Three of operations, as shown below:

	<u>Per Visit</u>	<u>Year One</u>	<u>Per Visit</u>	<u>Year Three</u>
Revenues:				
NYC HRA	\$311.38	<u>\$2,679,150</u>	\$311.38	<u>\$3,792,660</u>
Total Revenues		\$2,679,150		\$3,792,660
Expenses:				
Operating	\$249.00	\$2,142,382	\$231.82	\$2,823,571
Capital	<u>58.11</u>	<u>\$499,997</u>	<u>\$41.05</u>	<u>\$499,997</u>
Total Expenses	\$307.11	\$2,642,379	\$272.87	\$3,323,568
Net Income/(Loss)		\$36,771		\$469,092
Utilization (Visits)		8,604		12,180

All revenue, expense and utilization assumptions are based on the actual experiences of FECS Procure during their period of operations as an Article 28 D&TC. The budget is reasonable.

#### Capability and Feasibility

There are no project costs or purchase price associated with this application. Working capital requirements are estimated at \$553,928, which is equivalent to two months of Year Three expenses. The sole member of FedCare, Inc., Fedcap Rehabilitation Services, Inc., will provide the entire working capital requirement via a Board Fund Investment.

BFA Attachment A is the 2013 and 2014 certified financial statements for Fedcap Rehabilitation Services, Inc. and Subsidiaries which shows the entity had both positive average working capital and net assets positions, and an average net income of \$7,922,055 for the period.

BFA Attachment B is the pro forma balance sheet of FedCare, Inc. as of the first day of operation, which indicates that the operation will begin with breakeven member equity.

The submitted budget indicates a net income of \$36,771 and \$469,092 during Year One and Year Three, respectively. Revenues are based on the current NYC HRA contract amount for the services. The submitted budget is reasonable.

Recommendation

**From a financial perspective, contingent approval is recommended.**

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## Attachments

- BFA Attachment A 2013-2014 Certified Financial Statements of Fedcap Rehabilitation Services, Inc. and Subsidiaries
- BFA Attachment B Pro-Forma Balance Sheet of FedCare, Inc.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 10<sup>th</sup> day of December, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish FedCare Inc. as the new operator of the facility located at 344 West 51<sup>st</sup> Street, New York (originally operated by FEDS), and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

152029 E

FedCare

APPROVAL CONTINGENT UPON:

1. Submission of an executed consulting agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of a photocopy of the applicant's executed proposed by-laws, which is acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant's executed consulting and administrative services agreement, which is acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



**Project # 152075-E  
First Medicare Primary Care Center**

**Program:** Diagnostic and Treatment Center    **County:** Kings  
**Purpose:** Establishment    **Acknowledged:** August 20, 2015

**Executive Summary**

**Description**

First Medicare, Inc. d/b/a First Medicare Primary Care Center (First Medicare), an existing proprietary Article 28 Diagnostic and Treatment Center (D&TC) located at 8707 Flatlands Avenue, Brooklyn (Kings County), requests approval to add Moishe Heimowitz as a 25% owner of the Corporation through a stock purchase agreement. There will be no change in services as a result of this proposed change in ownership.

The current and proposed ownership interest in First Medicare are as follows:

<u>Current Ownership</u>	
<u>Stockholder:</u>	<u>%</u>
Gershon Klein (200 shares)	100%

<u>Proposed Ownership</u>	
<u>Stockholders:</u>	<u>%</u>
Gershon Klein (150 shares)	75%
Moishe Heimowitz (50 shares)	25%

**OPCHSM Recommendation**

Contingent Approval

**Need Summary**

No Need Review will be conducted as a result of this proposal.

**Program Summary**

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

**Financial Summary**

There are no project costs associated with this application and no budgeted incremental operating expenses or revenues.

Moishe Heimowitz will purchase 25% ownership interest in First Medicare through a stock purchase agreement for a purchase price of \$10 paid via equity.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a photocopy the applicant's fully executed operating agreement, acceptable to the Department. [CSL]
2. Submission of a photocopy of the applicant's executed Certificate of Amendment of the Articles of Organization, acceptable to the Department. [CSL]
3. Submission of a photocopy of the applicant's executed lease agreement and purchase agreement for real property, acceptable to the Department. [CSL]
4. Submission of a photocopy of the purchase and sales agreement between RCNR Realty, LLC and RCNR Reality Acquisition, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of the applicant's Asset Purchase Agreement, acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date

**December 10, 2015**

## Program Analysis

### Project Proposal

First Medicare Inc., an existing Article 28 Diagnostic and Treatment Center located at 8705 Flatlands Avenue in Brooklyn (Kings County), requests approval to transfer a portion of the center's membership interest to one (1) new member. There are no programmatic changes as a result of this request.

Gershon Klein, the current sole shareholder of the corporation, has agreed to sell shares representative of 25% of the corporation to proposed new member Moishe Heimowitz.

The following table details the proposed change in ownership:

<b>Member Name</b>	<b>Current Membership Interest</b>	<b>Proposed Membership Interest</b>
Gershon Klein	100.00%	75.00%
Moishe Heimowitz	----	25.00%

### Character and Competence

The proposed new individual member, Mr. Moishe Heimowitz has been employed by First Medicare since June 1999. In October 2008, he was promoted to Administrator, and, in this role, his responsibilities have included overseeing day-to-day operations and coordinating all functions and activities of the center. He supervises approximately 50 individuals and has an active role in the hiring, firing and training of employees as well as assigning work and assessing performance. Additionally, Mr. Heimowitz handles patient complaints, oversees the facility's quality assurance program, reports incidents to the Department, and supports the Medical Director in the provision of healthcare services at the center.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted for the two 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

### Total Project Costs and Financing

There are no project costs associated with this application. There are no budgeted incremental operating expenses or revenues associated with this project, since patient care services will not be affected.

### Stock Purchase Agreement

The applicant has submitted an executed stock purchase agreement for the change of 25% ownership interest in First Medicare, to be effectuated upon Public Health and Health Planning Council approval, the terms of which are summarized below:

Date:	June 2, 2015
Seller:	Gershon Klein (100% ownership)
Buyer:	Moishe Heimowitz
Asset Acquired:	50 shares representing 25% of all issued and outstanding shares.
Purchase Price:	\$10
Payment of Purchase Price:	Equity at Closing

### Capability and Feasibility

There are no project costs associated with this application.

BFA Attachment A is the net worth statement of the Moishe Heimowitz, which shows sufficient liquid resources to cover the equity requirement for this project.

BFA Attachment B is the 2013 and 2014 certified financial statements of First Medicare, Inc. and a summary of the Corporation's internal financial statements as of August 31, 2015. As shown, the entity maintained positive working capital and positive member's equity, and achieved an average net income of \$59,926 for the 2013 to 2014 audited period.

Based on the preceding, the applicant has demonstrated the capability to proceed in a financially feasible manner.

### Recommendation

**From a financial perspective, approval is recommended.**

## Attachments

- BFA Attachment A Net Worth Statement of Moishe Heimowitz
- BFA Attachment B 2013 & 2014 Certified and August 31, 2015 Internal Financial Statements & Summary for First Medicare, Inc.



RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 10<sup>th</sup> day of December, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer of 25% ownership interest to one (1) new member from the one (1) existing member, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

152075 E

First Medicare Primary Care Center

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy the applicant's fully executed operating agreement, acceptable to the Department. [CSL]
2. Submission of a photocopy of the applicant's executed Certificate of Amendment of the Articles of Organization, acceptable to the Department. [CSL]
3. Submission of a photocopy of the applicant's executed lease agreement and purchase agreement for real property, acceptable to the Department. [CSL]
4. Submission of a photocopy of the purchase and sales agreement between RCNR Realty, LLC and RCNR Reality Acquisition, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of the applicant's Asset Purchase Agreement, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



Project # 151070-E  
USRC Pelham, LLC  
d/b/a U.S. Renal Care Pelham Parkway Dialysis

**Program:** Diagnostic and Treatment Center    **County:** Bronx  
**Purpose:** Establishment    **Acknowledged:** February 27, 2015

**Executive Summary**

**Description**

USRC Pelham, LLC d/b/a U.S. Renal Care Pelham Parkway Dialysis (USRC Pelham), a New York limited liability company, requests approval to be established as the new operator of Pelham Parkway Dialysis Center (Pelham Dialysis), a 25-station Article 28 diagnostic and treatment center located in leased space at 1400 Pelham Parkway South, Bronx (Bronx County). The subject location is currently operated by IHS of New York, Inc. as the main site of Pelham Dialysis. CON # 151072, to establish USRC South Flushing, LLC as the new operator of the extension clinic site, is being reviewed concurrently.

USRC Pelham is a wholly owned subsidiary of USRC Appalachian Partners, LLC, a Delaware limited liability company 70% owned by USRC Alliance, LLC, and 30% owned by IHS Dialysis, Inc., the current operator of the clinic. On November 12, 2014, IHS Dialysis, Inc., IHS of New York, Inc., and the members of USRC Pelham, LLC entered into a Contribution and Asset Purchase Agreement (CAPA) for the transfer of all rights, title, interests in, and assets and properties used in and for the benefit of the Pelham Dialysis facility. The purchase price for the operations is \$8,489,485. Closure will be effectuated upon approval of this CON by the Public Health and Health Planning Council (PHHPC).

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

<b>USRC Pelham, LLC d/b/a/ U.S. Renal Care Pelham Parkway Dialysis</b>		
<b>Member</b>		<b>%</b>
USRC Appalachian Partners, LLC		100%
USRC Alliance, LLC	70%	
U.S. Renal Care, Inc. (100%)		
IHS Dialysis, Inc.	30%	
Nelson Shaller (100%)		

**OPCHSM Recommendation**  
Contingent Approval

**Need Summary**

The proposed transfer of ownership will not result in any changes in services being provided. Therefore no need review will be presented.

**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 \$8,489,485 acquisition price will be provided by U.S. Renal Care Inc., an indirect owner of USRC Pelham, LLC.

There are no project costs associated with this application. The operating budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$9,345,093	\$9,415,000
Expenses	7,858,218	8,089,594
Net Income	\$1,486,875	\$1,375,406

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of an executed Administrative Service Agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed Assignment and Assumption Agreement associated with the lease rental agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
4. Submission of an executed Medical Director Agreement, acceptable to the Department. [HSP]
5. Submission of a photocopy of USRC Pelham LLC's executed Amended and Restated Operating Agreement, acceptable to the Department. [CSL]
6. Submission of a photocopy of the applicant's updated Medical Director Agreement, acceptable to the Department. [CSL]
7. Submission of a photocopy of the executed Administrative Service Agreement between US Renal Care, Inc. and USRC Pelham, LLC, acceptable to the Department. [CSL]
8. Submission of a photocopy of the executed Amended and Restated Agreement of USRC Appalachian Partners, LCC, acceptable to the Department. [CSL]
9. Submission of a photocopy of the non-redacted Contribution and Asset Purchase Agreement between IHS Dialysis LLC, IHS of New York, Inc., US Renal Care LLC and USRC Alliance, LLC, acceptable to the Department. [CSL]
10. Submission of a photocopy of the IHS Dialysis bylaws, amending Article 1.9, acceptable to the Department. [CSL]
11. Submission of a photocopy document proof of the implementation of the IHS Dialysis by-laws, acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date

**December 10, 2015**

## Program Analysis

### Character and Competence

USRC Pelham, LLC is a wholly owned subsidiary of USRC Appalachian Partners, LLC. The members of USRC Appalachian Partners, LLC are as follows:

<b>Name</b>	<b>Interest</b>	<b>Work History/Affiliation</b>
<b>USRC Alliance, LLC</b>	<b>70%</b>	
Stephen M. Pirri		President of USRC Manager of USRC Appalachian Partners, LLC <i>President of USRC Pelham, LLC</i>
Thomas L. Weinberg		Attorney licensed to practice in Texas and Washington. Executive VP, General Counsel of USRC Manager of USRC Appalachian Partners, LLC
James D. Shelton		Executive Vice President, CFO of USRC Manager of USRC Appalachian Partners, LLC; <i>Vice President &amp; Treasurer of USRC Pelham, LLC</i>
David P. Eldridge		Senior Vice President, Finance of USRC <i>Secretary of USRC Pelham, LLC</i>
<b>IHS Dialysis, Inc.</b>	<b>30%</b>	
Nelson C. Shaller		CEO of IHS Dialysis, Inc. for over 25 years. Manager of USRC Appalachian Partners, LLC Indirect owner of USRC Pelham, LLC

Disclosure information was similarly submitted and reviewed for the Medical Director. Dr. Kisra Anis is board-certified in internal medicine and nephrology. She has over 15 years of experience as a Nephrologist and has been an attending physician at Jacobi Medical Center since 2001. In addition, since July 2002, she has served as an Assistant Professor of Medicine at Albert Einstein College of Medicine.

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.

*The officers of U.S. Renal Care (USRC) disclosed that U.S. Renal Care acquired Dialysis Corporation (DCA) in June 2010, however, in February 2010, DCA had been subpoenaed by the Office of the Inspector General of the U.S. Department of Health and Human Service (OIG) with respect to an investigation relating to alleged improper Medicare and Medicaid billing at certain DCA clinics. The investigation related to two qui tam suits with the Department of Justice and private litigants. USRC denied any impropriety or liability by DCA in both cases, but determined that it should settle those cases with the government and private litigants which it did in May 2013 and September 2014. Both suits have been dismissed. No non-DCA facilities owned by USRC were involved in the investigations and litigation.*

*On September 16, 2015, the Department issued a Stipulation and Order and a \$2,000 fine to IHS of New York, Inc. as operator of Pelham Parkway Dialysis Center for violations of Article 28 of the Public Health*

Law and Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (10 NYCRR). As detailed in a Statement of Deficiencies issued in July 2015, the Department discovered that, on or about May 27, 2015, Nelson Shaller, the owner of 100% of shares of stock in IHS of New York, Inc., had transferred all of the shares he owned to another corporation (in which he is also 100% owner) without prior approval from the Public Health and Health Planning Council. The Department directed that an appropriate Certificate of Need Application be filed and that documentation be submitted (within Department specified time frames) to complete the application process. In addition to the monetary penalty, the Department has directed IHS/Mr. Shaller to submit quarterly reports for a one year period which detail the steps taken to implement the corrective action plan and to access their effectiveness.

#### Star Ratings - Dialysis Facility Compare (DFC)

The Centers for Medicare and Medicaid Services (CMS) and the University of Michigan Kidney Epidemiology and Cost Center have developed a methodology for rating each dialysis facility which may be found on the Dialysis Facility Compare website as a "Star Rating." The method produces a final score that is based on quality measures currently reported on the DFC website and ranges from 1 to 5 stars. A facility with a 5-star rating has quality of care that is considered 'much above average' compared to other dialysis facilities. A 1- or 2- star rating does not mean that a facility provides poor care. It indicates only that measured outcomes were below average compared to other facilities. Star ratings on DFC are updated annually to align with the annual updates of the standardized measures.

The DFC website currently reports on 9 measures of quality of care for facilities. The measures used in the star rating are grouped into three domains by using a statistical method known as Factor Analysis. Each domain contains measures that are most correlated. This allows CMS to weight the domains rather than individual measures in the final score, limiting the possibility of overweighting quality measures that assess similar qualities of facility care.

To calculate the star rating for a facility, each domain score between 0 and 100 averages the normalized scores for measures within that domain. A final score between 0 and 100 is obtained by averaging the three domain scores (or two domain scores for peritoneal dialysis-only facilities). Finally, to recognize high and low performances, facilities receive stars in the following way:

- Facilities with the top 10% final scores were given a star rating of 5.
- Facilities with the next 20% highest final scores were given 4 stars.
- Facilities within the middle 40% of final scores were given 3 stars.
- Facilities with the next 20% lowest final scores were given 2 stars.
- Facilities with the bottom 10% final scores were given 1 star.

U.S. Renal Care, Inc. operates over 190 dialysis centers, three of which are located in New York State. As USRC will have a 70% membership interest in USRC Pelham, LLC, the Star Ratings for USRCs New York facilities are noted below (and a comprehensive list of Star Ratings for all USRC-operated centers is provided in **HSP Attachment A**). IHS Dialysis, Inc. has a 30% membership interest in USRC Pelham, LLC and reported operating 5 dialysis centers, two of which are located in the state of New York and are the subject of this application (and the companion CON 151072). The Star Ratings profile for IHS facilities is noted below.

<b>Facilities operated by U.S. Renal Care Facilities (in New York)</b>	<i>(Refer to HSP Attachment A for a list of all of USRCs dialysis centers.)</i>	
USRC Cheektowaga, Inc. d/b/a U.S. Renal Care Cheektowaga Dialysis	2875 Union Rd Suite 13 C/D Cheektowaga NY 14225	★ ★ ● ● ●
USRC Williamsville, Inc. d/b/a U.S. Renal Care Williamsville Dialysis	7964 Transit Rd Suite 8-A Williamsville NY 14221	★ ★ ★ ● ●
USRC Tonawanda, Inc. d/b/a U.S. Renal Care Tonawanda Dialysis	3161 Eggert Rd Tonawanda NY 14150	★ ★ ★ ★ ●

<b>Facilities operated by IHS Dialysis, Inc.</b>		
Pelham Parkway Dialysis Center <i>*subject of this CON</i>	1400 Pelham Parkway South Bldg. 5 Dialysis Center Bronx, NY 10461	★ ★ ★ ★ ●
IHS Queens Dialysis d/b/a Queens Dialysis at South Flushing <i>*subject of companion CON 151072</i>	71-12 Park Avenue Flushing, NY 11365	★ ★ ★ ★ ●
Advanced Directions Renal Care Center	1250 Hancock St., Ste. 204-N-B Quincy, MA 02169	Facility Information Not Available
Quincy Center Dialysis	1250 Hancock St., Ste. 110N Quincy, MA 02169	★ ★ ● ● ●
Advanced Kidney Therapies	3200 Cobb Galleria Pkwy, Ste. 228 Atlanta, GA 30339	Facility Information Not Available

(Information retrieved from <http://www.medicare.gov/dialysisfacilitycompare/#> on 11/3/15)

Recommendation

**From a programmatic perspective, contingent approval is recommended.**

## Financial Analysis

### Contribution and Asset Purchase Agreement

The applicant has submitted an executed Contribution and Asset Purchase Agreement for the change in ownership of the operations related to Pelham Dialysis. The agreement will become effectuated upon PHHPC approval of this CON. The terms of the agreement are summarized below:

Date:	November 12, 2014
Seller:	IHS Dialysis, Inc., and IHS of New York, Inc.
Purchaser:	USRC Pelham, LLC d/b/a U.S. Renal Care Pelham Parkway Dialysis; USRC Appalachian Partners, LLC ; USRC Alliance, LLC; U.S. Renal Care Inc.
Acquired Assets:	Seller's right, title and interest in all of the assets and properties of every kind owned and used by the seller in the Pelham Dialysis business whether tangible, intangible, real, personal or mixed located on premises, including but not limited to the fixed assets and inventories. Pelham assets shall include tangible property, equipment, inventories, office and medical supplies, leasehold improvements, goodwill, software, intellectual property, prepaid expense, and applicable deposits, assigned contracts, books and records, policy and procedures, phone numbers, and transferable license and permits.
Excluded Assets:	All cash and cash equivalents or accounts receivable related to the Pelham Dialysis business, any claims or causes of action of IHS of New York, Inc. and those unrelated to the dialysis business.
Assumed Liabilities:	Those obligations arising on or after the closing date
Excluded Liabilities:	All of the debts, obligations or liabilities of IHS of New York, Inc. arising and whatever type of nature, accrued or un accrued, fixed or contingent. All excluded liabilities listed in asset purchase agreement.

Bill of Sale, Assignment and Assumption, and Transfer of Business Ownership Agreement

The applicant has submitted a draft Bill of Sale, Assignment and Assumption, and Transfer of Business Ownership Agreement, which is summarized as follows:

Seller:	IHS of New York, Inc.
Purchaser:	USRC Pelham, LLC d/b/a U.S. Renal Care Pelham Parkway Dialysis
Acquired Assets:	Seller's right, title and interest in all of the assets and properties of every kind owned and used by the seller in the Pelham Dialysis business whether tangible, intangible, real, personal or mixed located on premises, including but not limited to the fixed assets and inventories. Pelham assets shall include tangible property, equipment, inventories, office and medical supplies, leasehold improvements, goodwill, software, intellectual property, prepaid expense, and applicable deposits, assigned contracts, books and records, policy and procedures, phone numbers, and transferable license and permits.
Excluded Assets:	All cash and cash equivalents or accounts receivable related to the Pelham Dialysis business, any claims or causes of action of IHS of New York, Inc. and those unrelated to the dialysis business.
Assumed Liabilities:	Those obligations arising on or after the closing date
Excluded Liabilities:	All of the debts, obligations or liabilities of IHS of New York, Inc. arising and whatever type of nature, accrued or un accrued, fixed or contingent. All excluded liabilities listed in asset purchase agreement.
Purchase Price:	\$8,489,485
Payment:	\$8,489,485 has been deposited into escrow, 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 Medicaid audit liabilities or assessments.

Administrative Services Agreement

The applicant has submitted a draft administrative services agreement with U.S. Renal Care, Inc. which is summarized as follows:

Provider/Administrator:	U.S. Renal Care, Inc.
Licensed Operator:	USRC Pelham, LLC d/b/a U.S. Renal Care Pelham Parkway Dialysis
Services Provided:	Provide for the benefit of and subject to direction of Licensed Operator: personnel training, monitoring & oversight; assist with compensation, benefits, personnel policies, and performance standards for administrative and ancillary health care staff; provide at cost of the Licensed Operator, supplies and inventory necessary for the clinic's operation under national and regional supply agreements; assist operator in purchasing drugs and medical supplies; patient billing and collecting functions; assist in report preparation and filing, contract negotiations, and reimbursement-related audits; assist in maintenance of financial records; manage clinics funds: obtain appropriate commercial insurance coverage; recommend operational policies and procedures to establish appropriate standards of patient care; provide access to selected proprietary software; at the Licensed Operator's cost furnish all medical and office equipment, furniture and fixtures, maintain equipment and make necessary capital improvements; assist in development of quality assurance and review programs, maintain licenses and permits including



	Medicaid and Medicare provider numbers; assist in compliance with all applicable federal, state rules and regulations.
Term:	10 years
Fee:	\$835,884 per year

While U.S. Renal Care, Inc. will provide all of the above services, the Licensed Operator retains ultimate authority, responsibility, and control for the operations. There is a common ownership between the applicant and the administrative services agreement provider as shown on BFA Attachment B, post-closing organization chart.

#### Lease Rental Agreement

The applicant has submitted an executed Lease Rental Agreement for the proposed site, the terms of which are summarized below:

Date:	July 1, 2009
Lessor:	Albert Einstein College of Medicine of Yeshiva University
Lessee:	IHS of New York, Inc. d/b/a Pelham Parkway Dialysis Center
Premises:	10,052 sq. ft. located at 1400 Pelham Parkway South, Bronx, NY 10416 (Ground Floor of a building known as Van Etten)
Term:	June 30, 2019. The applicant will remain at the current location and will begin planning 24 months prior to the expiration date.
Payment:	\$362,285 per year (\$36.04 per sq. ft.), with 3% increase per year.
Provisions:	Included in the lease.

The applicant has provided an affidavit stating the lease is an arm's length transaction. The applicant has submitted letters from two NYS licensed realtors attesting to the reasonableness of the per square foot rental rate.

#### Assignment and Assumption Agreement

The applicant has submitted a draft Assignment and Assumption Agreement for the assignment of the lease associated with this project as shown below:

Assignor:	IHS of New York, Inc.
Assignee:	USRC Pelham, LLC d/b/a U.S. Renal Care Pelham Parkway Dialysis
Lessee Assigned:	10,052 sq. ft. located at 1400 Pelham Parkway South, Bronx, NY 10416 (Ground Floor of a building known as Van Etten)
Lease Terms/Payment and Provisions:	No change

#### Operating Budget

The applicant has submitted the current year and the facility's year one and three operating budgets, in 2015 dollars, as shown below:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
<b>Revenue</b>			
Medicaid Fee For Service	\$662,247	\$662,247	\$662,247
Medicaid Managed Care	402,390	402,390	402,390
Medicare Fee For Service	3,583,536	3,583,536	3,583,536
Medicare Managed Care	513,739	513,739	513,739
Commercial MC	<u>4,143,181</u>	<u>4,183,181</u>	<u>4,253,088</u>
Total Revenues	\$9,305,093	\$9,345,093	\$9,415,000
<b>Expenses</b>			
Operating	\$8,112,910	\$7,480,946	\$7,654,837
Capital	<u>364,538</u>	<u>377,272</u>	<u>384,757</u>
Total	\$8,477,448	\$7,858,218	\$8,039,594

Net Income	\$827,645	\$1,486,875	\$1,375,406
Utilization (Treatments)	28,315	26,950	26,950
Cost Per Treatment	\$299.40	\$291.59	\$298.32

Total operating expenses are expected to decline in Year One as the facility starts to take advantage of favorable contracts negotiated by U.S. Renal Care (USRC). The applicant has indicated other areas where savings may occur including the following:

- Employing USRC's staffing model to increase operating efficiencies along with reducing overtime;
- Favorable pricing on employing benefits as the employees transition over to USRC's benefits; and
- Favorable pricing on Med/Surg and Non-Med/Surg supplies which are under national contracts.

The breakeven point is expected at about 84% or 22,662 visits in the first year.

Utilization by payor source for the current year, and years one and three subsequent the ownership change, are summarized below:

Payor:	Current Year		Year One		Year Three	
	Visits	%	Visits	%	Visits	%
Medicaid-FFS	2,621	9.26%	2,621	9.73%	2,621	9.73%
Medicaid-MC	1,450	5.12%	1,450	5.38%	1,450	5.38%
Medicare-FFS	14,594	51.54%	14,594	54.15%	14,594	54.15%
Medicare-MC	1,949	6.88%	1,949	7.23%	1,949	7.23%
Commercial-MC	<u>7,701</u>	<u>27.20%</u>	<u>6,336</u>	<u>23.51%</u>	<u>6,336</u>	<u>23.51%</u>
Total	28,315	100%	26,950	100.0%	26,950	100.0%

Utilization and revenue assumptions are based on the current and proposed operator's experience. They expect a 5% decrease in total visits with a slight increase (approximately 1.5%) in the commercial per visit rate. These assumptions appear reasonable.

#### Capability and Feasibility

The facility's \$8,489,485 purchase price has been deposited into an escrow account by U.S. Renal Care Inc. There are no project costs associated with this application.

Working capital requirements are estimated at \$1,309,703 based upon two months of Year One expense. The applicant will provide more than half or \$772,703 from the member's equity. The remaining \$537,000 will be satisfied through a 4-year promissory note at 8% interest rate from U.S. Renal Care Inc. BFA Attachments C and D are U.S. Renal Care, Inc. and Subsidiaries' 2012 - 2013 and 2013 - 2014 certified financial statements, respectively. BFA Attachment E is the internal financial statements of IHS Dialysis, Inc. as of December 31, 2014. Review of the above financial summaries shows the members have sufficient liquid resources to meet the project's equity and working capital requirements.

BFA Attachment F is USRC Pelham's Pro Forma Balance Sheet which shows operations will start off with \$12,127,836 in equity. Assets include \$5,771,634 in goodwill and other intangible assets which are not liquid resources, nor recognized for Medicaid reimbursement purposes. Thus, the positive net asset position is \$6,356,202.

BFA Attachment G is the 2012 - 2014 internal financial summaries for the three New York dialysis centers associated with U.S. Renal Care, Inc. (USRC Williamsville, Inc., USRC Tonawanda, Inc. and USRC Cheektowaga, Inc.) which show each had a positive working capital position, positive net asset position and positive operating surpluses.

Review of U.S. Renal Care, Inc.'s 2012 - 2013 and 2013 - 2014 certified financial statements (BFA Attachments C and D, respectively) indicates that during this time period U.S. Renal Inc. maintained a positive working capital and net asset position, and in 2014 generated net income of \$48,652,324. During 2012 and 2013 US Renal Care incurred losses of \$14,541,186 and \$428,918 respectively. These losses were due to three one-time transactions: a change in private equity ownership (\$20.8 million), acquisition

of ASA Inc. (\$20.1 million), and early retirement of debt transaction expenses (\$5.3 million). These transactions are not expected to reoccur and should result in at least breakeven position for the company.

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.**

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## Attachments

HSP Attachment A	Star Rating Profile for all U.S. Renal Care facilities
BFA Attachment A	Pre-Closing Organizational Chart
BFA Attachment B	Post-Closing Organizational Chart
BFA Attachment C	U.S. Renal Care, Inc. and Subsidiaries 2012 - 2013 Financial Statements
BFA Attachment D	U.S. Renal Care, Inc. and Subsidiaries 2013 - 2014 Financial Statements
BFA Attachment E	IHS Dialysis, Inc. Internal Financial Statements as of December 31, 2014
BFA Attachment F	Pro-Forma Balance Sheet
BFA Attachment G	Affiliated New York Dialysis Centers- Internal Financial Summary, 2012 to 2014

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 10<sup>th</sup> day of December, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish USRC Pelham, LLC as the new operator of the facility located at 1400 Pelham Parkway South, Bronx that is currently operated as Pelham Parkway Dialysis Center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

151070 E

FACILITY/APPLICANT:

USRC Pelham, LLC d/b/a U.S. Renal Care  
Pelham Parkway Dialysis

APPROVAL CONTINGENT UPON:

1. Submission of an executed Administrative Service Agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed Assignment and Assumption Agreement associated with the lease rental agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
4. Submission of an executed Medical Director Agreement, acceptable to the Department. [HSP]
5. Submission of a photocopy of USRC Pelham LLC's executed Amended and Restated Operating Agreement, acceptable to the Department. [CSL]
6. Submission of a photocopy of the applicant's updated Medical Director Agreement, acceptable to the Department. [CSL]
7. Submission of a photocopy of the executed Administrative Service Agreement between US Renal Care, Inc. and USRC Pelham, LLC, acceptable to the Department. [CSL]
8. Submission of a photocopy of the executed Amended and Restated Agreement of USRC Appalachian Partners, LCC, acceptable to the Department. [CSL]
9. Submission of a photocopy of the non-redacted Contribution and Asset Purchase Agreement between IHS Dialysis LLC, IHS of New York, Inc., US Renal Care LLC and USRC Alliance, LLC, acceptable to the Department. [CSL]
10. Submission of a photocopy of the IHS Dialysis bylaws, amending Article 1.9, acceptable to the Department. [CSL]
11. Submission of a photocopy document proof of the implementation of the IHS Dialysis by-laws, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



Project # 151072-E  
USRC South Flushing, LLC  
d/b/a U.S. Renal Care South Flushing Dialysis

**Program:** Diagnostic and Treatment Center    **County:** Queens  
**Purpose:** Establishment    **Acknowledged:** February 27, 2015

**Executive Summary**

**Description**

USRC South Flushing, LLC d/b/a U.S. Renal Care South Flushing Dialysis (USRC South), a New York limited liability company, requests approval to be established as the new operator of Queens Dialysis at South Flushing (Queens Dialysis), a 25-station Article 28 diagnostic and treatment center located in leased space at 71-12 Park Avenue, Flushing (Queens County). The dialysis clinic is currently operated as an extension clinic of Pelham Parkway Dialysis Center.

USRC South is a wholly owned subsidiary of USRC Appalachian Partners, LLC, a Delaware limited liability company 70% owned by USRC Alliance, LLC and 30% owned by IHS Dialysis, Inc., the current operator of the clinic. On November 12, 2014, IHS Dialysis, Inc., IHS of New York, Inc., and the members of USRC South Flushing, LLC entered into a Contribution and Asset Purchase Agreement (CAPA) for the transfer of all rights, title, interests in, and assets and properties used in and for the benefit of the Queens Dialysis facility. The purchase price for the operations is \$5,227,409. Closure will be effectuated upon approval of this CON by the Public Health and Health Planning Council (PHHPC).

CON #151070, to establish USRC Pelham, LLC as the new operator of the main site located at 1400 Pelham Parkway South, Bronx, is being reviewed concurrently.

Ownership after approval will be:

USRC South Flushing, LLC d/b/a U.S. Renal Care South Flushing Dialysis		
Member		%
USRC Appalachian Partners, LLC		100%
USRC Alliance, LLC	70%	
U.S. Renal Care, Inc. (100%)		
IHS Dialysis Inc.	30%	
Nelson Shaller (100%)		

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

The proposed transfer of ownership will not result in any changes in services being provided. Therefore no Need review will be presented.

**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 \$5,227,409 acquisition price will be provided by U.S. Renal Care Inc., an indirect owner of USRC South Flushing, LLC. There are no project costs associated with this application. The operating budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$7,902,098	\$7,957,099
Expenses	6,552,951	6,720,626
Net Income	\$1,349,147	\$1,236,472

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of an executed Administrative Service Agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed Assignment and Assumption Agreement associated with the lease rental agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
4. Submission of an executed Medical Director Agreement, acceptable to the Department. [HSP]
5. Submission of a photocopy of the executed Amended and Restated Articles of Organization of USRC South Flushing, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of USRC South Flushing LLC's executed Amended and Restated Operating Agreement, acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant's updated Medical Director Agreement, acceptable to the Department. [CSL]
8. Submission of a photocopy of the executed Amended and Restated Company Agreement of USRC Appalachian Partners, LLC, acceptable to the Department. [CSL]
9. Submission of a photocopy of the executed Administrative Service Agreement between US Renal Care, Inc. and USRC South Flushing, LLC, acceptable to the Department. [CSL]
10. Submission of a photocopy of the executed Amended and Restated Agreement of USRC Appalachian Partners, LCC, acceptable to the Department. [CSL]
11. Submission of a photocopy of the non-redacted Contribution and Asset Purchase Agreement between IHS Dialysis LLC, IHS of New York, Inc., US Renal Care LLC and USRC Alliance, LLC, acceptable to the Department. [CSL]
12. Submission of a photocopy of the IHS Dialysis bylaws, amending Article 1.9, acceptable to the Department. [CSL]
13. Submission of a photocopy document proof of the implementation of the IHS Dialysis by-laws, acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date

**December 10, 2015**

## Program Analysis

### Project Proposal

Establish USRC South Flushing, LLC, d/b/a U.S. Renal Care South Flushing Dialysis Center, as the new operator of Queens Dialysis at South Flushing. Queens Dialysis at South Flushing, a 25-station dialysis center located at 71-12 Park Avenue in Flushing (Queens County), is an extension clinic currently operated by IHS of New York, Inc. There are no significant programmatic changes anticipated as a result of this proposal.

### Character and Competence

USRC South Flushing, LLC is a wholly owned subsidiary of USRC Appalachian Partners, LLC. The members of USRC Appalachian Partners, LLC are as follows:

<b>Name</b>	<b>Interest</b>	<b>Work History/Affiliation</b>
<b>USRC Alliance, LLC*</b>	<b>70%</b>	
Stephen M. Pirri		President of USRC Manager of USRC Appalachian Partners, LLC <i>President of USRC South Flushing, LLC</i>
Thomas L. Weinberg		Attorney licensed to practice in Texas & Washington. Executive VP, General Counsel of USRC Manager of USRC Appalachian Partners, LLC
James D. Shelton		Executive Vice President, CFO of USRC Manager of USRC Appalachian Partners, LLC; <i>Vice President &amp; Treasurer of USRC South Flushing, LLC</i>
David P. Eldridge		Senior Vice President, Finance of USRC <i>Secretary of USRC South Flushing, LLC</i>
<b>IHS Dialysis, Inc.</b>	<b>30%</b>	
Nelson C. Shaller		CEO of IHS Dialysis, Inc. for over 25 years. Manager of USRC Appalachian Partners, LLC Indirect owner of USRC South Flushing, LLC

\* Please refer to **HSP Attachment A** for Post-Closing Organizational Chart for USRC South Flushing, LLC

Disclosure information was similarly submitted and reviewed for the Medical Director, Bruce A. Garrison, MD. Dr. Garrison is board-certified in internal medicine. He has over 25 years of experience in private practice and has held varied hospital and academic appointments. Dr. Garrison has also served as the Medical Director of IHS Queens Dialysis Center and IHS Queens Dialysis at South Flushing since 1998 and 2003, respectively.

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.



*The officers of U.S. Renal Care (USRC) disclosed that U.S. Renal Care acquired Dialysis Corporation (DCA) in June 2010, however, in February 2010, DCA had been subpoenaed by the Office of the Inspector General of the U.S. Department of Health and Human Service (OIG) with respect to an investigation relating to alleged improper Medicare and Medicaid billing at certain DCA clinics. The investigation related to two qui tam suits with the Department of Justice and private litigants. USRC denied any impropriety or liability by DCA in both cases, but determined that it should settle those cases with the government and private litigants which it did in May 2013 and September 2014. Both suits have been dismissed. No non-DCA facilities owned by USRC were involved in the investigations and litigation.*

*On September 16, 2015, the Department issued a Stipulation and Order and a \$2,000 fine to IHS of New York, Inc. as operator of Pelham Parkway Dialysis Center for violations of Article 28 of the Public Health Law and Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (10 NYCRR). As detailed in a Statement of Deficiencies issued in July 2015, the Department discovered that, on or about May 27, 2015, Nelson Shaller, the owner of 100% of shares of stock in IHS of New York, Inc., had transferred all of the shares he owned to another corporation (in which he is also 100% owner) without prior approval from the Public Health and Health Planning Council. The Department directed that an appropriate Certificate of Need Application be filed and that documentation be submitted (within Department specified time frames) to complete the application process. In addition to the monetary penalty, the Department has directed IHS/Mr. Shaller to submit quarterly reports for a one year period which detail the steps taken to implement the corrective action plan and to assess their effectiveness.*

#### Star Ratings - Dialysis Facility Compare (DFC)

The Centers for Medicare and Medicaid Services (CMS) and the University of Michigan Kidney Epidemiology and Cost Center have developed a methodology for rating each dialysis facility which may be found on the Dialysis Facility Compare website as a "Star Rating." The method produces a final score of 1 to 5 stars that is based on quality measures currently reported on the DFC website. A facility with a 5-star rating has quality of care that is considered 'much above average' compared to other dialysis facilities. A 1- or 2- star rating does not mean that a facility provides poor care. It indicates only that measured outcomes were below average compared to other facilities. Star ratings on DFC are updated annually to align with the annual updates of the standardized measures.

The DFC website currently reports on 9 measures of quality of care for facilities. The measures used in the star rating are grouped into three domains by using a statistical method known as Factor Analysis. Each domain contains measures that are most correlated. This allows CMS to weight the domains rather than individual measures in the final score, limiting the possibility of overweighting quality measures that assess similar qualities of facility care.

To calculate the star rating for a facility, each domain score between 0 and 100 averages the normalized scores for measures within that domain. A final score between 0 and 100 is obtained by averaging the three domain scores (or two domain scores for peritoneal dialysis-only facilities). Finally, to recognize high and low performances, facilities receive stars in the following way:

- Facilities with the top 10% final scores were given a star rating of 5.
- Facilities with the next 20% highest final scores were given 4 stars.
- Facilities within the middle 40% of final scores were given 3 stars.
- Facilities with the next 20% lowest final scores were given 2 stars.
- Facilities with the bottom 10% final scores were given 1 star.

U.S. Renal Care, Inc. operates over 190 dialysis centers, three of which are located in New York State. As USRC will have a 70% membership interest in USRC South Flushing, LLC, the Star Ratings profile for USRCs New York facilities is provided below. (A comprehensive list of Star Ratings for all USRC-operated centers is provided in **HSP Attachment B**). IHS Dialysis, Inc. has a 30% membership interest in USRC South Flushing, LLC and operates 5 dialysis centers, two of which are located in the state of New York and are the subject of this application (and the companion CON 151070).

The Star Ratings profile for IHS facilities is provided below.

<b>Facilities operated by U.S. Renal Care Facilities (in New York)</b>	<i>(Refer to HSP Attachment B for a list of all of USRCs dialysis centers.)</i>	
USRC Cheektowaga, Inc. d/b/a U.S. Renal Care Cheektowaga Dialysis	2875 Union Rd Suite 13 C/D Cheektowaga NY 14225	★ ★ ● ● ●
USRC Williamsville, Inc. d/b/a U.S. Renal Care Williamsville Dialysis	7964 Transit Rd Suite 8-A Williamsville NY 14221	★ ★ ★ ● ●
USRC Tonawanda, Inc. d/b/a U.S. Renal Care Tonawanda Dialysis	3161 Eggert Rd Tonawanda NY 14150	★ ★ ★ ★ ●
<b>Facilities operated by IHS Dialysis, Inc.</b>		
IHS Queens Dialysis d/b/a Queens Dialysis at South Flushing <i>*acquired entity/subject of this CON</i>	71-12 Park Avenue Flushing, NY 11365	★ ★ ★ ★ ●
Pelham Parkway Dialysis Center <i>*subject of companion CON 151070</i>	1400 Pelham Parkway South Bldg. 5 Dialysis Center Bronx, NY 10461	★ ★ ★ ★ ●
Advanced Directions Renal Care Center	1250 Hancock St., Ste. 204-N-B Quincy, MA 02169	Facility Information Not Available
Quincy Center Dialysis	1250 Hancock St., Ste 110N Quincy, MA 02169	★ ★ ● ● ●
Advanced Kidney Therapies	3200 Cobb Galleria Pkwy, Ste. 228 Atlanta, GA 30339	Facility Information Not Available

*(Information retrieved from <http://www.medicare.gov/dialysisfacilitycompare/#> on 11/3/15)*

Recommendation

**From a programmatic perspective, contingent approval is recommended.**

## Financial Analysis

### Contribution and Asset Purchase Agreement

The applicant has submitted an executed Contribution and Asset Purchase Agreement for the change in ownership of the operations related to Queens Dialysis. The agreement will become effectuated upon PHHPC approval of this CON. The terms of the agreement are summarized below:

Date:	November 12, 2014
Seller:	IHS Dialysis, Inc., and IHS of New York, Inc.
Purchaser:	USRC South Flushing, LLC d/b/a U.S. Renal Care South Flushing Dialysis; USRC Appalachian Partners, LLC ; USRC Alliance, LLC; U.S. Renal Care Inc.
Acquired Assets:	Seller's right, title and interest in all of the assets and properties of every kind owned and used by the seller in the Pelham Dialysis business whether tangible, intangible, real, personal or mixed located on premises, including but not limited to the fixed assets and inventories. Pelham assets shall include tangible property, equipment, inventories, office and medical supplies, leasehold improvements, goodwill, software, intellectual property, prepaid expense, and applicable deposits, assigned contracts, books and records, policy and procedures, phone numbers, and transferable license and permits.

Excluded Assets:	All cash and cash equivalents or accounts receivable related to the Pelham Dialysis business, any claims or causes of action of IHS of New York, Inc. and those unrelated to the dialysis business.
Assumed Liabilities:	Those obligations arising on or after the closing date
Excluded Liabilities:	All of the debts, obligations or liabilities of IHS of New York, Inc. arising and whatever type of nature, accrued or un accrued, fixed or contingent. All excluded liabilities listed in asset purchase agreement.

Bill of Sale, Assignment and Assumption, and Transfer of Business Ownership Agreement

The applicant has submitted a draft Bill of Sale, Assignment and Assumption and Transfer of Business Ownership Agreement, which is summarized as follows:

Seller:	IHS of New York, Inc.
Purchaser:	USRC South Flushing, LLC d/b/a U.S. Renal Care South Flushing Dialysis
Acquired Assets:	Seller's right, title and interest in all of the assets and properties of every kind owned and used by the seller in the Queens Dialysis business whether tangible, intangible, real, personal or mixed located on the premises, including but not limited to the fixed assets and inventories. Queens assets shall include tangible property, equipment, inventories, office and medical supplies, leasehold improvements, goodwill, software, Queens intellectual property, prepaid expense, and applicable deposits, assigned contracts, books and records, policies and procedures, phone numbers, and transferable license and permits.
Excluded Assets:	All cash and cash equivalents or accounts receivable related to the Queens Dialysis business, any claims or causes of action of IHS of New York, Inc. and those unrelated to the Queens Dialysis business.
Assumed Liabilities:	Those obligations arising on or after the closing date
Excluded Liabilities:	All of the debts, obligations or liabilities of IHS of NY Inc. arising and whatever type of nature, accrued or un-accrued, fixed or contingent. All excluded liabilities listed in asset purchase agreement.
Purchase Price:	\$ 5,227,409
Payment:	\$ 5,227,409 already deposited into escrow and 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 ability and responsibility. Currently, the facility has no outstanding Medicaid audit liabilities or assessments.

Administrative Services Agreement

The applicant has submitted a draft Administrative Services Agreement with U.S. Renal Care Inc., which is summarized as follows:

Provider/Administrator:	U.S. Renal Care Inc.
Licensed Operator:	USRC South Flushing, LLC d/b/a U.S. Renal Care South Flushing Dialysis
Services Provided:	Provide for the benefit of and subject to direction of License Operator: personnel training, monitoring & oversight; assist with compensation, benefits, personnel policies, and performance standards for administrative and ancillary health care staff; provide at cost of the Licensed Operator, supplies and inventory necessary for the clinic's operation under national and regional supply agreements; assist in purchasing drugs and medical supplies; patient billing/collecting

	functions; assist in report preparation and filing, contract negotiations, and reimbursement related audits; assist in maintenance of financial records; manage clinics funds: obtain appropriate commercial insurance coverage; recommend operational policies and procedures to establish appropriate standards of patient care; provide access to selected proprietary software; at the Licensed Operator's cost furnish all medical and office equipment, furniture and fixtures, maintain equipment and make necessary capital improvements; assist in development of quality assurance and review programs, maintain licenses and permits including Medicaid and Medicare provider numbers; assist in compliance with all applicable federal, state rules and regulations.
Term:	10 years
Fee:	\$722,496 per year

While U.S. Renal Care Inc. will provide all of the above services, the Licensed Operator retains ultimate authority, responsibility, and control for the operations.

There is a common ownership between the applicant and the administrative services agreement provider as shown on BFA Attachment B post- closing organization chart.

#### Lease Rental Agreement

The applicant has submitted an executed Lease Rental Agreement for the proposed site, the terms of which are summarized below:

Date:	December 10, 1999
Lessor:	Atria 2000 Associates, LLC
Lessee:	IHS of New York, Inc. d/b/a Queens Dialysis at South Flushing
Premises:	10,000 sq. ft. located at 71-12 Park Ave, Flushing, NY 11365 (Ground Floor)
Term:	Through to July 31, 2018. The applicant will remain at the current location and will begin planning 24 months prior to the lease expiration date.
Payment:	\$344,359 per year (\$34.43 per sq. ft.), with 3% increase per year.
Provisions:	Maintenance, utilities and real estate taxes, insurance.

The applicant has provided an affidavit stating the lease is an arm's length transaction. The applicant has submitted letters from t NYS licensed realtors attesting to the reasonableness of the per square foot rental rate.

#### Assignment and Assumption Agreement

The applicant has submitted a draft Assignment and Assumption Agreement for the assignment of the lease associated with this project, as shown below:

Assignor:	IHS of New York, Inc.
Assignee:	USRC South Flushing, LLC d/b/a U.S. Renal Care South Flushing Dialysis
Lessee Assigned:	Lease associated with premises located at 71-12 Park Ave, Flushing, NY 11365 (Ground Floor)
Lease Terms/Payments and Provisions:	No change

## Operating Budget

The applicant has submitted the current year and the facility's year one and three operating budgets, in 2015 dollars, as shown below:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
<b>Revenue</b>			
Medicaid Fee For Service	\$194,160	\$194,160	\$194,160
Medicaid Managed Care	262,352	262,352	262,352
Medicare Fee For Service	4,126,347	4,126,347	4,126,347
Medicare Managed Care	989,235	989,235	989,235
Commercial MC	2,308,430	2,328,430	2,383,430
Private Pay	<u>1,574</u>	<u>1,574</u>	<u>1,575</u>
<b>Total Revenues</b>	<b>\$7,882,098</b>	<b>\$7,902,098</b>	<b>\$7,957,099</b>
<b>Expenses</b>			
Operating	\$6,507,863	\$6,081,490	\$6,237,448
Capital	<u>432,860</u>	<u>471,461</u>	<u>483,178</u>
<b>Total</b>	<b>\$6,940,723</b>	<b>\$6,552,951</b>	<b>\$6,720,626</b>
<b>Net Income</b>	<b>\$941,375</b>	<b>\$1,349,147</b>	<b>\$1,236,472</b>
Utilization (Treatments)	23,837	24,564	24,564
Cost Per Treatment	\$291.17	\$266.77	\$273.60

Total operating expenses are expected to decline in the 1<sup>st</sup> and 3<sup>rd</sup> years after the change in ownership, as the facility starts to take advantage of favorable contracts negotiated by U.S. Renal Care (USRC). The applicant has indicated other areas where savings may occur including the following:

- Employing USRC's staffing model to increase operating efficiencies along with reducing overtime;
- Favorable pricing on employing benefits as the employees transition over to USRC's benefits; and
- Favorable pricing on Med/Surg and Non-Med/Surg supplies which are under national contracts.

The breakeven utilization is expected at 83% or 20,370 visits in the first year.

Utilization by payor source for the current year, and years one and three subsequent the ownership change, are summarized below:

<u>Payor</u>	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Medicaid-FFS	715	3.00%	715	2.91%	715	2.91%
Medicaid-MC	777	3.26%	777	3.16%	777	3.16%
Medicare-FFS	15,223	63.86%	15,223	61.98%	15,223	61.98%
Medicare-MC	3,421	14.35%	3,421	13.93%	3,421	13.93%
Commercial-MC	3,695	15.50%	4,422	18.00%	4,422	18.00%
Private Pay/Other	<u>6</u>	<u>0.03%</u>	<u>6</u>	<u>0.02%</u>	<u>6</u>	<u>0.02%</u>
<b>Total</b>	<b>23,837</b>	<b>100.0%</b>	<b>24,564</b>	<b>100.0%</b>	<b>24,564</b>	<b>100.0%</b>

Utilization and revenue assumptions are based on the current and proposed operator's experience that projects a small increase in visits of approximately 1.5% while overall per visit revenue will be roughly flat. These assumptions appear reasonable.

## Capability and Feasibility

The facility's \$5,227,409 purchase price has been deposited into an escrow account by U.S. Renal Care Inc. There are no project costs associated with this application.

Working capital requirements are estimated at \$1,092,159 based upon two months of year one expense. The applicant will provide more than half or \$646,159 from the member's equity. The remaining \$446,000

will be satisfied through a 4-year promissory note at 8% interest rate from U.S. Renal Care Inc. BFA Attachments C and D are U.S. Renal Care, Inc. and Subsidiaries' 2012 - 2013 and 2013 - 2014 certified financial statements, respectively. BFA Attachment E is the internal financial statements of IHS Dialysis, Inc. as of December 31, 2014. Review of the above financial summaries shows the members have sufficient liquid resources to meet the equity and working capital requirements of this project.

BFA Attachment F is USRC South's Pro Forma Balance Sheet which shows operations will start off with \$7,467,727 in equity. Assets include \$3,815,680 in goodwill and other intangible assets which are not liquid resources, nor recognized for Medicaid reimbursement purposes. Thus, the positive net asset position is \$3,652,047.

BFA Attachment G is the 2012 - 2014 internal financial summaries for the three New York dialysis centers associated with U.S. Renal Care, Inc. (USRC Williamsville, Inc., USRC Tonawanda, Inc. and USRC Cheektowaga, Inc.) which show each had a positive working capital position, positive net asset position and positive operating surpluses.

Review of U.S. Renal Care, Inc.'s 2012 - 2013 and 2013 - 2014 certified financial statements (BFA Attachments C and D, respectively) indicates that during this time period U.S. Renal Inc. maintained a positive working capital and net asset position, and in 2014 generated net income of \$48,652,324. During 2012 and 2013 US Renal Care incurred losses of \$14,541,186 and \$428,918 respectively. These losses were due to three one-time transactions: a change in private equity ownership (\$20.8 million), acquisition of ASA Inc. (\$20.1 million), and early retirement of debt transaction expenses (\$5.3 million). These transactions are not expected to reoccur and should result in at least breakeven position for the company.

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

Recommendation

**From a financial perspective, contingent approval is recommended.**

## Attachments

HSP Attachment A	<i>Post-Closing Organizational Chart for USRC South Flushing, LLC</i>
HSP Attachment B	<i>Star Rating Profile for all U.S. Renal Care facilities</i>
BFA Attachment A	Pre-Closing Organizational Chart
BFA Attachment B	Post-Closing Organizational Chart
BFA Attachment C	U.S. Renal Care, Inc. and Subsidiaries 2012 - 2013 Financial Statements
BFA Attachment D	U.S. Renal Care, Inc. and Subsidiaries 2013 - 2014 Financial Statements
BFA Attachment E	IHS Dialysis, Inc. Internal Financial Statements as of December 31, 2014
BFA Attachment F	Pro-Forma Balance Sheet
BFA Attachment G	Affiliated New York Dialysis Centers Internal Financial Summary 2012 to 2014.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 10<sup>th</sup> day of December, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish USRC South Flushing, LLC as the new operator of the facility located at 71-12 Park Avenue, Flushing which is currently operated as an extension clinic of the Pelham Parkway Dialysis Center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

151072 E

USRC South Flushing, LLC d/b/a U.S. Renal  
Care South Flushing Dialysis

APPROVAL CONTINGENT UPON:

1. Submission of an executed Administrative Service Agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed Assignment and Assumption Agreement associated with the lease rental agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
4. Submission of an executed Medical Director Agreement, acceptable to the Department. [HSP]
5. Submission of a photocopy of the executed Amended and Restated Articles of Organization of USRC South Flushing, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of USRC South Flushing LLC's executed Amended and Restated Operating Agreement, acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant's updated Medical Director Agreement, acceptable to the Department. [CSL]
8. Submission of a photocopy of the executed Amended and Restated Company Agreement of USRC Appalachian Partners, LLC, acceptable to the Department. [CSL]
9. Submission of a photocopy of the executed Administrative Service Agreement between US Renal Care, Inc. and USRC South Flushing, LLC, acceptable to the Department. [CSL]
10. Submission of a photocopy of the executed Amended and Restated Agreement of USRC Appalachian Partners, LCC, acceptable to the Department. [CSL]
11. Submission of a photocopy of the non-redacted Contribution and Asset Purchase Agreement between IHS Dialysis LLC, IHS of New York, Inc., US Renal Care LLC and USRC Alliance, LLC, acceptable to the Department. [CSL]
12. Submission of a photocopy of the IHS Dialysis bylaws, amending Article 1.9, acceptable to the Department. [CSL]
13. Submission of a photocopy document proof of the implementation of the IHS Dialysis by-laws, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.





**Project # 152058-B**  
**Associates of Fulton County, LLC d/b/a Gloversville Dialysis  
 Center**

**Program:** Diagnostic and Treatment Center    **County:** Fulton  
**Purpose:** Establishment and Construction    **Acknowledged:** July 30, 2015

**Executive Summary**

**Description**

Associates of Fulton County, LLC, d/b/a Gloversville Dialysis Center, an existing New York State limited liability company, requests approval to establish and construct a 13-station freestanding Article 28 chronic renal dialysis center. The clinic will be housed in 7,000 square feet of leased space located at 99 E. State Street, Gloversville (Fulton County). The space will be leased from Nathan Littauer Hospital Association and Gloversville Extended Care and Nursing Home Co., Inc. pursuant to a proposed lease agreement. The center will provide outpatient hemodialysis and home peritoneal dialysis training and support services.

The proposed members of Gloversville Dialysis Center and their ownership percentages are:

<u>Member</u>	<u>Interest</u>
American Renal Associates, LLC	51%
Dr. Soo Gil Lee	24.5%
Dr. Hani L. Shahata	24.5%

OPCHSM Recommendation  
 Contingent Approval

**Need Summary**

The applicant plans to provide outpatient hemodialysis, as well as home peritoneal dialysis training and support. There is a current need for 12 chronic dialysis stations in Fulton County. Currently there are no existing facilities in the planning area. This 13-station facility will absorb all current and projected need for Fulton County. This project will not have any negative impact on any other facilities in the service area.

**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 total project costs of \$1,359,254 will be met with \$150,000 of members' equity and an intercompany loan from ARA for \$1,209,254 at an interest rate of 5% with a five-year term. The budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,545,358	\$1,797,490
Expenses	<u>\$1,444,212</u>	<u>\$1,581,624</u>
Net Income	\$101,146	\$215,866

## 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. A copy of the check must be uploaded into NYSECON. [PMU]
2. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
3. Submission of an executed intercompany loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed intercompany working capital loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
7. Submission of an executed Medical Director Agreement, acceptable to the Department. [HSP]
8. Submission of a photocopy of the applicant's Operating Agreement, amending Article V (5), acceptable to the Department. [CSL]
9. Submission of proof of the applicant's site control of a leased space at Nathan Littauer Hospital, located at 99 East State Street, Gloversville, NY, 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]
6. The applicant is required to submit Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction for record purposes. [AES]
7. Construction must start on or before May 1, 2016 and must be completed by July 30, 2016, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Part 710.10(a), if construction is not started on or before the start date, this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AES]

Council Action Date

**December 10, 2015**

# Need Analysis

## Project Description

Associates of Fulton County, LLC d/b/a Gloversville Dialysis Center, an existing limited liability company, seeks approval to construct a 13-station chronic renal dialysis center in the City of Gloversville (Fulton County). The proposed center will be located in leased space at Nathan Littauer Hospital, 99 E. State Street, Gloversville, NY 12078

## Analysis

The primary service area for the new facility is Fulton County, which had a population estimate of 54,105 for 2014. The percentage of the population aged 65 and over was 18.1%. The nonwhite population percentage was 4.4%. These are the two population groups that are most in need of end stage renal dialysis service. Comparisons between Fulton County and New York State are listed below.

	<u>County</u>	<u>State</u>
Ages 65 and Over:	18.1%	14.7%
Nonwhite:	4.4%	30.6%

Source: U.S. Census 2015

## 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 projected 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 is 15 patients per week, per station [(2.5 x 6) x 52 weeks] equals 780 treatments per year. Assuming a 90% utilization rate based on the expected number of annual treatments (780), the projected number of annual treatments per free standing station is 702. The estimated average number of dialysis procedures each patient receives from a free standing station per year is 156.
- One hospital based station represents 499 projected treatments per year. This is based on the expectation that the hospital will operate 2.0 patient shifts per day at 6 days per week, which is 12 patients per week, per station [(2 x 6) x 52 weeks] equals 624 treatments per year. Assuming an 80% utilization rate based on the expected number of annual treatments (624), the projected number of annual treatments per hospital station is 499. One hospital based station can treat 3 patients per year.
- Per Department policy, hospital-based stations may treat fewer patients per year than do free-standing stations. Statewide, the majority of stations are free-standing, as are the majority of applications for new stations. As such, when calculating the need for additional stations, the Department bases the projected need on establishing additional free-standing stations.
- There are currently no free-standing chronic dialysis stations operating in Fulton County and none in pipeline.
- Based upon DOH methodology, there is a need for 12 free standing stations in Fulton County in 2015.

## Need Projections

	2014	2015	2019	
	Total Patients Treated	Total Residents Treated	Projected Total Patients Treated	Projected Residents Treated
	0	50	0	57
Free-standing Stations Needed	0	12	0	13
Existing Stations	0	0	0	0
Pipeline Stations	0	0	0	0
Total stations, including this CON	13	13	13	13
Unmet Need, With this Approval	-13	-1	-13	0

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 2014.

**Conclusion**

Currently there is a need for 12 stations in Fulton County. The requested new facility will have 13 stations, Projections show the facility will utilize the additional station by 2019. Furthermore, the project will not have any negative impact on other facilities since no others exist in the service area.

**Recommendation**

**From a need perspective, approval is recommended.**

<b>Program Analysis</b>
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**Project Proposal**

Associates of Fulton County, LLC d/b/a Gloversville Dialysis Center, requests approval to establish and construct a 13-station chronic renal dialysis center in leased space at Nathan Littauer Hospital located at 99 E. State Street in Gloversville (Fulton County).

<b>Proposed Operator</b>	Associates of Fulton County, LLC
<b>Doing Business As</b>	Gloversville Dialysis Center
<b>Site Address</b>	99 E. State Street Gloversville, NY (Fulton County)
<b>Approved Services</b>	Chronic Renal Dialysis (13 Stations) and Home Peritoneal Dialysis Training & Support
<b>Shifts/Hours/Schedule</b>	Initially, the Center will be open Monday, Wednesday & Friday and, after the census has grown, hours will be Monday through Saturday 6:00 am to 5:00 pm
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	8.0 FTEs increasing by 1.0 FTEs by the third year of operation
<b>Medical Director(s)</b>	Soo Gil Lee, MD
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Expected to be provided by St. Mary's Healthcare 12.86 miles / 19 minutes

**Character and Competence**

The proposed members/managers of Associates of Fulton County, LLC are:

<u><b>Name</b></u>	<u><b>Percent</b></u>
<b>American Renal Associates, LLC (ARA)</b>	51.0%
American Renal Holdings, Inc. (100%)	
Joseph A. Carlucci ( <i>officer</i> )	
John J. McDonough ( <i>officer</i> )	
Syed T. Kamal ( <i>officer</i> )	
<b>Hani L. Shahata, M.D.</b>	24.5%
<b>Soo Gill Lee, M.D.</b>	24.5%

Dr. Soo Gill Lee will serve as the center's Medical Director. He is a local physician, board-certified in Internal Medicine and Pediatrics and board-eligible in Nephrology. Dr. Lee completed his Nephrology Fellowship at the University of Rochester Medical Center and has admitting privileges at St. Mary's Healthcare in Amsterdam and consulting privileges at Nathan Littauer and Ellis Hospitals. He has experience with the renal population and is committed to ensuring the facility provides safe and timely dialysis services.

American Renal Associates is a subsidiary of American Renal Holdings, Inc. (ARH), a national provider of kidney dialysis services which owns and operates over 150 dialysis clinics treating nearly 9,000 patients in 23 states and the District of Columbia.

Mr. Kamal and Mr. Carlucci are Founders of American Renal Associates, LLC (ARA). Currently, Mr. Kamal serves as President and Mr. Carlucci is the Chief Executive Officer. Mr. McDonough is Executive Vice President and Chief Operating Officer of the corporation.

The Company's operating model is based on shared ownership of its facilities with nephrologists practicing in the area served by the clinic. Each clinic is maintained as a separate joint venture in which the ARH owns a controlling interest.

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.

#### Star Ratings - Dialysis Facility Compare (DFC)

The Centers for Medicare and Medicaid Services (CMS) and the University of Michigan Kidney Epidemiology and Cost Center have developed a methodology for rating each dialysis facility which may be found on the Dialysis Facility Compare website as a "Star Rating." The method produces a final score that is based on quality measures currently reported on the DFC website ranging from 1 to 5 stars. A facility with a 5-star rating has quality of care that is considered 'much above average' compared to other dialysis facilities. A 1- or 2- star rating does not mean that a facility provides poor care. It only indicates that measured outcomes were below average compared to other facilities. Star ratings on DFC are updated annually to align with the annual updates of the standardized measures.

The DFC website currently reports on 9 measures of quality of care for facilities. The measures used in the star rating are grouped into three domains by using a statistical method known as Factor Analysis. Each domain contains measures that are most correlated. This allows CMS to weight the domains rather than individual measures in the final score, limiting the possibility of overweighting quality measures that assess similar qualities of facility care.

To calculate the star rating for a facility, each domain score is obtained by averaging the normalized scores for measures within that domain. A final score between 0 and 100 is obtained by averaging the three domain scores (or two domain scores for peritoneal dialysis-only facilities). Finally, to recognize high and low performances, facilities receive stars in the following way:

- Facilities with the top 10% final scores were given a star rating of 5.
- Facilities with the next 20% highest final scores were given 4 stars.
- Facilities within the middle 40% of final scores were given 3 stars.
- Facilities with the next 20% lowest final scores were given 2 stars.
- Facilities with the bottom 10% final scores were given 1 star.

The applicant disclosed interest in the following New York State facilities, who's Star Ratings are provided below:

Facility Name	Address	Star Rating
Elizabethtown Center, LLC	75 Park Street, Elizabethtown, NY	★ ★ ● ● ●
Hastings Hemodialysis Center	20 Fourth Street, Malone, NY	★ ★ ★ ● ●
Mohawk Valley Dialysis Center, Inc.	115 Towne Square Drive, Amsterdam, NY	★ ★ ● ● ●
H.K. Freedman Renal Center	91 Plaza Boulevard, Plattsburgh, NY	★ ★ ★ ● ●
Massena Dialysis Center	290 Main Street, Massena, NY	★ ★ ★ ★ ★

Information retrieved on 10/15/15 from <http://www.medicare.gov/DialysisFacilityCompare/search.html>

The Star Ratings of all ARA-associated facilities are provided in **HSP Attachment A - Dialysis Compare/STAR Ratings for ARA-affiliated facilities.**

Recommendation

**From a programmatic perspective, contingent approval is recommended.**

## Financial Analysis

### Total Project Costs and Financing

Total project costs are estimated at \$1,359,254 broken down as follows:

New Construction	\$674,175
Design Contingency	6,008
Construction Contingency	33,375
Fixed Equipment	176,000
Planning Consultant Fees	11,250
Architect/Engineering Fees	46,725
Movable Equipment	402,297
CON Fee	2,000
Additional Processing Fee	<u>7,424</u>
Total Project Cost	<u>\$1,359,254</u>

Project costs are based on a construction start date of May 1, 2016, with a three-month construction period.

The applicant's financing plan appears as follows:

Equity	\$150,000
Intercompany loan from ARA (5% interest, 5-year term)	<u>\$1,209,254</u>
Total	<u>\$1,359,254</u>

Equity of \$150,000 will be provided from the proposed members of Gloversville Dialysis Center as follows: \$76,500 from ARA, \$36,750 from Dr. Soo Gil Lee and \$36,750 from Dr. Hani L. Shahata. A letter of interest has been provided by ARA attesting to the intercompany loan at the terms noted above.

### Lease Rental Agreement

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

Premises:	7,000 sq. ft. in a building located at 99 East State Street, Gloversville, NY
Lessor:	Nathan Littauer Hospital Association and Gloversville Extended Care and Nursing Home Co., Inc.
Lessee:	Associates of Fulton County, LLC
Term:	10 years with 2 additional 5-year renewal terms
Rental:	Year 1 \$105,000 (\$15 per sq. ft.) with a 2% annual increase for years 2-10.
Provisions:	The lessee shall be responsible for maintenance, utilities and real estate taxes.

The applicant indicated that the lease arrangement is an arm's length lease. The applicant submitted letters from two NYS licensed realtors attesting to the reasonableness of the per square foot rental.

### Administrative Services Agreement

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

Date:	April 30, 2015
Facility:	Associates of Fulton County, LLC
Contractor:	American Renal Management, LLC
Services Provided:	Establish and supervise all administrative and accounting functions. Develop, maintain and update all training programs for all personnel. Recommend, analyze and manage the purchases and leases of equipment, supplies and materials needed to operate the dialysis center. Prepare all financial reports, annual budgets and reimbursement requests for the facility. Apply for and maintain the name of the company and all state, federal and local licenses, permits and other required documentation. Provide drafts of all necessary manuals, policies and procedures. Advise and assist the Company in negotiating and maintaining contracts and arrangements with individuals or entities. Provide maintenance and repairs services for the facility, procure insurance policies on the company's behalf and market the dialysis center's services.
Term:	3 years with unlimited 3-year renewal terms
Fee:	\$110,000 per year (\$9,166.67 per month)

While American Renal Management, LLC will be providing all of the above services, the Facility retains ultimate control in all of the final decisions associated with the services through their managing committee which is comprised of the CEO, COO and President of American Renal Associates, Dr. Soo Gil Lee and Dr. Hani L. Shahata.

### Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, for Years One and Three of operations, summarized below:

	Per <u>Treatment</u>	<u>Year One</u>	Per <u>Treatment</u>	<u>Year Three</u>
Revenues:				
Medicare FFS	\$245.01	\$849,947	\$245.01	\$808,870
Commercial FFS	\$843.95	<u>\$695,411</u>	\$844.33	<u>\$988,620</u>
Total Revenues		\$1,545,358		\$1,797,490
Expenses:				
Operating	\$251.13	\$1,078,096	\$246.15	\$1,229,016
Capital	\$85.28	<u>\$366,116</u>	\$70.62	<u>\$352,608</u>
Total Expenses		\$1,444,212		\$1,581,624

Net Income/(Loss)	\$101,146	\$215,866
Utilization (Treatments)	4,293	4,993
Cost Per Treatment	\$336.41	\$316.77

Utilization broken down by payor source during years one and three is as follows:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Treatments</u>	<u>%</u>	<u>Treatments</u>	<u>%</u>
Medicare FFS	3,469	80.81%	4,035	80.81%
Commercial FFS	<u>824</u>	<u>19.19%</u>	<u>958</u>	<u>19.19%</u>
Total	4,293	100.00%	4,993	100.00%

The following is noted with respect to the submitted budget:

- Medicare revenues are estimated based upon Medicare's CY2015 ESRD bundled payment rate (currently at a base rate of \$239.43 before case-mix and other adjustments). Revenue assumptions include consideration of the reimbursement rates paid to other area ESRD clinic providers by payor, and a review of ARA's total company reimbursement rates by payor for fiscal year ending 2014.
- Expense assumptions are based upon comparable industry standards for operating a dialysis center, incorporating staffing pattern requirements, supplies and equipment needs for a 13-station facility.
- Utilization assumptions are based on the historical experience of other dialysis facilities in the Fulton County area. Fulton County currently has a significant unmet need for renal dialysis stations. The Center anticipates that it will operate eleven hours per day and six days per week.

The budget is reasonable.

#### Capability and Feasibility

Project costs of \$1,359,254 will be met via members' equity of \$150,000 with the remaining \$1,209,254 financed through an intercompany loan as stated above.

Working capital requirements are estimated at \$263,604, which is equivalent to two months of Year Three expenses. The applicant indicated they will provide \$300,000 toward working capital, which is approximately \$36,396 over the estimated working capital requirement. The members will provide \$150,000 in equity equivalent to their ownership percentages. ARA's equity portion is \$76,500 and will come from operations. Dr. Soo Gil Lee's and Dr. Hani L. Shahata's equity portions are \$36,750 each and will come from each doctor's personal net worth. The remaining \$150,000 will be provided through an intercompany loan from ARA at an interest rate of 5% with a five-year term. A letter of interest has been provided by ARA for the proposed working capital financing.

BFA Attachment B is the personal net worth statements of Dr. Lee and Dr. Shahata, which indicates sufficient liquid resources to cover both equity requirements associated with this CON.

BFA Attachment C is the 2013 and 2014 certified financial statements of ARH, which indicates sufficient liquid assets to cover ARA's portion of the equity requirements and both intercompany loans associated with this CON. ARH maintained positive working capital, positive net assets and had an averaged net income of \$3,674,000 for the period shown. In 2013 ARH suffered a net loss of \$8,927,000. The net loss is due to the following transactions: ARH modified their stock options resulting in a \$19.7 million non-cash expense (Patient Care for \$2.8 million and General/Administrative for \$16.9 million). Also, ARH raised new debt of \$640 million and paid off ARH's and ARAH's debt. Paying off the old debt resulted in \$12.8 million pre-payment penalty recorded as a loss on early extinguishment of debt, and required ARH to write off discounts and related fees of \$8.7 million which was a non-cash charge to loss on early extinguishment of debt. This transaction was done in order to benefit from lower interest rates.

- Annual transaction: ARH makes an annual distribution to the minority shareholders of all their clinics. This distribution, labeled "Net Income attributable to non-controlling interests," amounted to \$62,074,000 in 2013.



As a result of the above noted transactions, ARH made a return of capital to its parent company ARAH resulting in a significant drop in equity for 2013. Adding back the impact of the above noted transactions increases net income from operations by approximately \$41.2 million. The net income attributable to American Renal Holdings, Inc. for 2013 would have been approximately \$32,273,000 without these transactions, as shown below:

	<u>Income Statements</u>	
	<u>Original 2013</u>	<u>Adjusted 2013</u>
Operating Income	\$110,852,000	\$110,852,000
Interest expense, net	(\$39,396,000)	(\$19,696,000)
Loss on early extinguishment of debt	(\$21,503,000)	(\$3,000)
Income before taxes	\$49,953,000	\$91,153,000
Income tax (benefit) expense	<u>(\$3,194,000)</u>	<u>(\$3,194,000)</u>
Net Income	\$53,147,000	\$94,347,000
Less: Net income attributable to non-controlling interests	<u>(\$62,074,000)</u>	<u>(\$62,074,000)</u>
Net (loss) income attributable to ARH	(\$8,927,000)	\$32,273,000

BFA Attachment D is the pro forma balance sheet of Gloversville Dialysis Center as of the first day of operation, which indicates the operation will begin with a positive members' equity of \$300,000.

The submitted budget indicates a net income \$101,146 and \$215,866 for Year One and Year Three, respectively. Revenues are based on the current reimbursement methodologies for dialysis services. The submitted budget is reasonable.

BFA Attachment E is a summary of the financial statements for all the NYS dialysis centers ARA operates as majority shareholder, which shows the following:

- Mohawk Valley Dialysis Center, Inc.: The facility generated both average positive working capital and net asset positions, and an average net income of \$854,203 for the 1/1/2013 - 8/31/2015 period.
- Plattsburgh Dialysis, LLC: The facility generated both positive working capital and net asset positions, and an average net income of \$2,724,640 for the 1/1/2014 - 8/31/2015 period.
- Elizabethtown Center, LLC: The facility generated an average negative working capital position, an average positive net asset position, and an average net loss of \$45,450 for the 4/1/2014 - 8/31/2015 period. The loss and negative working capital are attributable to startup costs. ARA will provide the facility with needed working capital funds.
- Plattsburgh Associates, LLC d/b/a Hastings Hemodialysis Center: The facility generated both average negative working capital and net asset positions, and an average net loss of \$284,531 for the 8/1/2014 - 8/31/2015 period. The negative working capital is attributable to startup costs and ARA will provide the facility with the needed working capital funds. The loss is due to the facility experiencing lower than historical census rates. ARA is determining what is causing this lower census and will develop a plan to fix the issue.
- Massena Center, LLC: The facility generated both negative working capital and net asset positions, and a net loss of \$347,645 for the 1/1/2015 - 8/31/2015 period. The loss and negative working capital are attributable to startup costs. ARA will provide the facility with needed working capital funds.

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

Recommendation

**From a financial perspective, contingent approval is recommended.**

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## Attachments

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- HSP Attachment A Dialysis Compare/STAR Ratings for ARA-affiliated facilities
- BFA Attachment A Organizational Chart
- BFA Attachment B Net Worth Statements of the members' of Gloversville Dialysis Center
- BFA Attachment C Certified Financial Statements of American Renal Holdings Inc. and Subsidiaries for 2013-2014
- BFA Attachment D Pro-Forma Balance Sheet of Gloversville Dialysis Center
- BFA Attachment E Summary of the financial statements of the ARA affiliated NYS Dialysis Centers.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 10<sup>th</sup> day of December, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a 13-station dialysis facility in leased space at Nathan Littauer Hospital located at 99 E. State Street, Gloversville, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

152058 B

FACILITY/APPLICANT:

Associates of Fulton County, LLC  
d/b/a Gloversville Dialysis Center

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. A copy of the check must be uploaded into NYSECON. [PMU]
2. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
3. Submission of an executed intercompany loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed intercompany working capital loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
7. Submission of an executed Medical Director Agreement, acceptable to the Department. [HSP]
8. Submission of a photocopy of the applicant's Operating Agreement, amending Article V (5), acceptable to the Department. [CSL]
9. Submission of proof of the applicant's site control of a leased space at Nathan Littauer Hospital, located at 99 East State Street, Gloversville, NY, 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]
6. The applicant is required to submit Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction for record purposes. [AES]
7. Construction must start on or before May 1, 2016 and must be completed by July 30, 2016, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Part 710.10(a), if construction is not started on or before the start date, this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AES]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



**Project # 152118-E  
DSI Dutchess Dialysis, Inc.**

**Program:** Diagnostic and Treatment Center    **County:** Dutchess  
**Purpose:** Establishment    **Acknowledged:** August 28, 2015

**Executive Summary**

**Description**

DSI Dutchess Dialysis, Inc. (DSI Dutchess), a 24-station Article 28 end stage renal dialysis (ESRD) center located at 2585 South Road, Poughkeepsie (Dutchess County), is requesting a change in their indirect ownership at the great-grandparent level. There will be no change in services.

The current great-grandparent is Dialysis Parent, LLC and the proposed great-grandparent is U.S. Renal Care, Inc. BFA Attachments A and B show the pre and post-closing organizational charts. The change in ownership will be accomplished through a contribution agreement between Rangers Renal Holdings LP, the ultimate parent of U.S. Renal Care, Inc., and Dialysis Parent, LLC. The transaction will occur through a two-step process detailed below:

1. Rangers Renal Holdings LP entered into a Contribution Agreement with Dialysis Parent, LLC, sole member of Dialysis HoldCo, LLC, whereby Dialysis Parent, LLC contributes 100% equity interest in Dialysis HoldCo, LLC to Rangers Renal Holdings LP for 44.7% of their limited partnership interests.
2. Rangers Renal Holdings, LP then contributes its equity interests in Dialysis HoldCo, LLC to U.S. Renal Care, Inc., thus making U.S. Renal Care, Inc. the owner of both of Dialysis HoldCo, LLC's subsidiaries: Dialysis Newco, Inc. d/b/a DSI Renal (direct subsidiary) and DSI Dutchess Dialysis, Inc. (indirect subsidiary).

U.S. Renal Care, Inc. currently has indirect ownership in the following three New York ESRD centers located in Erie County: USRC Cheektowaga, Inc. d/b/a U.S. Renal Care Cheektowaga Dialysis (13 stations); USRC Tonawanda, Inc. d/b/a U.S. Renal Care Tonawanda Dialysis (13 stations); and USRC Williamsville, Inc. d/b/a U.S. Renal Care Williamsville Dialysis (13 stations).

**OPCHSM Recommendation**  
Contingent Approval

**Need Summary**  
There will be no Need review for this project.

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

**Financial Summary**  
This is a non-cash transaction. The purchase price associated with this project is 44.7% limited partnership interest in Rangers Renal.

There are no project costs associated with this application. The operating budget is as follows:

Revenues	\$17,218,522
Expenses	<u>\$10,634,672</u>
Net Income	\$6,583,850

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of an executed Administrative Services Agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed Medical Director Agreement, acceptable to the Department. [HSP]
3. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
4. Submission of a photocopy of each shareholder in the applicant's Pre-Closing Organizational Chart for DSI Dutchess Dialysis, Inc., acceptable to the Department. [CSL]
5. Submission of a photocopy of the applicant's executed Administrative Service Agreement, acceptable to the Department. [CSL]
6. Submission of a photocopy of proof of adoption of DSI Dutchess's By-laws, acceptable to the Department. [CSL]
7. Submission of photocopy of a sample unit certificate, acceptable to the Department. [CSL]
8. Submission of a photocopy of an executed Contribution Agreement between Rangers Renal Holdings, LP and Dialysis Parent LLC, acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date

**December 10, 2015**

## Program Analysis

### Project Proposal

DSI Dutchess Dialysis, Inc. requests approval for a transfer of indirect ownership interest at the great-grandparent level. There are no other anticipated programmatic changes or effects on the actual operation of the facility.

The current great-grandparent of DSI Dutchess Dialysis is Dialysis Parent, LLC. The proposed great-grandparent is U.S. Renal Care, Inc. (USRC). The change in ownership will be accomplished through a contribution agreement between Rangers Renal Holdings LP, the ultimate parent of U.S. Renal Care, Inc., and Dialysis Parent, LLC.

### Character and Competence

DSI Dutchess Dialysis, Inc. is a wholly owned subsidiary of Dialysis Newco, Inc. Dialysis Newco, Inc. is wholly owned by Dialysis HoldCo, LLC, which, in turn, is wholly owned by U.S. Renal Care, Inc. The officers/directors are as follows:

<b>Name</b>	<b>Work History/Affiliation</b>
Stephen M. Pirri	President of Dialysis Holdco, LLC; Dialysis NewCo, Inc; and <i>DSI Dutchess Dialysis, Inc.</i>
Thomas L. Weinberg	Attorney licensed to practice in Texas & Washington. Chairman of Dialysis Holdco, LLC; Dialysis NewCo, Inc.; and <i>DSI Dutchess Dialysis, Inc.</i>
James D. Shelton	Vice President & Treasurer of Dialysis Holdco, LLC; Dialysis NewCo, Inc.; and <i>DSI Dutchess Dialysis, Inc.</i>
David P. Eldridge	Secretary of Dialysis Holdco, LLC; Dialysis NewCo, Inc.; and <i>DSI Dutchess Dialysis, Inc.</i>

Character and Competence Reviews were conducted based on Department policy (dated May 1, 2009) previously presented to the Public Health Council.

Disclosure information was similarly submitted and reviewed for the Medical Director. Dr. Paul Feldman, is board certified in Internal Medicine and Nephrology. Dr. Feldman completed his nephrology fellowship at New York Weill Cornell Medical Center and has hospital affiliations with Vassar Brothers Medical Center, St. Francis Hospital and St. Luke's Cornwall Hospital.

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

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



Star Ratings - Dialysis Facility Compare (DFC)

The Centers for Medicare and Medicaid Services (CMS) and the University of Michigan Kidney Epidemiology and Cost Center have developed a methodology for rating each dialysis facility which may be found on the Dialysis Facility Compare website as a “Star Rating.” The method produces a final score that is based on quality measures currently reported on the DFC website and ranges from 1 to 5 stars. A facility with a 5-star rating has quality of care that is considered 'much above average' compared to other dialysis facilities. A 1- or 2- star rating does not mean that a facility provides poor care. It indicates only that measured outcomes were below average compared to other facilities. Star ratings on DFC are updated annually to align with the annual updates of the standardized measures.

The DFC website currently reports on 9 measures of quality of care for facilities. The measures used in the star rating are grouped into three domains by using a statistical method known as Factor Analysis. Each domain contains measures that are most correlated. This allows CMS to weight the domains rather than individual measures in the final score, limiting the possibility of overweighting quality measures that assess similar qualities of facility care.

To calculate the star rating for a facility, each domain score between 0 and 100 averages the normalized scores for measures within that domain. A final score between 0 and 100 is obtained by averaging the three domain scores (or two domain scores for peritoneal dialysis-only facilities). Finally, to recognize high and low performances, facilities receive stars in the following way:

- Facilities with the top 10% final scores were given a star rating of 5.
- Facilities with the next 20% highest final scores were given 4 stars.
- Facilities within the middle 40% of final scores were given 3 stars.
- Facilities with the next 20% lowest final scores were given 2 stars.
- Facilities with the bottom 10% final scores were given 1 star.

U.S. Renal Care, Inc. operates over 190 dialysis centers, three of which are located in New York State. USRCs New York facilities are noted below (and a comprehensive list of Star Ratings for all USRC-operated centers is provided in **HSP Attachment A**).

<b>Facilities operated by U.S. Renal Care Facilities (in NY)</b>	<i>(Refer to HSP Attachment A for a list of all of USRCs centers)</i>	
USRC Cheektowaga, Inc. d/b/a U.S. Renal Care Cheektowaga Dialysis	2875 Union Rd Suite 13 C/D Cheetowaga NY 14225	★ ★ ● ● ●
USRC Williamsville, Inc. d/b/a U.S. Renal Care Williamsville Dialysis	7964 Transit Rd Suite 8-A Williamsville NY 14221	★ ★ ★ ● ●
USRC Tonawanda, Inc. d/b/a U.S. Renal Care Tonawanda Dialysis	3161 Eggert Rd Tonawanda NY 14150	★ ★ ★ ★ ●

(Information retrieved from <http://www.medicare.gov/dialysisfacilitycompare/#> on 11/3/15)

Recommendation

**From a programmatic perspective, contingent approval is recommended.**

## Financial Analysis

### Contribution Agreement

The applicant has submitted an executed Contribution Agreement for the change in the great-grandparent level indirect ownership of DSI Dutchess. The agreement will become effective upon Public Health and Health Planning Council approval of this CON. The terms of the agreement are summarized below:

Date:	August 21, 2015
Seller:	Dialysis Parent, LLC
Purchaser:	Rangers Renal Holdings, LP
Acquired Assets:	100% membership interest in Dialysis HoldCo, LLC
Assumed Liabilities:	Those obligations arising on or after the closing date
Payment:	44.7% limited partnership interests in Ranger Renal Holdings, LP

The contribution agreement is a non-cash transaction. Concurrent with the consummation of the Contribution Agreement transactions, all of the current and outstanding long-term indebtedness of U.S. Renal Care, Inc. and DSI Renal will be paid off with funds from a new credit facility between a consortium of banks and U.S. Renal Care, Inc.

### Administrative Services Agreement

The applicant has submitted a draft Administrative Services Agreement with Dialysis Newco, Inc. d/b/a/ DSI Renal, summarized below:

Provider/Administrator:	Dialysis Newco, Inc. d/b/a DSI Renal
Licensed Operator:	DSI Dutchess Dialysis, Inc.
Services Provided:	Provide for the benefit of and subject to direction of License Operator: personnel training, monitoring & oversight; assist with compensation, benefits, personnel policies, and performance standards for administrative and ancillary health care staff; provide at cost of the Licensed Operator, supplies and inventory necessary for the clinic's operation under national and regional supply agreements; assist in purchasing drugs and medical supplies; patient billing/collecting functions; assist in report preparation and filing, contract negotiations, and reimbursement related audits; assist in maintenance of financial records; manage clinics funds: obtain appropriate commercial insurance coverage; recommend operational policies and procedures to establish appropriate standards of patient care; provide access to selected proprietary software; at the Licensed Operator's cost furnish all medical and office equipment, furniture and fixtures, maintain equipment and make necessary capital improvements; assist in development of quality assurance and review programs, maintain licenses and permits including Medicaid and Medicare provider numbers; assist in compliance with all applicable federal, state rules and regulations.
Term:	10 years
Fee:	\$1,800,000 per year (\$150,000 monthly)

While Dialysis Newco, Inc. d/b/a DSI Renal will provide all of the above services, the Licensed Operator retains ultimate authority, responsibility, and control for the operations.

There is common ownership between the applicant and the Administrative Services Agreement provider as shown on BFA Attachment B post-closing organization chart.

## Operating Budget

The applicant has submitted operating budgets, in 2015 dollars, as shown below:

	<u>Current Year</u>		<u>Year One</u>	
	<u>Per Treatment</u>	<u>Total</u>	<u>Per Treatment</u>	<u>Total</u>
<u>Revenues:</u>				
Medicaid FFS	\$277	\$417,677	\$275	\$452,276
Medicaid MC	\$187	\$301,460	\$185	\$326,109
Medicare FFS	\$298	\$6,617,173	\$298	\$7,145,260
Medicare MC	\$317	\$749,579	\$300	\$775,580
Commercial FFS	\$2,605	\$7,702,549	\$2,589	\$8,355,964
Private Pay/Other	\$408	<u>\$152,975</u>	\$397	<u>\$163,333</u>
Total Revenue		\$15,941,413		\$17,218,522
<u>Expenses:</u>				
Operating	\$233	\$7,307,899	\$281	\$9,549,239
Capital	<u>\$29</u>	<u>\$900,224</u>	<u>\$32</u>	<u>\$1,085,433</u>
Total Expenses	\$262	\$8,208,123	\$313	\$10,634,672
Net Income:		\$7,733,290		\$6,583,850
Treatments:		31,318		33,929

Utilization by payor source for the current year and year one subsequent to the ownership change are summarized below:

<u>Payor</u>	<u>Current Year</u>	<u>Year One</u>
Medicaid FFS	4.81%	4.85%
Medicaid MC	5.15%	5.19%
Medicare FFS	70.96%	70.74%
Medicare MC	7.56%	7.61%
Commercial FFS	9.44%	9.51%
Private Pay/Other	1.20%	1.21%
Charity	<u>0.88%</u>	<u>0.89%</u>
Total	100.00%	100.00%

Utilization, expense and revenue assumptions are based on the current operator's experience. The assumptions are reasonable.

### Capability and Feasibility

There are no project costs associated with this application. The purchase price is 44.7% limited partnership interests in Ranger Renal Holdings, LP and is a non-cash transaction.

The submitted budget indicates a net income \$6,583,850 for the first year subsequent to the change in ownership. Revenues are based on the current reimbursement methodologies for dialysis services. The submitted budget is reasonable.

BFA Attachment C is the 2013 through August 2015 unaudited financial statements of DSI Dutchess Dialysis Inc., which indicate the entity maintained positive working capital and net asset positions, and generated an average net income of \$3,463,973 for the period. The applicant has clarified that the intercompany line item on the DSI Dutchess consolidated balance sheet, which is shown as a negative number, reflects monies held by Dialysis Newco, Inc., as administrator, on behalf of the operator, DSI Dutchess.

BFA Attachment D is the 2012 - 2014 certified financial statements of U.S. Renal Care, Inc., which indicate the entity maintained positive working capital and net asset positions for the period, and generated net income of \$48,652,324 in 2014. During 2012 and 2013, US Renal Care, Inc. incurred losses of \$14,541,186 and \$428,918 respectively. The losses were due to three one-time transactions: a change in private equity ownership (\$20.8 million), acquisition of ASA Inc. (\$20.1 million), and early retirement of debt transaction expenses (\$5.3 million). These transactions are not expected to reoccur and should result in at least breakeven position for the company.

BFA Attachment E is the 2012 - 2014 internal financial summaries for the three New York dialysis centers associated with U.S. Renal Care, Inc. (USRC Williamsville, Inc., USRC Tonawanda, Inc. and USRC Cheektowaga, Inc.), which show each had a positive working capital position, positive net asset position and positive operating surpluses.

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

Recommendation

**From a financial perspective, contingent approval is recommended.**

## Attachments

HSP Attachment A	Star Rating Profile for all U.S. Renal Care facilities
BFA Attachment A	Pre-Closing Organizational Chart
BFA Attachment B	Post-Closing Organizational Chart
BFA Attachment C	DSI Dutchess Dialysis, Inc. 2013 - August 2015 unaudited financial statements
BFA Attachment D	U.S. Renal Care, Inc. and Subsidiaries 2012 - 2014 Financial Statements
BFA Attachment E	Affiliated New York Dialysis Centers Internal Financial Summary 2012-2014

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 10<sup>th</sup> day of December, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application for a change in the indirect ownership at the great-grandparent level of DSI Dutchess Dialysis, Inc., and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

152118 E

DSI Dutchess Dialysis, Inc.

APPROVAL CONTINGENT UPON:

1. Submission of an executed Administrative Services Agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed Medical Director Agreement, acceptable to the Department. [HSP]
3. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
4. Submission of a photocopy of each shareholder in the applicant's Pre-Closing Organizational Chart for DSI Dutchess Dialysis, Inc., acceptable to the Department. [CSL]
5. Submission of a photocopy of the applicant's executed Administrative Service Agreement, acceptable to the Department. [CSL]
6. Submission of a photocopy of proof of adoption of DSI Dutchess's By-laws, acceptable to the Department. [CSL]
7. Submission of photocopy of a sample unit certificate, acceptable to the Department. [CSL]
8. Submission of a photocopy of an executed Contribution Agreement between Rangers Renal Holdings, LP and Dialysis Parent LLC, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



**Project # 152172-E**  
**Harriman Partners, LLC d/b/a Premier Dialysis Center**

**Program:** Diagnostic and Treatment Center    **County:** Orange  
**Purpose:** Establishment    **Acknowledged:** September 18, 2015

**Executive Summary**

**Description**

Harriman Partners, LLC d/b/a Premier Dialysis Center (the Center), an existing New York limited liability company, requests approval to become the new operator of Regional Kidney Center, a 20-station chronic renal dialysis center currently operated as an extension clinic of Good Samaritan Hospital of Suffern. The center is located in leased space at 33-1 Route 17M, Suffern (Orange County). On September 14, 2015, Good Samaritan Hospital of Suffern and Harriman Partners, LLC entered into an Asset Purchase Agreement for the sale and acquisition of the dialysis clinic, to be effectuated upon Public Health and Health Planning Council (PHHPC) approval of this application. The applicant intends to extend employment offers to all existing Regional Kidney Center staff.

The members of Harriman Partners, LLC are as follows:

American Renal Associates LLC	60.0%
Rachel Colvin, MD	32.0%
Sergio Obligado, MD	8.0%

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

The facility will not be changing any services or stations. No change in capacity is expected.

There are currently 77 stations in the county and there is need for 7 more.

**Program Summary**

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

**Financial Summary**

There are no project costs associated with this application.

The purchase price for the acquisition of the dialysis center is \$800,000 (held in escrow) plus the value of on-site inventory on the closing date.

Budget:	Revenues:	\$3,846,148
	Expenses:	<u>3,654,690</u>
	Gain:	\$190,458

## 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. A copy of the check must be uploaded into NYSE-CON whenmailed. [PMU]
2. Submission of an executed intercompany loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed intercompany working capital loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed assignment and assumption of the building lease, acceptable to the Department of Health. [BFA]
5. Submission of an executed equipment lease agreement, acceptable to the Department of Health. [BFA]
6. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
7. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
8. Submission of an executed Medical Director Agreement, acceptable to the Department. [HSP]
9. Submission of the executed restated Articles of Organization of Harriman Partners, LLC. [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

**December 10, 2015**



## Need Analysis

### 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 projected 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 is 15 patients per week, per station [(2.5 x 6) x 52 weeks] equals 780 treatments per year. Assuming a 90% utilization rate based on the expected number of annual treatments (780), the projected number of annual treatments per free standing station is 702. The estimated average number of dialysis procedures each patient receives from a free standing station per year is 156.
- One hospital based station represents 499 projected treatments per year. This is based on the expectation that the hospital will operate 2.0 patient shifts per day at 6 days per week, which is 12 patients per week, per station [(2 x 6) x 52 weeks] equals 624 treatments per year. Assuming an 80% utilization rate based on the expected number of annual treatments (624), the projected number of annual treatments per hospital station is 499. One hospital based station can treat 3 patients per year.
- Per Department policy, hospital-based stations may treat fewer patients per year than do free-standing stations. Statewide, the majority of stations are free-standing, as are the majority of applications for new stations. As such, when calculating the need for additional stations, the Department bases the projected need on establishing additional free-standing stations.

### Conclusion

There is no expected change in stations or facility utilization and therefore no expected impact on need.

### Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Project Proposal

Harriman Partners, LLC d/b/a Premier Dialysis Center seeks approval to become the new operator of Regional Kidney Center, an existing twenty (20) station Article 28 chronic renal dialysis center located at 33-1 Route 17M in Harriman (Orange County) that is currently operated as an extension clinic of Good Samaritan Hospital of Suffern.

<b>Proposed Operator</b>	Harriman Partners, LLC
<b>Doing Business As</b>	Premier Dialysis Center
<b>Site Address</b>	33-1 Route 17M Harriman, NY (Orange County)
<b>Approved Services</b>	Chronic Renal Dialysis (20 Stations) and Home Peritoneal Dialysis Training & Support
<b>Shifts/Hours/Schedule</b>	Monday, Wednesday & Friday from 6am – 10pm and Tuesday, Thursday & Saturday from 6 am – 5 pm
<b>Staffing (1st Year / 3rd Year)</b>	Increasing by 0.5 FTEs in the first year, and by 2.0 FTEs in the third year of operation
<b>Medical Director(s)</b>	Rachel Colvin, MD
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Expected to be provided by Orange Regional Medical Center 17.96 miles /21 minutes

## Character and Competence

The proposed members/managers of Harrison Partners, LLC are:

<u>Name</u>	<u>Percent</u>
<b>American Renal Associates, LLC (ARA)</b>	60.0%
American Renal Holdings, Inc. (100%)	
Joseph A. Carlucci (officer)	
John J. McDonough (officer)	
Syed T. Kamal (officer)	
<b>Rachel Colvin, D.O.</b>	32.0%
<b>Sergio Obligado, M.D.</b>	8.0%

Dr. Rachel Colvin will serve as the center's Medical Director. She is board certified in Internal Medicine and Nephrology and has extensive experience with the renal population. Dr. Colvin completed her nephrology fellowship at the North Shore University Hospital and is presently the Medical Director of Good Samaritan Hospital's inpatient dialysis unit/Regional Kidney Center/Weiss Renal Center. Since 2008, she has been a shareholder in Horizon Family Medical Center and, prior to that, she owned her own practice between from 2003-2008. Her current hospital affiliations include Orange Regional Medical Center, St. Anthony's Community Hospital, and Good Samaritan Hospital (Suffern).

Dr. Obligado is a Nephrologist who has worked in a health care facility for over seven years. He has experience delivering care in both outpatient dialysis units and inpatient hospital setting.

American Renal Associates is a subsidiary of American Renal Holdings, Inc. (ARH), a national provider of kidney dialysis services which owns and operates over 150 dialysis clinics treating nearly 9,000 patients in 23 states and the District of Columbia.

Mr. Kamal and Mr. Carlucci are Founders of American Renal Associates, LLC (ARA). Currently, Mr. Kamal serves as President and Mr. Carlucci is the Chief Executive Officer. Mr. McDonough is Executive Vice President and Chief Operating Officer of the corporation.

The Company's operating model is based on shared ownership of its facilities with nephrologists practicing in the area served by the clinic. Each clinic is maintained as a separate joint venture in which the ARH owns a controlling interest.

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.

### Star Ratings - Dialysis Facility Compare (DFC)

The Centers for Medicare and Medicaid Services (CMS) and the University of Michigan Kidney Epidemiology and Cost Center have developed a methodology for rating each dialysis facility which may be found on the Dialysis Facility Compare website as a "Star Rating." The method produces a final score that is based on quality measures currently reported on the DFC website and ranges from 1 to 5 stars. A facility with a 5-star rating has quality of care that is considered 'much above average' compared to other dialysis facilities. A 1- or 2- star rating does not mean that a facility provides poor care. It only indicates that measured outcomes were below average compared to other facilities. Star ratings on DFC are updated annually to align with the annual updates of the standardized measures.

The DFC website currently reports on 9 measures of quality of care for facilities. The measures used in the star rating are grouped into three domains by using a statistical method known as Factor Analysis. Each domain contains measures that are most correlated. This allows CMS to weight the domains rather than individual measures in the final score, limiting the possibility of overweighting quality measures that assess similar qualities of facility care.

To calculate the star rating for a facility, each domain score between 0 and 100 is averaged with the normalized scores for measures within that domain. A final score between 0 and 100 is obtained by averaging the three domain scores (or two domain scores for peritoneal dialysis-only facilities). Finally, to recognize high and low performances, facilities receive stars in the following way:

- Facilities with the top 10% final scores were given a star rating of 5.
- Facilities with the next 20% highest final scores were given 4 stars.
- Facilities within the middle 40% of final scores were given 3 stars.
- Facilities with the next 20% lowest final scores were given 2 stars.
- Facilities with the bottom 10% final scores were given 1 star.

The applicant disclosed interest in the following facilities whose Star Ratings are provided below:

Facility Name	Address	Star Rating
Elizabethtown Center, LLC	75 Park Street, Elizabethtown	☆☆●●●
Hastings Hemodialysis Center	20 Fourth Street, Malone, NY	☆☆☆●●
Mohawk Valley Dialysis Center, Inc.	115 Towne Square Drive, Amsterdam	☆☆●●●
H.K. Freedman Renal Center	91 Plaza Boulevard, Plattsburgh	☆☆☆●●
Massena Dialysis Center	290 Main Street, Massena	☆☆☆☆☆

Information retrieved on 10/15/15 from <http://www.medicare.gov/DialysisFacilityCompare/search.html>

The Star Ratings of all ARA-associated facilities are provided in **HSP Attachment A - Dialysis Compare/STAR Ratings for ARA-affiliated facilities.**

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

Recommendation

**From a programmatic perspective, contingent approval is recommended.**

## Financial Analysis

### Asset Purchase Agreement

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

Date:	September 14, 2015
Seller:	Good Samaritan Hospital of Suffern
Purchaser :	Harriman Partners, LLC
Purchased Assets:	All assets used in operation of the facility. Facilities; equipment; supplies and inventory; prepaid expenses; documents and records; assignable leases, contracts, licenses and permits; telephone numbers, fax numbers and all logos; accounts and notes receivable; cash, deposits and cash equivalents.
Excluded Assets:	Cash, cash equivalents or short-term investments, unassigned contracts, inter-company balances due to or from seller, any interests in real property not listed, deposits ,rebates, recovery rights of claims and all settlements prior to closing.
Assumed Liabilities:	Those associated with purchased assets.
Excluded Liabilities:	Pre-closing debt, obligations or liabilities of seller.
Purchase Price:	\$800,000 plus the value of inventory at the site on closing date. There is a limited amount of inventory and the value is unknown at this time, but will be paid out of the intercompany financing.
Payment of Purchase Price:	\$800,000 to be held in escrow and cash to be paid at closing.

American Renal Associates will provide an \$880,000 intercompany loan with a five-year term and 5% interest rate for the overall purchase, apportioned as follows: \$580,000 for the acquisition, and \$300,000 for the working capital requirement. A loan commitment letter has been provided. BFA Attachment E provides the schedule of capital contributions for the remaining \$220,000 of the purchase price.

The proposed members have submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring interest, without releasing the transferor of its liability and responsibility.

### Administrative Services Agreement

Harriman Partners, LLC will enter into an Administrative Services Agreement with American Renal Management, LLC. The consultant will provide certain professional business, consulting and administrative services to the dialysis center relating to the operation of the facility.

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

Date:	August 4, 2015
Facility:	Harriman Partners, LLC d/b/a Premier Dialysis Center
Contractor:	American Renal Management, LLC
Administrative Term:	3 Years, with option to renew for three additional terms of 3-year periods.
Compensation:	\$226,000 per annum (\$18,833.33/month) for administrative services.
Duties of the Contractor:	Financial Management Services. Strategic Planning, Training and Development, Policies and Procedures, Contracting Services, Personnel, Supplies, Maintenance and repair of equipment, Operating Licenses and Banking, Billing and Collection Services.

While American Renal Management, LLC will be providing all of the above services, the Facility retains ultimate control in all of the final decisions associated with the services through their managing committee which is comprised of the CEO, CFO and COO of American Renal Associates, Dr. Sergio Obligado and Dr. Rachel Colvin.

#### Assignment and Assumption of Lease Agreement

On April 23, 2015, the site occupied by the Regional Kidney Center at 33-1 Rt. 17m in Harriman, New York, was sold to Virginia Realty Co., LLC who in turn assigned the property and all its leases to Harriman Park Estates, LLC. The applicant has submitted a draft assignment and assumption of lease rental agreement for the site to be occupied by Harriman Partners, LLC (assignee) from Good Samaritan Hospital of Suffern (assignor). There is no affiliation between Harriman Park Estates, LLC, the current landlord, and the applicant.

#### Original Lease

Date:	September 1, 1998
Premises:	5,000 square feet located at 33 route 17M, Harriman, New York
Landlord:	Harriman Commons Comprehensive Medical Center Real Estate Ltd.
Tenant:	Good Samaritan Hospital of Suffern
Term:	10 Years with seventeen additional 5 year renewals.
Rental:	\$100,000 per annum (\$19.50 per sq. ft.) or \$9,945 per month
Provisions:	The lessee shall be responsible for utilities, taxes, maintenance and insurance.

#### Equipment Lease Agreement

The applicant has submitted a draft equipment lease agreement whereas Good Samaritan Hospital of Suffern will lease certain equipment to Harriman Partners, LLC for a period of three months, estimated at less than \$1,000. The equipment lease is for the computers and electronic medical records (EMR) system on site and will be utilized until the applicant can transition to their own EMR system and equipment.

#### Operating Budget

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

	<u>Per Diem</u>	<u>Year One</u>	<u>Per Diem</u>	<u>Year Three</u>
<b>Revenues:</b>				
Medicare Fee-For-Service	\$240.00	\$1,494,073	\$240.00	\$1,784,364
Medicaid Fee-For-Service	\$239.73	86,544	\$239.81	103,359
Commercial Fee-For-Service	\$471.48	<u>1,639,816</u>	\$568.32	<u>1,958,425</u>
Total Revenues		\$3,220,433		\$3,846,148
<b>Expenses:</b>				
Operating	\$249.93	\$2,515,304	\$250.35	\$2,831,957
Capital	<u>\$30.78</u>	<u>309,751</u>	<u>72.73</u>	<u>822,733</u>
Total Expenses	\$280.71	\$2,825,055	\$323.08	\$3,654,690
Net Income (Loss)		<u>\$395,378</u>		<u>\$191,458</u>
Utilization (treatments)		10,064		11,312
Cost Per Treatment		\$280.71		\$323.08

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

	<u>Year One</u>	<u>Year Three</u>
Medicare Fee-For-Service	61.85%	65.73%
Medicaid Fee-For-Service	3.59%	3.81%
Commercial Fee-For-Service	34.56%	30.46%

Expense and utilization assumptions are based on historical data from Good Samaritan Hospital of Suffern and comparable clinics from the geographical area. Cost per treatment increases in year three due to the increase in capital expenditures.

#### Capability and Feasibility

There are no project costs associated with this application. The purchase price of \$800,000 will be provided by \$220,000 in equity from the proposed members and \$580,000 from an intercompany term loan at 5% over five years from American Renal Associates. A letter of commitment has been submitted by American Renal Associates for the intercompany loan at the stated terms.

Working capital requirements are estimated at \$470,843 based on two months of first year expenses and will be provided through \$170,843 equity from the proposed members distributions at year end of up to the amount of \$227,274 with the remaining \$300,000 through an intercompany term loan from American Renal Associates at 5% over five years. A letter of loan commitment has been submitted by American Renal Associates. BFA Attachment C is the financial statement of American Renal Associates, LLC for periods 2014 and as of March 31, 2015, which shows sufficient equity. BFA Attachment D is the pro forma balance sheet of Premier Dialysis Center as of the first day of operation, which indicates positive equity of \$220,000.

The submitted budget projects a net profit of \$395,378 and \$191,458 during the first and third years, respectively. Medicare and Medicaid revenues reflect prevailing reimbursement methodologies. All other revenues assume current reimbursement methodologies. The budget appears reasonable.

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

#### Recommendation

**From a financial perspective, contingent approval is recommended.**

## Attachments

HSP Attachment A	Dialysis Compare/STAR Ratings for ARA-affiliated facilities
BFA Attachment A	Organizational Chart
BFA Attachment B	Net Worth Statement of Proposed Physicians
BFA Attachment C	Financial Summary of American Renal Associates, LLC
BFA Attachment D	Pro Forma Balance Sheet
BFA Attachment E	Schedule of Capital Contributions

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 10<sup>th</sup> day of December, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Harriman Partners, LLC as the new operator of the 20-station chronic renal dialysis center located at 33-1 Route 17M, Harriman that is currently operated as an extension clinic of Good Samaritan Hospital of Suffern, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

152172 E

FACILITY/APPLICANT:

Harriman Partners, LLC  
d/b/a Premier Dialysis Center

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. A copy of the check must be uploaded into NYSE-CON whenmailed. [PMU]
2. Submission of an executed intercompany loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed intercompany working capital loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed assignment and assumption of the building lease, acceptable to the Department of Health. [BFA]
5. Submission of an executed equipment lease agreement, acceptable to the Department of Health. [BFA]
6. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
7. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
8. Submission of an executed Medical Director Agreement, acceptable to the Department. [HSP]
9. Submission of the executed restated Articles of Organization of Harriman Partners, LLC. [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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.





Project # 151046-E  
Diamond Hill Operator, LLC  
d/b/a Diamond Hill Nursing and Rehabilitation Center

**Program:** Residential Health Care Facility  
**Purpose:** Establishment

**County:** Rensselaer  
**Acknowledged:** February 12, 2015

**Executive Summary**

**Description**

Diamond Hill Operator, LLC d/b/a Diamond Hill Nursing and Rehabilitation Center, a New York limited liability company, requests approval to be established as the new operator of Diamond Hill Nursing and Rehabilitation Center, a 120-bed, Article 28 residential health care facility (RHCF) located at 100 New Turnpike Road, Troy (Rensselaer County). A separate realty entity, Diamond Hill Building, LLC, will acquire the real property. There will be no change in services provided.

On May 1, 2014, the current operators of the RHCF entered into an Asset Purchase Agreement with Diamond Hill Operator, LLC for the sale and acquisition of the RHCF operating interests, to be effectuated upon approval by the Public Health and Health Planning Council (PHHPC). Concurrently, the current real property owner, entered into a Contract of Sale with Diamond Hill Building, LLC for the sale and acquisition of the real property for \$7,400,000. There is a relationship between Diamond Hill Operator, LLC (operator) and Diamond Hill Building, LLC (landlord) in that the entities have identical members. The applicant will lease the premises from Diamond Hill Building, LLC.

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

<u>Current Operator</u>	
Troy Operating Co., LLC	
<u>Member:</u>	<u>%</u>
Bent Phillipson	100%

<u>Proposed Operator</u>	
Diamond Hill Operator, LLC	
<u>Members</u>	<u>%</u>
Diamond Hill Holdings, LLC	100%
Michael Netzer (Manager)	29.30%
Anne Gottlieb	5.00%
Saul Horowitz	8.66%
Moshe Wiederman	4.34%
Jay Lobell	7.00%
Israel Birnbaum	10.00%
Chaim Klein	8.40%
Nachum Stein	2.80%
Chana Lichtschein	5.25%
Manny Haber	11.20%
Aaron Lichtschein	5.25%
Chaya Millet	2.80%

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

There will be no changes to beds or services at this facility. Diamond Hill Nursing and Rehabilitation Center's occupancy was 94.5% in 2011, 96.4% in 2012, 97.5% in 2013 and 96.9% in 2014. Historic occupancy has been near or above the Department's planning optimum.

**Program Summary**

No negative information has been received concerning the character and competence of the proposed applicants. No changes in the program or physical environment are proposed in this application. No administrative services or

consulting agreements are proposed in this application.

#### Financial Summary

Diamond Hill Operator, LLC has agreed to acquire the RHCfs operations for \$100 and the assumption of certain liabilities estimated at \$1,701,167. Diamond Hill Building, LLC, the applicant's landlord, is purchasing the real property for \$8,400,000 and its members have already contributed \$1,000,000 in equity along with entering into a \$7,400,000 loan with a five-

year term, and an option for a five-year extension, and 25-year amortization. The loan agreement has been executed with Oxford Finance LLC.

There are no project costs associated with this proposal. The operating budget is as follows:

Revenues	\$10,220,846
Expenses	<u>\$ 9,307,002</u>
Gain/(Loss)	\$ 913,844

## 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. Completion of Limited Review Application #152014. [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.The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
5. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
6. Submission of a photocopy of the executed Operating Agreement of Diamond Hill Operator, LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of the executed Lease Agreement between Diamond Hill Building, LLC and the applicant, acceptable to the Department. [CSL]
8. Submission of a photocopy of the executed Articles of Organization of Diamond Hill Operator, LLC, acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date

**December 10, 2015**

# Need Analysis

## Project Description

Diamond Hill Operator, LLC seeks approval to become the established operator of Diamond Hill Nursing and Rehabilitation Center, a 120-bed Article 28 residential health care facility (RHCF), located at 100 New Turnpike Road, Troy, 12182 in Rensselaer County.

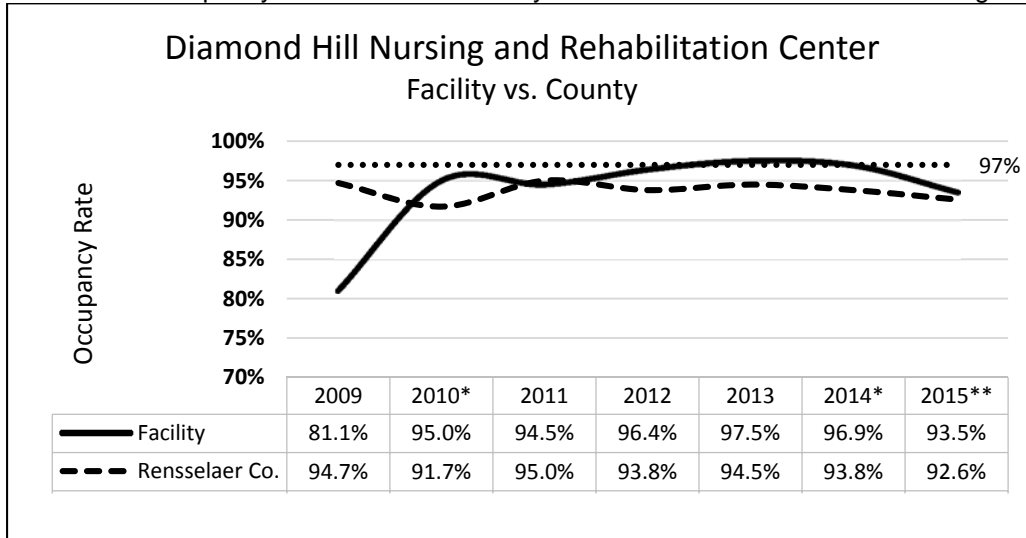
## Analysis

There is currently a surplus of 219 beds in Rensselaer County as indicated in the table below:

### RHCF Need – Rensselaer County

<b>2016 Projected Need</b>	1,025
<b>Current Beds</b>	1,244
<b>Beds Under Construction</b>	0
<b>Total Resources</b>	1,244
<b>Unmet Need</b>	-219

The overall occupancy for Rensselaer County is 94.5% as indicated in the following chart:



\*2010 County rate is an artifact of incomplete reporting.

\*\* 2015 Facility and County rates are unaudited; based on weekly census.

Diamond Hill's occupancy was 94.5% in 2011, 96.4% in 2012, 97.5% in 2013 and 96.9% in 2014. The facility's occupancy increased in 2013 to above the Department's planning optimum. Occupancy at this facility for 2015 averages 93.5%. Census as of October 21, 2015 was 97.5% with three vacant beds. The applicant attributes the decline in occupancy in 2015 to the discharging of lower acuity residents in favor of admitting high-acuity residents, in keeping with DSRIP and Managed Long Term Care Plan initiatives. In 2015, the current operator made a concerted effort to discharge residents whose conditions did not absolutely require RHCF placement. As a result, the applicant reports the Case Mix Index (CMI) at the facility increased from 0.87 at the end of 2014 to 1.2 as of October 1, 2015. The proposed operators will implement the INTERACT model to work closely with local hospitals to reduce acute care length of stay and prevent hospital readmissions in attempt to restore occupancy to the planning optimum.

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.

Diamond Hill Nursing and Rehabilitation Center's Medicaid admissions for 2012 and 2013 are 32.5% and 42.3%, respectively. This facility exceeded Rensselaer County 75% Medicaid admission threshold rates in 2012 and 2013 of 12.2% and 12.8%, respectively.

Conclusion

Approval of this application will result in providing a much needed resource for the Medicaid population in the community.

Recommendation

**From a need perspective, contingent approval is recommended.**

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Diamond Hill Nursing and Rehabilitation Center	Diamond Hill Nursing and Rehabilitation Center
Address	100 New Turnpike Road Troy, NY. 12182	Same
RHCF Capacity	120	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Limited Liability Company	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	Troy Operating Co., LLC	Diamond Hill Operator, LLC <u>Members:</u> Diamond Hill Holdings, LLC      100% *Michael Netzer            29.30% Manny Haber                1.20% Israel Birnbaum            10.00% Saul Horowitz              8.66% Chaim Klein                 8.40% Jonah Lobell                 7.00% Aaron Lichtschein         5.25% Chana Lichtschein        5.25% Anne Gottlieb              5.00% Moshe Wiederman         4.34% Chaya Millet                2.80% Nachum Stein               2.80%  *Managing Member

## Character and Competence - Background

### Facilities Reviewed

#### New York Nursing Homes

Meadow Park Rehabilitation and Healthcare Center LLC	06/2005 to present
Park Avenue Extended Care Facility	06/2005 to present
White Plains Center for Nursing Care, LLC	06/2005 to present
Nathan Miller Care Center	06/2005 to 02/2011

#### New Jersey Nursing Homes

Liberty Royal Rehabilitation and Care Center	02/2013 to present
Crystal Lake Healthcare	06/2013 to present

#### Vermont Nursing Home

Crescent Manor Care Center	06/2013 to present
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#### Massachusetts Nursing Homes

The Reservoir Center for Health and Rehabilitation	06/2012 to present
Colony Center for Health and Rehabilitation	06/2012 to present
Country Center for Health and Rehabilitation	06/2012 to present
Eliot Center for Health and Rehabilitation	06/2012 to present
Newton Wellesley Center for Alzheimer's Care	06/2012 to present
Sachem Center for Health and Rehabilitation	06/2012 to present

#### Maine Nursing Homes

Augusta Center for Health and Rehabilitation	06/2012 to present
Brentwood Nursing Center for Health and Rehabilitation	06/2012 to present
Brewer Center for Health and Rehabilitation	06/2012 to present
Eastside Center for Health and Rehabilitation	06/2012 to present
Kennebunk Center for Health and Rehabilitation	06/2012 to present
Norway Center for Health and Rehabilitation	06/2012 to present
Winship Green Center for Health and Rehabilitation	06/2012 to present

#### New Hampshire Nursing Home

Dover Center for Health and Rehabilitation	06/2012 to present
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#### New York Adult Care Facilities

Elm York, LLC	05/2008 to present
Madison York Rego Park LLC	05/2008 to present
Madison York Assisted Living Community	05/2008 to present

#### New York Licensed Home Care Services Agency

York Home Care LLC	05/2008 to present
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### Individual Background Review

Michael Netzer is the Owner/President of Concordia Properties, Inc., a real estate management company located in Hillside, New Jersey. Mr. Netzer discloses the following ownership interests in health facilities:

Meadow Park Rehabilitation and Healthcare Center LLC	12/1999 to present
Park Avenue Extended Care Facility	07/2004 to present
Liberty Royal Rehabilitation and Care Center (NJ)	02/2013 to present
Crystal Lake Healthcare (NJ)	06/2013 to present
Crescent Manor Care Center (VT)	06/2013 to present

Manny Haber is the President of Fleet Street Ltd., a company that imports women's clothing and outwear located in New York, New York. Mr. Haber discloses no ownership interest in health facilities.

Israel Birnbaum lists his employment as the Chief Financial Officer of Innovative Supply Group, a medical supplies company located in Lakewood, New Jersey. Mr. Birnbaum discloses no ownership interest in

health facilities.

Saul Horowitz lists his employment as the Chief Executive Officer of Major Energy Services and Respond Power. Both companies are located in Orangeburg, New York and are listed as energy retail companies. Mr. Horowitz discloses no ownership interest in health facilities.

Chaim Klein is a New York State licensed dentist and is considered to be in good standing. He lists his employment as the assistant operator of York Home Care, a home care services agency located in Flushing, New York. He is also employed as a dentist at CV DDS PC located in Brooklyn, New York. Chaim Klein discloses the following ownership interests in health facilities:

Elm York, LLC	05/2008 to present
Madison York Rego Park LLC	05/2008 to present
Madison York Assisted Living Community	05/2008 to present
York Home Care LLC	05/2008 to present

Jonah Lobell is a New York State licensed attorney and is considered to be in good standing. He lists his employment as the President of Meridian Capital Group, LLC, a mortgage company located in New York, New York. Mr. Lobell also continues to consult for his previous employer, Paramount BioSciences, a venture capital and drug development firm located in New York, New York. Jonah Lobell discloses the following ownership interests in health facilities:

The Reservoir Center for Health & Rehabilitation (MA)	06/2012 to present
Colony Center for Health and Rehabilitation (MA)	06/2012 to present
Country Center for Health and Rehabilitation (MA)	06/2012 to present
Eliot Center for Health and Rehabilitation (MA)	06/2012 to present
Newton Wellesley Center for Alzheimer's Care (MA)	06/2012 to present
Sachem Center for Health and Rehabilitation (MA)	06/2012 to present
Augusta Center for Health and Rehabilitation (ME)	06/2012 to present
Brentwood Nursing Center for Health and Rehabilitation (ME)	06/2012 to present
Brewer Center for Health and Rehabilitation (ME)	06/2012 to present
Eastside Center for Health and Rehabilitation (ME)	06/2012 to present
Kennebunk Center for Health and Rehabilitation (ME)	06/2012 to present
Norway Center for Health and Rehabilitation (ME)	06/2012 to present
Winship Green Center for Health and Rehabilitation (ME)	06/2012 to present
Dover Center for Health and Rehabilitation (NH)	06/2012 to present

Aaron Lichtschein is currently a student at Yeshiva Beth Madrash in Lakewood, New Jersey. He has no employment history. Mr. Lichtschein discloses no ownership interest in health facilities.

Chana Lichtschein is a self-employed preschool teacher in Lakewood, New Jersey. Ms. Lichtschein discloses no ownership interest in health facilities.

Anne Gottlieb is a New York State licensed nursing home administrator and is considered to be in good standing. She is currently employed as the Executive Director for Garden Care Center, a nursing home located in Franklin Square, New York. Ms. Gottlieb discloses the following ownership interests in health facilities:

Meadow Park Rehabilitation and Health Care Center	12/1999 to present
Nathan Miller Care Center	10/2004 to 02/2011
White Plains Center for Nursing Care, LLC	10/2004 to present

Moshe Wiederman is the president and founder of Major Energy Services, an energy retail company located in Orangeburg, New York. Mr. Wiederman discloses no ownership interest in health facilities.

Chaya Millet is a New Jersey licensed insurance producer and is considered to be in good standing. She is also a certified lactation consultant through the International Board of Lactation Consultant Examiners. Chaya Millet is employed as a history teacher of the Oros Bais Yaakov High School in Lakewood, New Jersey. She is also a lactation consultant at La Leche League International based out of Chicago, Illinois. Ms. Millet was previously employed as an insurance agent at Associated Insurance Concepts located in Thomas River, New Jersey. Ms. Millet discloses no ownership interest in health facilities.

Nachum Stein is the founder and chairman of American European Group, an insurance company located in New York, New York. Mr. Stein discloses no ownership interest in health facilities.

#### Character and Competence – Analysis

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

A review of the operations of Nathan Miller Care Center for the time period indicated above reveals that the facility was fined \$2,000 pursuant to a Stipulation and Order on November 4, 2009 for surveillance findings on November 24, 2008. Deficiencies were found under 10 NYCRR 415.29 Physical Environment.

A review of operations for Nathan Miller Care Center results in a conclusion of substantially consistent high level of care since there were no repeat enforcements. Nathan Miller Center for Nursing closed on February 7, 2011.

A review of operations for Meadow Park Rehabilitation and Healthcare Center LLC, Park Avenue Extended Care Facility, White Plains Center for Nursing Care, LLC, and the Nathan Miller Care Center for the periods identified above results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of operations for Liberty Royal Rehabilitation and Care Center in Tinton Falls, New Jersey for the periods identified above reveals that the facility was fined a civil monetary penalty of \$5,000 for surveillance findings on March 7, 2014. Deficiencies were found under F371(L): Store, cook, and serve food in a safe and clean way.

A review of operations for Crystal Lake Rehabilitation and Care Center in Bayville, New Jersey for the periods identified above reveals that the facility was recommended for a civil monetary penalty of \$1,500 for surveillance findings on March 21, 2015. Deficiencies were found under F323: Accidents/Falls.

A review of operations for the Liberty Royal Rehabilitation and Care Center and Crystal Lake Rehabilitation and Care Center in the state of New Jersey for the period results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of the Massachusetts Department of Public Health website as well as affidavit submitted by the applicant for The Reservoir Center for Health and Rehabilitation, Colony Center for Health and Rehabilitation, Country Center for Health and Rehabilitation, Eliot Center for Health and Rehabilitation, Newton Wellesley Center for Alzheimer's Care, and Sachem Center for Health and Rehabilitation in Massachusetts for the periods identified above results in a conclusion of substantially consistent high level of care since there were no enforcements disclosed.

A review of operations for Augusta Center for Health and Rehabilitation, Brentwood Nursing Center for Health and Rehabilitation, Brewer Center for Health and Rehabilitation, Eastside Center for Health and Rehabilitation, Kennebunk Center for Health and Rehabilitation, Norway Center for Health and Rehabilitation, and Winship Green Center for Health and Rehabilitation in Maine for the periods identified above results in a conclusion of substantially consistent high level of care since there were no enforcements disclosed.

A review of operations for Dover Center for Health and Rehabilitation in New Hampshire for the periods identified above results in a conclusion of substantially consistent high level of care since there were no enforcements disclosed.

#### Project Review

The current operator, Troy Operating Co., LLC was established as the operator of the facility in 2010. In July of 2015 a limited review (CON 152014) was submitted to perform \$555,000 in interior renovations to certain parts of the first floor (entry core, therapy suite and laundry) of the facility. These renovations



must be completed prior to the change in operator. No other modification or improvement applications have been submitted for approval since 2010.

This application proposes to establish Diamond Hill Operator, LLC as the operator of Diamond Hill Nursing and Rehabilitation Center. Diamond Hill Operator, LLC is an existing New York State limited liability company whose sole member is another New York State limited liability company, Diamond Hill Holdings, LLC. Diamond Hill Holdings, LLC is not known to be the operator of record on any health facility, or be the member of any health care related operating entities.

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The facility is in compliance with CMS 2013 sprinkler mandates.

**Conclusion**

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a(3).

**Recommendation**

**From a programmatic perspective, approval is recommended.**

**Financial Analysis**

**Asset Purchase Agreement**

The applicant has submitted an executed asset purchase agreement to acquire the operating interests of the RHC. The agreement will become effectuated upon PHHPC approval of this CON application. The terms of the agreement are summarized below:

Date:	May 1, 2014
Seller:	Troy Operating Co., LLC
Purchaser:	Diamond Hill Operator, LLC
Assets Transferred:	All right, title and interest in, to or under the Basic Assets free clear of liens, claims, assessments, security interests, mortgages other defects in title and/or encumbrances of any kind, including: business and operation of the facility, agreement of lease of premises, all inventory not removed prior to May 1, 2014, contracts, resident funds held in trust, the name and all trademarks, security deposits and prepayments, menus, policies and procedures, financial books and records, resident/patient records, goodwill, copies of all other books and records, Medicaid and Medicare provider numbers, assignable licenses and permits, leasehold improvements, funds not in the payables account, accounts receivable, retroactive rate increases for services on or after the contract date, and other assets used in connection with the business but not included in the excluded assets.
Excluded Assets:	Personal property, accounts receivable of any kind for service rendered prior to the contract date, funds in the payable account, and retroactive rate increases for services before contract dates.
Assumed Liabilities:	All liabilities related to the use, ownership and operation of the facility, any loans provided or arranged by the Buyer to Operator on or after the contract date, any new member loans, all operator liability for cash receipts, and all operator's obligations to make distributions to member for his personal tax liabilities.
Purchase Price:	\$100 plus assumed liabilities estimated at \$1,701,167

The assumed liabilities and the working capital requirement will be met with \$1,472,757 in accounts receivable, \$250,000 in cash and \$1,529,577 in members' equity. Saul Horowitz has provided an affidavit attesting to contribute personal resources to cover any working capital shortfall in the event that the accounts receivable are insufficient to meet working capital requirements. BFA Attachment B is a summary of the net worth of the applicant members of Diamond Hill Operator, LLC.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of August 10, 2015, there is a very small outstanding retro rate liability.

#### Purchase and Sale Agreement for the Real Property

The applicant has submitted an executed agreement to acquire the real property. The terms of the agreement are summarized below:

Date:	May 1, 2014
Seller Realty:	100 New Turnpike Road, LLC
Purchaser Realty:	Diamond Hill Building, LLC
Asset Transferred:	100 New Turnpike Road LLC
Purchase Price:	\$8,400,000
Payment of Purchase Price:	\$600,000 paid upon execution of the Agreement; \$400,000 paid as of June 1, 2014; and \$7,400,000 due at closing.

The purchase price for the RHCF realty is proposed to be satisfied as follows:

Equity - Diamond Hill Building, LLC Members	\$1,000,000
Loan (6.6% interest, 5-year term, w/option for 5-year extension, 25-year amortization)	\$7,400,000
Total	\$8,400,000

The applicant has provided an executed real property loan from Oxford Finance, LLC to finance the acquisition of the realty at the above stated terms. The applicant intends to refinance the loan before the balloon payment becomes due. Jay Lobell and Anne Gottlieb have submitted individual affidavits stating they will personally contribute resources to fund the balloon payment should acceptable financing not be available at the time of refinancing.

BFA Attachment B is the net worth summaries of the proposed members of Diamond Hill Operator, LLC, whose members are identical to Diamond Hill Building, LLC. A review of the net worth statement reveals sufficient resources to meet the equity requirements. It is noted that liquid resources may not be available in proportion to the proposed ownership interest.

#### Lease Agreement

The applicant has submitted a draft lease for the real property. The terms are summarized below:

Premises:	120-bed skilled nursing facility located at 100 New Turnpike Road, Troy, NY 12182
Landlord:	Diamond Hill Building, LLC
Lessee:	Diamond Hill Operator, LLC
Term:	30 years
Rent:	\$800,000 per year (\$66,666.67 per month)
Provisions:	Triple Net

The lease arrangement is a non-arm's length agreement. The applicant acknowledges that both entities are 100% owned by Diamond Hill Holding, LLC.

### Operating Budget

The applicant has provided an operating budget, in 2015 dollars, for the first year subsequent to the change in ownership, summarized as follows:

	<u>Per Diem</u>	<u>Current Year</u>	<u>Per Diem</u>	<u>First Year</u>
Revenues:				
Medicare Fee for Service	\$374.04	\$1,047,688	\$415.00	\$881,460
Medicaid Fee for Service	\$192.06	\$6,635,018	\$203.16	\$7,164,234
Other	\$315.90	<u>\$1,571,272</u>	\$426.67	<u>\$2,175,152</u>
Total Revenues		\$9,253,978		\$10,220,846
Expenses:				
Operating	\$224.27	\$9,491,594	\$194.91	\$8,281,002
Capital	<u>\$13.95</u>	<u>\$590,592</u>	<u>\$24.15</u>	<u>\$1,026,000</u>
Total Expenses	\$238.22	\$10,082,186	\$219.06	\$9,307,002
Net Income		<u>(\$828,208)</u>		<u>\$913,844</u>
Patient Days		42,322		42,486
Utilization		96.63%		97.0%

The following is noted respect to the submitted budget:

- The current year reflects the facility's 2013 revenues and costs.
- Medicaid rate projections are based on the current operator's 2014 Medicaid rates.
- Other revenues include Private Pay, Hospice and Part B Medicare Income.
- Utilization projections are based on five months of 2014 utilization annualized with overall utilization in year one projected at 97% occupancy.
- Utilization by payor source is anticipated as follows:

	<u>Current Year</u>	<u>Year One</u>
Medicare Fee-for-Service	6.62%	5.00%
Medicaid Fee-for-Service	81.63%	83.00%
Other	<u>11.75%</u>	<u>12.00%</u>
Total	100.00%	100.00%

- The applicant projects breakeven utilization in year one at 38,687 patient days or 88.3%, and 37,736 patient days or 86.2% in year three.

### Capability and Feasibility

There are no project costs associated with this application. Diamond Hill Operator, LLC will acquire the RHC operating interests for \$100 plus the assumption of certain liabilities, estimated at \$1,701,167. On December 31, 2014, Diamond Hill Building, LLC (the proposed landlord) purchased the real property for \$8,400,000 funded via members' equity of \$1,000,000 (already contributed) and a loan for \$7,400,000 from Oxford Finance, LLC, which was executed with the above, stated terms on December 11, 2014.

The working capital requirement is estimated at \$1,551,167 based on two months of first year expenses. The applicant projects assumed liabilities of \$1,701,167. The liabilities and the working capital requirement will be met with \$1,472,757 in Accounts Receivable, \$250,000 in cash and \$1,529,577 in members' equity. Diamond Hill Nursing and Rehabilitation Center's Accounts Receivable Aging Summary shows \$1,472,756.80 in Accounts Receivable as of March 31, 2015. Saul Horowitz has provided an affidavit to contribute resources to cover any working capital shortfall with personal funds in the event that Accounts Receivable are insufficient to meet working capital requirements. BFA Attachment C is Diamond Hill Operator, LLC's pro forma balance sheet as of the first day of operation, which indicates members' equity of \$1,529,577. Assets includes \$675,000 in goodwill, which is not a

liquid resource nor is it recognized for Medicaid reimbursement. If goodwill were eliminated, the total members' equity would become \$854,577.

The submitted budget projects net income of \$913,844 in Year One. The budgeted revenues are expected to increase by \$966,868 over the current year. The applicant anticipates that by using an aggressive outreach effort to hospitals, adult care facilities, assisted living programs and the Rensselaer County Department of Social Services, they will be able to increase utilization and revenues. The budgeted expenses are projected to drop by \$775,184 based, in part, on reductions in nursing salaries, administrative services and purchased services. The budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment D, financial summary for Troy Operating Company, LLC d/b/a Diamond Hill Nursing and Rehabilitation Center, indicates the facility had negative net assets, negative working capital and an operating loss in 2013. However, the facility improved their performance in 2014 and their financial statements show they achieved positive working capital, positive member equity and a net operating gain in 2014.

BFA Attachment E, financial summary of the proposed members' affiliated RHCs, shows Meadow Park Rehabilitation and Care Center had a positive working capital position and positive net income for the period from 2012 to 2014. The White Plains Center for Nursing had negative working capital in 2014; however, the applicant states that \$888,781 may be considered long-term liabilities, at which time the facility will have a positive working capital position. The facility shows 2014 operating net income.

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

Recommendation

**From a financial perspective, contingent approval is recommended.**

## Attachments

BNHLC Attachment A	Quality Measures and Inspection Report
BFA Attachment A	Real Property Ownership
BFA Attachment B	Net Worth Summary, Members of Diamond Hill Operator, LLC and for Diamond Hill Building, LLC
BFA Attachment C	Pro Forma Balance Sheet Diamond Hill Operator, LLC
BFA Attachment D	Financial Summary, Troy Operating Co., LLC d/b/a Diamond Hill Nursing and Rehabilitation Center 2012-2014
BFA Attachment E	Financial Summary, proposed members' affiliated Nursing Homes

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 10<sup>th</sup> day of December, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Diamond Hill Operator, LLC as the new operator of Diamond Hill Nursing and Rehabilitation Center, a 120-bed facility located at 100 New Turnpike Road, Troy, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

151046 E

FACILITY/APPLICANT:

Diamond Hill Operator, LLC  
d/b/a Diamond Hill Nursing and Rehabilitation  
Center

APPROVAL CONTINGENT UPON:

1. Completion of Limited Review Application #152014. [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.The DOH reserves the right to require continued reporting beyond the two year period.  
[RNR]
5. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
6. Submission of a photocopy of the executed Operating Agreement of Diamond Hill Operator, LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of the executed Lease Agreement between Diamond Hill Building, LLC and the applicant, acceptable to the Department. [CSL]
8. Submission of a photocopy of the executed Articles of Organization of Diamond Hill Operator, LLC, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



Project # 151284-E
Regeis Care Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Bronx
Acknowledged: June 16, 2015

Executive Summary

Description

Regeis Care Center, LLC d/b/a Regeis Care Center (the Center), is a 236-bed proprietary Residential Health Care Facility (RHCF) with two respite beds located at 3200 Baychester Avenue, Bronx (Bronx County). The sole member of Regeis Care Center, LLC, Chaim Sieger, is seeking to transfer 99.0% of his membership interest in the RHCF to two new members, Chana Brachfeld and Abraham Sieger. Upon approval of this application, Chaim Sieger will maintain 1.0% ownership interest in the RHCF.

On August 15, 2014, Chaim Sieger, Chana Brachfeld and Abraham Sieger entered into an Assignment of Membership Interest Agreement for a total consideration of \$10. The proposed new members will assume all liabilities of the Center.

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

Table with 2 columns: Member, %
Current Operator: Regeis Care Center, LLC
Member: Chaim Sieger, 100%

Table with 2 columns: Members, %
Proposed Operator: Regeis Care Center, LLC
Members: Abraham Sieger \* (49.5%), Chana Brachfeld (49.5%), Chaim Sieger (1.0%)

\* Abraham Sieger will be the managing member of the Center. He is currently the Center's administrator.

Jacob's Ladder Realty, LLC, a New York State limited liability company whose members are Chana Brachfeld (50%) and Abraham Sieger (50%), currently leases the property and building to Regeis Care Center, LLC. The lease will continue in force and there will be no changes to Jacob's Ladder Realty, LLC. Upon approval of this CON, there will be a relationship between Jacob's Ladder Realty, LLC and Regeis Care Center, LLC. An executed affidavit has been submitted stating the relationship between the tenant and landlord and that the lease is a non-arm's length agreement.

OPCHSM Recommendation
Contingent Approval

Need Summary
There will be no Need review for this project.

Program Summary
No negative information has been received concerning the character and competence of the proposed applicants identified as new members. No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.



## Financial Summary

There are no project costs associated with this proposal. The transfer price for the 99% membership interest assignment is \$10.

Budget:	Revenues:	\$30,051,587
	Expenses:	<u>27,469,835</u>
	Gain:	\$ 2,581,752

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a photocopy of the applicant's Certificate of Assumed Name, acceptable to the Department. [CSL]
2. Submission of a photocopy of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]
3. Submission of a photocopy of the applicant's Articles of Organization, acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant's executed assignment of membership interest, acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date

**December 10, 2015**

## Program Analysis

### Facility Information

	Existing	Proposed
Facility Name	Regeis Care Center	Same
Address	3200 Baychester Avenue Bronx, NY 10475	Same
RHCF Capacity	236	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Limited Liability Company	Same
Class of Operator	Proprietary	Same
Operator	Regeis Care Center, LLC	<u>Same</u>
	<u>Membership:</u> Chaim Sieger                      100%	<u>Membership:</u> Chaim Sieger                      1.00% Chana Brachfield                49.50% Abraham Sieger <u>49.50%</u> <span style="float: right;">100.00%</span>

### Character and Competence-Background

#### Facility Reviewed

Premier Health Services (Dialysis Center)

04/2011 to 2/2012

#### Individual Background Review

**Chana Brachfield** reports no employment during the past ten years. Ms. Brachfield has disclosed she has no health facility interests.

**Abraham Sieger** is currently employed as administrator of record at Regeis Care Center, and holds a nursing home administrator license in current compliance. Mr. Sieger discloses the following health facility interest:

Premier Health Services

04/2011 to 2/2012

### Character and Competence Analysis

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

A review of operations of Premier Health Services for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements. Premier Health Services ceased operation in 2012 due to damage from Superstorm Sandy.

This application proposes to distribute 99% membership of the existing operating LLC to two new members. The existing sole LLC member has agreed to remain in the ownership structure for a minimum of five years to ensure the new members obtain sufficient skilled nursing operating experience.

### Project Review

No changes in the program or physical environment are proposed in this application. In light of the dearth of health facility ownership experience, the existing owner, Chaim Sieger, has agreed to remain as a member of the operating limited liability company for a minimum period of five years.

### Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

### Assignment of Membership Interests Agreement

The applicant has submitted an executed assignment of membership interest agreement for the transfer of ownership, to be effectuated upon Public Health and Health Planning Council approval of this application, as summarized below:

Date:	August 15, 2014
Assignor:	Chaim Sieger
Assignees:	Abraham Sieger (49.5%), Chana Brachfeld (49.5%)
Rights transferred:	99.0% of operation
Purchase Price:	\$10
Payment of Purchase Price:	Cash at closing

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 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, outstanding Medicaid overpayment liabilities approximate \$314,817 due to a prior year Office of the Medicaid Inspector General audit.

### Operating Budget

The applicant has provided an operating budget, in 2015 dollars, for the first year subsequent to the transfer of ownership. The budget is summarized below:

	<u>Per Diem</u>	<u>Total</u>
Revenues:		
Medicaid	\$314.94	\$20,842,201
Medicare	\$632.52	4,425,125
Other*	\$687.41	4,191,822
Private Pay**	\$298.31	<u>592,439</u>
Total Revenues		\$30,051,587
Expenses:		
Operating		\$24,962,169
Capital		<u>2,507,666</u>
Total Expenses		\$27,469,835
Net Income		\$ 2,581,752
Total Patient Days		81,258

\* Other revenues represent various Commercial Insurances.

\*\* Private Pay per diem is \$425-\$450/day depending on the type of patient room. The facility is unable to collect the full rate, therefore writing off the difference of uncollected accounts.

The following is noted with respect to the submitted budget:

- Revenue assumptions are based on the facility's 2013 payment rates for the various payors. It is noted that the payment rate for Medicaid is conservative, as the facility's 2015 Medicaid FFS rate is currently \$331.83 per day (inclusive of the latest case mix adjusted operating and 2015 capital components).
- Budgeted expenses are based on the Center's 2013 experience per the 2013 RHCF-4 cost report. The applicant projects no incremental change in operations as a result of this application.

- Utilization assumptions are based on the historical experience of the facility. Overall utilization in 2013 was at 93.54% occupancy, with utilization by payor source as follows:
 

Medicaid	81.442%
Medicare	8.610%
Private/Other	9.948%
- Review of the Center's 2010-2013 RHCF-4 cost reports indicates the facility consistently maintained occupancy levels of 93.5% to 95.7%. However, occupancy fell to 90.5% in 2014, and was 91.5% as of April 30, 2015. The applicant indicated that the reason for the lower occupancy is that Center has experienced a higher turnover rate than nearby nursing homes due to its ability to accept higher acuity patients that the other nursing homes do not accept. As evidence of the higher acuity patients the facility has been serving, Regeis Care Center's all payor case mix index has increased to 1.57 per the July 2014 MDS collection, up from 1.49 per the July 2012 collection.
- Breakeven utilization is 85.5% for the first year subsequent to transfer of ownership.

### Capability and Feasibility

The assignment transfer price of \$10 has been paid at closing of the agreement. The working capital requirement of \$4,578,306, based on two months of first year expenses, will be satisfied from existing facility funds of \$48,655 (as of April 30, 2015, cash plus accounts receivable minus accounts payable) with the remaining \$4,529,651 to be provided from the proposed members' equity. Review of BFA Attachments A and B, the proposed members' net worth and Regeis Care Center's financial summary, respectively, reveals sufficient resources for the stated levels of equity.

The submitted budget indicates that net income of \$2,581,752 will be generated after the first year of the change in ownership. BFA Attachment C presents a budget sensitivity analysis based on current utilization of the facility as of December 31, 2014, which shows the budgeted revenues would increase by \$1,094,976 resulting in a net profit in year one of \$3,676,728. The increase is due to a shift in utilization to commercial insurance. The budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing Medicaid NH revenues through the transition period.

BFA Attachment B, financial summary of Regeis Care Center, indicates that the facility has experienced negative working capital, maintained a positive equity position and generated average annual net income of \$2,674,549 for 2013 and 2014. Also, the facility has maintained an occupancy of 91.51 % as of April 30, 2015, up from 90.5% in 2014. The negative working capital is due to a balance due on a working capital line of credit and amounts payable to third party payers as a result of an audit. The applicant expects that the working capital line of credit will be renewed with an extended payout period and the third party payer liabilities will be paid off by the end of 2015.

Based on the preceding, the applicant has demonstrated the capability to proceed in a financially feasible manner.

### Recommendation

**From a financial perspective, approval is recommended.**

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## Attachments

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BFA Attachment A      Regeis Care Center, LLC, Proposed Members Net Worth  
BFA Attachment B      Financial Summary, Regeis Care Center, LLC  
BFA Attachment C      Budget Sensitivity Analysis

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 10<sup>th</sup> day of December, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application for a transfer of 99% ownership interest to two (2) new members, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

151284 E

Regeis Care Center

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the applicant's Certificate of Assumed Name, acceptable to the Department. [CSL]
2. Submission of a photocopy of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]
3. Submission of a photocopy of the applicant's Articles of Organization, acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant's executed assignment of membership interest, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.





**Project # 152011-E**  
**Maximus 909 Operations, LLC**  
**d/b/a Briody Rehab & Residential Health Care Center**

**Program: Residential Health Care Facility**  
**Purpose: Establishment**

**County: Niagara**  
**Acknowledged: July 8, 2015**

**Executive Summary**

**Description**

Maximus 909 Operations, LLC d/b/a Briody Rehab & Residential Health Care Center, a Delaware limited liability company authorized to do business in New York State, is seeking approval to be established as the operator of Briody Health Care Facility, an 82-bed, Article 28 Residential Health Care Facility (RHCF) located at 909 Lincoln Avenue, Lockport (Niagara County). A separate entity, Maximus 909 Lincoln, LLC, will acquire the real property. There will be no change in services provided.

On March 25, 2015, Maximus 909 Operations, LLC entered into an Operations Transfer Agreement with Briody Health Care Facility, LLC for the sale and acquisition of the operating interests of Briody Health Care Facility. Simultaneously, 909 Lincoln Avenue, Inc., the real property owner, executed an Asset Purchase Agreement for the real property with Maximus 909 Lincoln, LLC, a related entity with the same proposed members as the operations. Maximus 909 Operations, LLC d/b/a Briody Rehab & Residential Health Care Center and Maximus 909 Lincoln, LLC will purchase the realty and operations for a total purchase price of \$7,544,000 apportioned as follows: \$5,544,000 for the operations and \$2,000,000 for the real estate. The applicant will lease the premises from Maximus 909 Lincoln, LLC.

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

Current Operator	
Briody Health Care Facility, LLC	
Members	
James T. Briody	78.0%
Joan M. Briody	2.0%
Ann Briody	5.0%
Mary E. Briody Gatto	5.0%
J. Thomas Briody	5.0%
Susan P. Briody Burke	5.0%

Proposed Operator	
Maximus 909 Operations, LLC	
Maximus Lockport Holdings, LLC	100%
Members	
Henry Steinmetz	26.66%
Nisson Hirsch	26.66%
Yisroel Bornstein	26.66%
Naftali Minzer	10.01%
Yaakov Weitman	10.01%

OPCHSM Recommendation  
Contingent Approval

**Need Summary**  
There will be no changes to beds or services at this facility. Briody Health Care Facility's occupancy was 92.8% in 2011, 95.1% in 2012, and 95.6% in 2013. Current occupancy, as of October 14, 2015 is 97.6%.

**Program Summary**  
No changes in the program or physical environment are proposed in this application. No negative information has been received concerning the character and competence of the

proposed applicant. The individual background review indicates the applicant has met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a(3).

Financial Summary

Maximus 909 Operations, LLC, d/b/a Briody Rehab & Residential Health Care Center and Maximus 909 Lincoln, LLC will purchase both the operating assets and the real estate for

\$7,544,000 with proposed members' equity of \$1,508,800 and a bank loan for \$6,035,200 at 5% interest for a ten-year term with an amortization of thirty years. The operating budget is as follows:

Revenues	\$8,205,000
Expenses	<u>7,673,300</u>
Gain	\$531,700

## 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 commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
  - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; 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]
3. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
  - 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.The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
4. Submission of an executed bank loan commitment for working capital acceptable to the Department of Health. [BFA]
5. Submission of an executed bank loan commitment for the purchase of the operations and realty acceptable to the Department of Health. [BFA]
6. Submission of an executed building lease acceptable to the Department of Health. [BFA]
7. Submission of an executed Assignment and Assumption Agreement acceptable to the Department of Health. [BFA]
8. Submission of a photocopy of an executed and completed facility lease agreement between Maximus 909 Lincoln, LLC and Maximus 909 Operations, LLC acceptable to the Department. [CSL]
9. Submission of a photocopy of the executed asset purchase agreement between Briody Health Care Facility, LLC, 909 Lincoln Avenue, Inc. and Maximus 909 Lincoln, LLC and any additional transfer documents, which are acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's executed Certificate of Assumed Name, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's executed proposed articles of organization, which is acceptable to the Department. [CSL]
12. Submission of a photocopy of the applicant's executed proposed operating agreement, which is acceptable to the Department. [CSL]

13. Submission of a photocopy of Maximum Lockport Holdings, LLC executed proposed articles of organization, which is acceptable to the Department. [CSL]
14. Submission of a photocopy of Maximum Lockport Holdings, LLC executed proposed operating agreement, which is acceptable to the Department. [CSL]
15. Submission of a photocopy of the applicant's Certificate of Amendment of Application for Authority, which is acceptable to the Department. [CSL]
16. Submission of a photocopy of the applicant's State of Delaware Certificate of Amendment, which is acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date  
December 10, 2015

# Need Analysis

## Project Description

Maximus 909 Operations, LLC d/b/a Briody Rehab and Health Care Center, seeks approval to become the established operator of Briody Health Care Center, an existing 82-bed Article 28 residential health care facility (RHCF), located at 909 Lincoln Avenue, Lockport, 14094, in Niagara County.

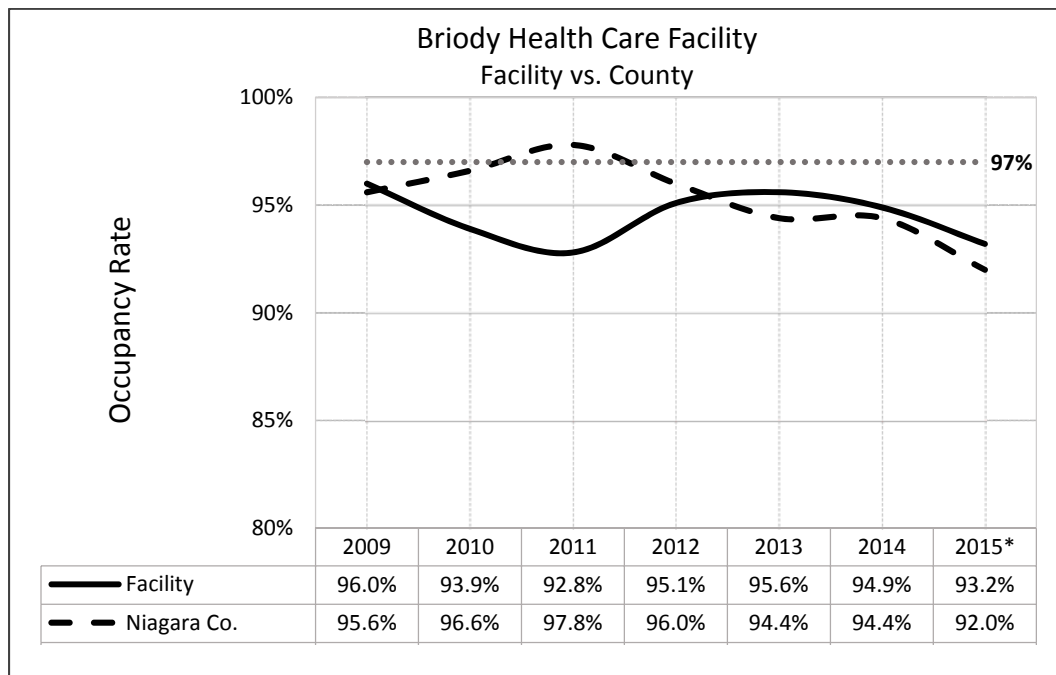
## Analysis

There is currently a surplus of 12 beds in Niagara County as indicated in the following table:

### RHCF Need – Niagara County

<b>2016 Projected Need</b>	1,377
<b>Current Beds</b>	1,399
<b>Beds Under Construction</b>	-10
<b>Total Resources</b>	1,389
<b>Unmet Need</b>	-12

The overall occupancy for Niagara County is 94.4% for 2013 as indicated in the following chart:



\*unaudited; based on weekly census

Historically, the facility's occupancy rates have been near the Department's planning optimum. According to the applicant, 17.7% of Niagara County's population is 65 years and older; 15.0% of the population between the ages of 55 and 64 will need long term care in the next 10 years; and 23.7% of the households in Niagara County earns less than \$25,000 and would potentially qualify for Medicaid assistance.<sup>1</sup> Also noted by the applicant, the proposed operators are committed to supporting the expansion of the long term care continuum to better serve residents, including forging strategic partnerships with local MLTC and DSRIP plans to improve the quality of care and reduce costs to the Medicare and Medicaid programs.

<sup>1</sup> According to Claritas SiteReports.

### 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.

Briody Health Care Center's Medicaid admissions of 2.6% and 6.7% in 2012 and 2013, respectively, did not exceed the Niagara County 75% rates of 17.1% and 16.3% in 2012 and 2013, respectively.

### Conclusion

Approval of this application will result in an effort to strengthen current resources in Niagara County.

### Recommendation

**From a need perspective, contingent approval is recommended.**

## Program Analysis

### Facility Information

	Existing	Proposed
Facility Name	Briody Health Care Facility	Briody Rehab and Residential Care Center
Address	909 Lincoln Avenue Lockport, NY 14094	Same
RHCF Capacity	82	82
ADHC Program Capacity	N/A	Same
Type of Operator	Limited Liability Company	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	Briody Health Care Facility, LLC	Maximus 909 Operations, LLC  <u>Sole Member:</u> Maximus Lockport Holdings, LLC *Yisroel A. Bornstein 26.66% *Henry Steinmetz 26.66% *Nisson Hirsch 26.66% Naftali Minzer 10.00% Yaakov Weitman 10.00%  *Managing Members

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Sans Souci Rehabilitation & Nursing Center	10/2009 to present
Dumont Center for Rehabilitation	08/2010 to present
Bellhaven Center for Rehabilitation and Nursing Center	03/2010 to present
St. James Rehabilitation & Healthcare Center	08/2012 to present
The Grand Pavilion for Rehabilitation at Rockville Center	08/2012 to present
Cortlandt Healthcare	03/2014 to present

NJ Outpatient Rehab

Therapeutics Unlimited, Inc.	06/2009 to present
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The principals of Maximum Lockport Holdings, LLC have also received Public Health and Health Planning Council contingent approval on June 11, 2015 to operate Newfane Rehab & Health Care Center.

Individual Background Review

Yisroel A. Bornstein is employed as the Principal / Executive Director of Therapeutics Unlimited, an outpatient physical, occupational therapy and sports rehab agency located in East Brunswick, New Jersey. Previously Mr. Bornstein was principal managing member of SCB & Associates, LLC, a consulting services company which invests in small cap public companies. Mr. Bornstein discloses ownership in the following health care facility:

Therapeutics Unlimited Rehab, LLC (NJ)	06/2009 to present
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Henry Steinmetz is employed as Executive Director of Therapeutics Unlimited Rehab. Previously Mr. Steinmetz was the Executive Director for First Healthcare/First Rehab, LLC, an outpatient physical, occupational, and sports rehab agency. Mr. Steinmetz discloses the following health facility ownership:

Therapeutics Unlimited Rehab, LLC (NJ)	06/2009 to present
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Nisson Hirsch is the Chief Executive Officer and owner of Omnicon Healthcare Consultants, a healthcare consulting company which has provided comprehensive cost control and fiscal consulting services to long term care facilities, since 2001. Mr. Hirsch discloses no health facility ownership interests.

Naftali Minzer is the Chief Executive Officer of Dermarite Industries LLC, a manufacturer of wound and skin care products in Paterson, New Jersey, since May 2006. Mr. Minzer discloses the following ownership interests:

Sans Souci Rehabilitation & Nursing Center	10/2009 to present
Dumont Center for Rehabilitation	08/2010 to present
Bellhaven Center for Rehabilitation and Nursing Center	03/2010 to present
St. James Rehabilitation & Healthcare Center	08/2012 to present
The Grand Pavilion for Rehabilitation at Rockville Center	08/2012 to present
Cortlandt Healthcare	03/2014 to present

Yaakov Weitman lists his employment as the Chief Operating Officer of Therapeutics Unlimited Rehab. Previously Mr. Weitman was employed as a commercial mortgage broker at Meridian Capital Group, LLC in New York, NY. Mr. Weitman discloses the following health facility ownership interest:

Therapeutics Unlimited Rehab, LLC (NJ)	04/2010 to present
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Character and Competence - Analysis

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

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

A review of operations for the Sans Souci Rehabilitation and Nursing Center for the period results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of operations for Dumont Center for Rehabilitation and Nursing Care indicates it incurred a \$45,070 civil monetary penalty from a complaint survey of April 13, 2015, which is awaiting payment. The review of a potential state enforcement action is underway, with the Independent Informal Dispute Resolution Process nearing completion.

A review of operations for Dumont Center for Rehabilitation and Nursing Care for the period results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of Bellhaven Center for Rehabilitation and Nursing, Cortlandt Healthcare, St. James Rehabilitation and Healthcare Center, and The Grand Pavilion for Rehabilitation at Rockville Center reveals that a substantially consistent high level of care has been provided since there were no enforcements for the time period reviewed.

#### Project Review

Maximus 909 Operations, LLC is an existing New York State limited liability company whose sole member is another New York State limited liability company, Maximus Lockport Holdings, LLC. No changes in the program or physical environment are proposed in this application. The applicant has not disclosed any administrative services or consulting agreements.

#### Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a(3).

#### Recommendation

**From a programmatic perspective, approval is recommended.**

<h2>Financial Analysis</h2>
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#### Asset Purchase Agreement

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

Date:	March 25, 2015
Seller :	Briody Health Care Facility, LLC and 909 Lincoln Avenue, Inc.
Buyer:	Maximus 909 Lincoln LLC
Asset Acquired:	The property and all buildings, structures, facilities or improvements to RHC facility known as Briody Health Care Facility located at 909 Lincoln Avenue, Lockport, New York. All furniture, fixtures, equipment, any other personal property attached or used in operation or maintenance of the land/improvements/facility.
Excluded Assets:	The name Briody as well as Quinlivan Outpatient Rehab Center; All Accounts, notes receivable; all deposits, advances, prepaid expenses, credits existing prior to closing date; and all other assets set forth in Operating Transfer Agreement as Sellers; laptop/cellular phone of Seller.
Transition Period Assets:	Period of nine (9) months following Closing, the Seller shall grant Purchaser usage of names "Briody" and "Quinlivan," Seller's Mark, and all iterations thereof necessary for Purchaser to operate during Transition Period; Link on Seller's website to Purchaser's; Forward of all mail and emails to Purchaser.
Assumption of Liabilities:	None
Purchase Price:	\$7,544,000



Payment of Purchase Price:	\$754,400 to be held in escrow with the remaining \$6,789,600 upon closing.
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Briody Health Care Facility, LLC and Maximus 909 Operations, LLC have executed an Operations Transfer Agreement under the Asset Purchase Agreement to occur simultaneously to ensure smooth transition of operations of the facility. Employment of the facility's current employees will be up to the new operator.

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

#### Assignment and Assumption Agreement

A draft assignment and assumption agreement has been initiated as follows for the operations:

Assignor:	Briody Health Care Facility, LLC
Assignee:	Maximus 909 Operations, LLC, LLC
Rights assigned:	All rights assigned under the Operations Transfer Agreement for Briody Health Care Center

#### Lease Agreement

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

Premises:	909 Lincoln Avenue, Lockport NY 14094
Lessor:	Maximus 909 Lincoln, LLC
Lessee:	Maximus 909 Operations, LLC
Term:	30 years
Rental:	Amount equal to debt service of lessor due under the mortgage, approximately \$600,000/year
Provisions:	Triple Net

The lease arrangement is a non-arm's length agreement. An affidavit has been submitted by the applicant attesting to the relationship between lessor and lessee.

#### Operating Budget

The applicant has provided an operating budget, in 2015 dollars, for the current year and year one subsequent to change of ownership, summarized as follows:

	<u>Per Diem</u>	<u>Current Year</u>	<u>Per Diem</u>	<u>Year One</u>
<u>Revenues</u>				
Medicare FFS/MC	\$439.56	\$1,252,758	\$551.60	\$1,601,300
Medicaid FFS/MC	\$173.35	2,729,861	\$171.56	2,914,000
Commercial - FFS	\$321.80	131,295	\$324.83	141,300
Private Pay/Other	\$344.62	<u>3,375,232</u>	\$399.97	<u>3,548,400</u>
Total Revenues		\$7,489,146		\$8,205,000
<u>Expenses</u>				
Operating	\$235.09	\$6,729,323	\$241.04	\$6,998,207
Capital	\$23.35	<u>668,422</u>	\$23.25	<u>675,093</u>
Total Expenses		\$7,397,745		\$7,673,300
Net Income		\$91,401		\$531,700

Total Patient Days	28,625	29,033
Occupancy %	95.6%	97.00%
Breakeven	94.47%	90.72%

The following is noted with respect to the submitted budget:

- Medicare revenue reflects the federal Medicare PPS rates in effect for 2015 plus Medicare Part B revenues increased by 2% per annum for inflation. Medicaid revenues are based on the facility's current 2015 Medicaid operating and capital rate components plus assessments.
- Private/Other rates are projected based on similar facilities in same geographical area increased by 2.5% per annum for inflation.
- Expenses are based on the facility's 2013 cost increased by 2% per annum.
- Utilization by payor, based on historical experience, is expected as follows:

<u>Utilization</u>	<u>Current Year</u>	<u>Year One</u>
Medicare	9.96%	10.00%
Medicaid	55.01%	58.50%
Private Pay/Other	35.03%	31.50%

- Breakeven utilization is projected at 90.72% and 90.47% for year one and year three, respectively.

#### Capability and Feasibility

There are no project costs associated with this application. The operations and real property will be purchased for \$7,544,000 with proposed members' equity of \$1,508,800, and a loan for \$6,035,200 financed at 5% interest with a ten-year term and 30-year amortization. BFA Attachment B is a summary of the net worth of the proposed members of Maximus 909 Operations, LLC which indicates the availability of sufficient funds. A letter of interest has been submitted from Meridian Capital Group, LLC for the loan. Affidavits have been submitted from each proposed member committing to personally fund the balloon payment on the proposed loan should terms acceptable to the Department of Health be unavailable at the time of refinancing. BFA Attachment F shows the amortization of the balloon payment after 10 years.

Working capital requirements are estimated at \$1,278,883 based on two months of the first year budgeted expenses, and will be met with a loan of \$639,441 and members' equity of \$639,442. A letter of interest has been submitted from Meridian Capital Group, LLC for the working capital loan at 5% over 5 years. Naftali Minzer and Yaakov Weitman, proposed members of Maximus 909 Operations, LLC, have submitted an affidavit stating willingness to contribute resources disproportionate to their ownership percentages toward working capital requirements. BFA Attachment B is a summary of the net worth of the members of Maximus 909 Operations, LLC, which indicates the availability of sufficient funds for working capital. BFA Attachment C is the pro-forma balance sheet of Maximus 909 Operations, LLC as of the first day of operations which indicates positive members' equity of \$1,882,100.. It is noted that assets include \$5,893,700 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Thus members' equity would be negative \$4,011,600.

The submitted budget indicates a net profit of \$531,700 for year one after the change in ownership. Annual rental expense is sufficient to cover the landlord's financing requirements. BFA Attachment G presents a budget sensitivity analysis based on current utilization of the facility as of April 30, 2015, which shows the budgeted revenues would decrease by \$137,377 resulting in a net profit in year one of \$394,323. The budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment D is the financial summary of Briody Health Care Facility for audited years 2012 through 2014 and internal statements for as of April 30, 2015, which indicates the facility maintained positive working capital, positive equity position and generated average annual net income from 2012-2014 of \$631,537 and \$105,911 as of April 30, 2015. Average occupancy of 95.2% was maintained from 2012-2014 and was 94.2% as of April 30, 2015.

BFA Attachment E, financial summary of proposed member Naftali Minzer's affiliated RHCfs, shows positive operating income for the years shown with the exception of The Grand Pavilion at Rockville Centre and Cortlandt Healthcare which show a net operating loss in 2014. Cortlandt Healthcare experienced net operating losses in 2014 as a result of the change in operator taking place and attributable to one time associated costs. Grand Pavilion at Rockville Centre's net operating loss is due to the operations and real estate having common ownership and additional monies allocated to the real property. Combined, there is a net profit of over \$1 million.

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

BNHLC Attachment A	Quality Measures and Inspection Report
BFA Attachment A	Organizational Chart
BFA Attachment B	Net Worth Statement for Maximus 909 Operations, LLC
BFA Attachment C	Pro Forma Balance Sheet for Maximus 909 Operations, LLC
BFA Attachment D	Briody Health Care Facility-Financial Summary, 2012- April 30, 2015
BFA Attachment E	Financial Summaries of Affiliated RHCfs
BFA Attachment F	Amortization Schedule for Balloon Payment
BFA Attachment G	Budget Sensitivity Analysis

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 10<sup>th</sup> day of December, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Maximus 909 Operations, LLC as the new operator of the 82-bed Briody Health Care Facility located at 909 Lincoln Avenue, Lockport, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

152011 E

Maximus 909 Operations, LLC  
d/b/a Briody Health Care Facility

APPROVAL CONTINGENT UPON:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
  - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; 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]
3. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
  - 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.

The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
4. Submission of an executed bank loan commitment for working capital acceptable to the Department of Health. [BFA]
5. Submission of an executed bank loan commitment for the purchase of the operations and realty acceptable to the Department of Health. [BFA]
6. Submission of an executed building lease acceptable to the Department of Health. [BFA]
7. Submission of an executed Assignment and Assumption Agreement acceptable to the Department of Health. [BFA]
8. Submission of a photocopy of an executed and completed facility lease agreement between Maximus 909 Lincoln, LLC and Maximus 909 Operations, LLC acceptable to the Department. [CSL]
9. Submission of a photocopy of the executed asset purchase agreement between Briody Health Care Facility, LLC, 909 Lincoln Avenue, Inc. and Maximus 909 Lincoln, LLC and any additional transfer documents, which are acceptable to the Department. [CSL]

10. Submission of a photocopy of the applicant's executed Certificate of Assumed Name, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's executed proposed articles of organization, which is acceptable to the Department. [CSL]
12. Submission of a photocopy of the applicant's executed proposed operating agreement, which is acceptable to the Department. [CSL]
13. Submission of a photocopy of Maximum Lockport Holdings, LLC executed proposed articles of organization, which is acceptable to the Department. [CSL]
14. Submission of a photocopy of Maximum Lockport Holdings, LLC executed proposed operating agreement, which is acceptable to the Department. [CSL]
15. Submission of a photocopy of the applicant's Certificate of Amendment of Application for Authority, which is acceptable to the Department. [CSL]
16. Submission of a photocopy of the applicant's State of Delaware Certificate of Amendment, which is acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.

**Licensed Home Care Services Agency  
Character and Competence Staff Review**

Name of Agency: Brooklyn Boulevard ALP LHCSA, LLC  
Address: Brooklyn  
County: Kings  
Structure: Limited Liability Company  
Application Number: 2638-L

**Description of Project:**

Brooklyn Boulevard ALP LHCSA, LLC, a to-be-formed limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

This LHCSA will be associated with Brooklyn Boulevard ALP Associates. The LHCSA and the ALP will have identical membership.

The sole member of Brooklyn Boulevard ALP LHCSA, LLC will be the following individual:

David Marx, Esq.  
President/Principal Shareholder, Manhattan Regional Center  
Owner/Managing Member, DSM Design Group, LLC  
Executive Director, Atria Builders, LLC

A Certificate of Good Standing has been received for the attorney associated with this application.

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

The applicant proposes to serve the residents of the following counties from an office located at 636 Louisiana Avenue, Brooklyn, New York 11239:

Kings	Bronx	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	Medical Social Services
Nutrition	Homemaker	Housekeeper

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

**Contingency**

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

Recommendation: Contingent Approval  
Date: September 25, 2015

**Licensed Home Care Services Agency  
Character and Competence Staff Review**

**Name of Agency:** Brooklyn Terrace, LLC d/b/a Surf Manor Home Care  
**Address:** Brooklyn  
**County:** Kings  
**Structure:** Limited Liability Company  
**Application Number:** 152001

**Description of Project:**

Brooklyn Terrace, LLC d/b/a Surf Manor Home Care, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

This LHCSA will be associated with the assisted living program to be operated by Brooklyn Terrace, LLC and will primarily serve the assisted living program residents of Surf Manor Home for Adults.

The members of Brooklyn Terrace, LLC d/b/a Surf Manor Home Care are comprised of the following individuals:

Yehoshua (Joshua) Teller – 50%	Aaron P. Lichtschein – 50%
Administrator, Surf Manor Home for Adults	Project Manager, TL Management

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 2316 Surf Avenue, Brooklyn, New York 12214:

Kings	Bronx	New York
Queens	Richmond	Nassau

The applicant proposes to provide the following health care services:

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

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

**Contingency**

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

**Recommendation:** Contingent Approval  
**Date:** September 17, 2015







Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Inficare Inc.  
Address: New York  
County: New York  
Structure: For-Profit Corporation  
Application Number: 2558-L

Description of Project:

Inficare 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.

Health and Comfort Home Care Inc. was previously approved as a home care services agency by the Public Health and Health Planning Council at its December 6, 2012 meeting and subsequently licensed 1978L001. The sole shareholder was Valeriy Aronov – 200 Shares.

The applicant has authorized 200 shares of stock, which are owned as follows:

Yue Lam – 200 shares

The Board of Directors of Inficare Inc. is comprised of:

Yue Lam – President/Director  
Administrator, Health and Comfort Home Care, Inc.  
President, Chinatown Senior Service, Inc.

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

Health and Comfort Home Care, Inc. entered into a management agreement with Inficare Inc. which was approved by the Department of Health on February 17, 2015.

The applicant proposes to serve the residents of the following counties from an office located at 90 Ludlow Street, 2<sup>nd</sup> 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	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 16, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Steps In Home Care, Inc.  
Address: White Plains  
County: Westchester  
Structure: For-Profit Corporation  
Application Number: 2621-L

Description of Project:

Steps In Home Care, Inc., a business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Steps In Home Care, Inc. was previously approved as a licensed home care services agency by the Public Health and Health Planning Council at its April 5, 2012 meeting and subsequently licensed as 1996L001. At that time the shares of Steps In Home Care, Inc. were owned by Mary Martire and Lisa Wade with each individual owning 100 shares.

This purpose of this application is to transfer the 100 shares of stock owned by Mary Martire to Jennifer M. Baukol. There will be no change in the stock interest of Lisa Wade.

The applicant has authorized 200 shares of stock, which are owned as follows: Lisa Wade 100 shares and Jennifer M. Baukol 100 shares.

The Board of Directors of Steps In Home Care, Inc. comprises the following individuals:

Lisa Wade, CEO/Treasurer

Jennifer M. Baukol, MBA, Vice President/Secretary  
Licensed Real Estate Salesperson  
Vice President, Steps In Home Care, Inc.

Lisa Wade is exempt from a character and competence review as an individual previously approved by the Public Health and Health Planning Council for this operator.

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 3 Barker Avenue, Suite 218, White Plains, New York 10601:

Westchester                      Nassau

The applicant proposes to continue to provide the following health care services:

Nursing                      Home Health Aide                      Personal Care

A seven (7) year review of the operations of the following facilities/agencies was performed as part of this review (unless otherwise noted):

Steps In Home Care, Inc. (2013 – Present)

The information provided by the Division of Home and Community based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

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

Contingency

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

Recommendation: Contingent Approval  
Date: October 26, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: EOM Management, LLC  
Address: Brooklyn  
County: Kings  
Structure: Limited Liability Company  
Application Number: 2644-L

Description of Project:

EOM Management, 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.

Eitan Dombrowsky d/b/a Palace Home Care Agency, was previously approved as a licensed home care services agency by the Public Health Council at its September 26, 1997 meeting and subsequently licensed 9984L001. At that time, Eitan Dombrowsky was the sole proprietor.

The members of EOM Management, LLC comprise the following individuals:

Samuel A. Weiss, Member – 10%  
President, NAE Edison LLC d/b/a Edison Home  
Health Care

Aryeh Chaim (Charles) Blumstein, Managing Member –  
90%  
Vice President, NAE Edison LLC d/b/a Edison Home  
Health Care

Affiliations:

- Preferred Home Health Care (4/2011 – Present)
- NAE Edison LLC d/b/a Edison Home Health Care (8/2008 – Present)

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

A seven (7) year review of the operations of the following agencies were performed as part of this review (unless otherwise noted):

- Preferred Home Health Care (4/2011 – Present)
- NAE Edison LLC d/b/a Edison Home Health Care

The applicant proposes to serve the residents of the following counties from an office located at 946 McDonald Avenue, 2<sup>nd</sup> Floor, Brooklyn, New York 11218:

Bronx            Kings            Queens            New York            Richmond            Nassau

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 26, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: South Shore Home Health Services, Inc.  
Address: Oakdale  
County: Suffolk  
Structure: For-Profit Corporation  
Application Number: 151282

Description of Project:

South Shore Home Health Services, 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.

South Shore Home Health Services, Inc. was previously approved by the Public Health Council at its June 27, 1986 meeting and subsequently licensed as 0318L001 and 0318L002. At that time the stock was jointly owned by Margaret Coffey and Carol Kolar.

Through a Securities Purchase Agreement, the applicant has proposes to purchase all issued and outstanding shares of stock of South Shore Home Health Services, Inc. Ms. Margaret Coffey and Ms. Carol Kolar will no longer be affiliated with the LHCSA.

The applicant has authorized 100 Class A Voting Shares and 300 Class B Non-Voting shares of stock, which will be owned as follows:

Addus HealthCare, Inc. d/b/a Addus HomeCare - 100 Class A Voting shares  
100 Class B Non-Voting shares

200 Class B Non-Voting shares of stock remain unissued.

The Board of Directors of South Shore Home Health Services, Inc. comprises the following individuals:

Mark S. Heaney – Director,  
Chief Executive Officer and President, Addus  
HealthCare, Inc.

Donald K. Klink, CPA – Director and Chief Financial Officer  
Chief Financial Officer, Addus HealthCare, Inc.

Addus HealthCare, Inc. d/b/a Addus HomeCare has authorized 1,000 shares of stock, which are owned as follows:

Addus HomeCare Corporation – 1,000 shares

The Board of Directors of Addus HealthCare, Inc. comprises the following individuals:

Mark S. Heaney – Director  
(Previously Disclosed)

Donald K. Klink, CPA – Director and Chief Financial Officer  
(Previously Disclosed)

Darby Anderson – Chief Business Development and  
Strategy Officer  
Chief Business Development & Strategy Officer,  
Addus HealthCare, Inc.

Maxine Hochhauser, PT – Chief Operating Officer  
Chief Operating Officer, Addus HealthCare, Inc.  
Senior Vice President, Amedisys

Inna Berkovich – Chief Information Officer  
Chief Information Officer, Addus HealthCare, Inc.

Addus HomeCare Corporation is a publically traded corporation on the NASDAQ which has authorized 11,089,311 shares of stock. The applicant has indicated that no one director or executive officer holds more than 5% of the issued and outstanding shares of common stock. EOS Partners SBIC III L.P. and EOS Capital Partners III L.P. are affiliated entities that collectively own approximately 36% of Addus HomeCare Corporation.

The Board of Directors of Addus HomeCare Corporation comprises the following individuals:

Mark S. Heaney – Director  
(Previously Disclosed)

Donald K. Klink, CPA – Director and Chief Financial Officer  
(Previously Disclosed)

Michael M. Earley – Director  
Owner/Manager, Pelican Advisors LLC

Mark L. First – Director  
Managing Director, EOS Management L.P.

Simon Bachleda – Director  
Co-Founder, Revelstoke Capital Partners LLC

Rodney D. Allison, CPA – Director  
Retired

Steve I. Geringer – Director  
Senior Advisor, Alvarez & Marshal, Inc.

The following two individuals are the control persons of the EOS Partners SBIC III L.P. and EOS Capital Partners III L.P.:

Steven M. Friedman  
President, EOS Management L.P.

Brian D. Young  
Chairman, EOS Management

A seven (7) year review of the operations of facilities outside of New York State affiliated with this applicant was performed as part of this review (unless otherwise noted):

- Alabama (July 2011 –Present)
- Pennsylvania (March 2010 – Present)
- Mississippi (June 2010 –Present)
- Illinois (February 2009-Present)
- Ohio (January 2015-Present)
- Tennessee (November 2013 – Present)
- South Carolina (January 2015 – Present)
- North Carolina (September – Present)
- Arkansas
- California
- Delaware
- Georgia
- Idaho
- Indiana
- Kentucky
- Michigan
- Montana
- Missouri
- New Mexico
- New York
- Nevada
- Oregon
- Washington

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.

Responses were received from the states listed above with the exception of the States of California, Indiana, Georgia, Mississippi, Nevada and Ohio. The responses received indicated that entities in these jurisdictions have exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients. The applicant provided sufficient evidence that they made an adequate effort to obtain out of state compliance for each health care facility located outside of New York State.

An affidavit stating that Addus HealthCare, Inc. operates either directly or through wholly owned subsidiaries home care businesses in the States of California, Indiana, Georgia, Mississippi, Nevada and Ohio and to the best of their knowledge each of the home care agencies currently operates, and has operated during the period their ownership or operation of the respective agencies are in compliance with all applicable codes, rules and regulations was submitted by the applicant.

A search of the individuals (and entities, where appropriate) named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicate no issues with the licensure of the health professionals associated with this application.

The applicant proposes to continue to serve the residents of the following counties from an office located at 1225 Montauk Highway, Oakdale, New York 11769:

Nassau

Queens

Suffolk

Westchester



The applicant proposes to continue to also serve the residents of the following counties from an office located at 185 Willis Avenue, Mineola, New York 11501:

Nassau                      Queens                      Suffolk                      Westchester

The applicant proposes to provide the following health care services:

Nursing                      Home Health Aide                      Personal Care                      Speech-Language Pathology  
Occupational Therapy                      Physical Therapy

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

Contingency

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

Recommendation:    Contingent Approval  
Date:                      October 21, 2015

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 10th day of December, 2015, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

<u>NUMBER:</u>	<u>FACILITY:</u>
2093 L	Communicare Group, Inc. (Kings, Queens, Bronx, New York and Westchester Counties)
2291 L	Trusted Care at Home, LLC (Monroe, Ontario, Wayne and Orleans County)
2337 L	CarePro of NY, Inc. (Kings, Queens, Bronx, New York, Richmond and Westchester Counties)
2403 L	Rockland Independent Seniors, Inc. d/b/a Home Instead Senior Care (Rockland County)

- 2404 L Buffalo Home Health Care Services, Inc.  
(Erie, Nassau, Chautauqua, Cattaraugus, Allegany,  
Wyoming, Genesee, Orleans and Livingston Counties)
- 2413 L Change A Life Time Companies, Inc.  
(Bronx, Kings, Queens and New York Counties)
- 2419 L Home Sweet Home Care Services, Inc.  
(Kings, Queens, Bronx, New York and Richmond  
Counties)
- 2427 L Advance Elite Solution LLC  
(Queens, Kings, New York, Bronx, Richmond and  
Westchester Counties)
- 2429 L Bena Home Care Agency Inc.  
(Queens, Bronx, Kings, New York, Richmond and  
Nassau Counties)
- 2460 L Best Companion Homecare Services, Inc.  
(Suffolk, Nassau and Queens Counties)
- 2466 L NYJ Gentle Touch, LLC  
(Richmond, New York, Kings, Queens, Bronx and  
Nassau Counties)
- 2479 L Crocus Home Care LLC  
(Richmond, Bronx, New York, Kings, Queens and  
Nassau Counties)
- 2497 L Matthews Homecare, Inc. d/b/a Right at Home  
Northern Westchester  
(Westchester, Dutchess and Putnam Counties)
- 2510 L LJNY Home Health Agency, Inc.  
(Kings, Queens, Bronx, New York, Richmond and  
Nassau Counties)
- 2514 L Lower Manhattan In-Home Care, Inc. d/b/a Right at  
Home Lower Manhattan  
(New York County)
- 2527 L Devoted Home Care LLC  
(Kings, Queens, Richmond, New York, Bronx and  
Nassau Counties)

2531 L Empire Care Agency, LLC  
(New York, Bronx, Kings, Queens, Richmond and Westchester Counties)

2545 L LifeWorx, Inc.  
(New York, Kings, Queens, Richmond, Bronx and Westchester Counties)

2572 L ADC Holdings, Inc.  
(Kings, Bronx, Queens, New York, Richmond and Nassau Counties)

2582 L Allborough Personal Care Inc.  
(Kings, Queens, New York, Bronx and Richmond Counties)

2583 L Reliable Care Home Infusion Services, Inc.  
(Rockland, Orange, Putnam and Westchester Counties)

2586 L Eagle Eye FV, Inc.  
(Bronx, Kings, Nassau, New York, Queens and Richmond Counties)

2587 L Stacey Ball d/b/a Changing Seasons Home Care  
(Onondaga, Cayuga, Madison, Oswego, Oneida, Cortland, Tomkins and Seneca Counties)

2638 L Brooklyn Boulevard ALP LHCSA, LLC  
(Kings, Bronx, New York, Queens, Richmond and Nassau Counties)

152001 E Brooklyn Terrace LLC d/b/a Surf Manor Home Care  
(Kings, Bronx, New York, Queens, Richmond and Nassau Counties)

2235 L Human Care, LLC  
(Bronx, Kings, New York, Queens, Richmond and Nassau Counties)

2468 L Your Choice Homecare Agency of NY, Inc.  
(Kings, Queens, Bronx, New York, Richmond and Nassau Counties)

- 2558 L            Infinicare, Inc.  
(New York, Bronx, Kings, Queens, Richmond and  
Nassau Counties)
- 2621 L            Steps In Home Care, Inc.  
(Westchester and Nassau Counties)
- 2644 L            EOM Management, LLC  
(Bronx, Kings, Queens, New York, Richmond and  
Nassau Counties)
- 151282 E        South Shore Home Health Services, Inc.  
(Nassau, Queens, Suffolk, and Westchester Counties)



## MEMORANDUM

**TO:** Public Health and Health Planning Counsel

**FROM:** Richard J. Zahnleuter  
Acting General Counsel

**DATE:** November 3, 2015

**SUBJECT:** Certificate of Incorporation of the Foundation of New York-  
Presbyterian/Lawrence Hospital

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The attached Certificate of Incorporation of The Foundation of New York-Presbyterian Hospital ("the Foundation") dated September 15, 2015, is being submitted for Public Health and Health Planning approval. The Foundation's certificate includes among its purposes the solicitation of public funds for the benefit of the Lawrence Hospital Center, doing business as the New York-Presbyterian/Lawrence Hospital. The Foundation's ability to file the certificate and solicit funds for such purpose depends on the approval of the Public Health and Health Planning Council pursuant to Public Health Law §2801 (1) and (6) and Not for Profit Corporation Law §404 (o) and (t).

In addition to the proposed Certificate of Incorporation, the following documents and information are attached in support of the Foundation's request for approval:

- 1) A letter, dated September 15, 2015, from the Foundation's attorney providing additional information about the Foundation, including a description of the Foundation's fund-raising activities.
- 2) The Foundation's by-laws.
- 3) A letter from the beneficiary acknowledging and confirming the Foundations' proposed fundraising activities on its behalf.
- 4) Disclosure of information regarding the Foundation's board of trustees.

The proposed Certificate of Incorporation is in legally acceptable form.

Attachments

**CERTIFICATE OF INCORPORATION**  
**OF**  
**THE FOUNDATION OF NEW YORK-PRESBYTERIAN/LAWRENCE HOSPITAL**

Under Section 402 of the  
New York Not-for-Profit Corporation Law

The undersigned, desiring to form a corporation pursuant to the provisions of the New York Not-for-Profit Corporation Law (the "NPCL"), does hereby certify (this "Certificate") as follows:

FIRST: The name of the corporation is The Foundation of New York-Presbyterian/Lawrence Hospital (hereinafter referred to as the "Corporation").

SECOND: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL. The Corporation is a charitable corporation under Section 201 of the NPCL.

THIRD: (A) The Corporation is organized and shall be operated exclusively for the charitable purpose of benefiting and supporting Lawrence Hospital Center, doing business as NewYork-Presbyterian/Lawrence Hospital ("NYP/Lawrence Hospital"), a New York State not-for-profit corporation exempt from federal income tax pursuant to Section 501(c)(3) and Section 509(a)(1) of the Internal Revenue Code of 1986, as the same may be amended from time to time and any successor statute thereto (the "Code"), and direct or indirect subsidiary entities of NYP/Lawrence Hospital that qualify as exempt from federal income tax under Section 501(a) of the Code as organizations described in Section 501(c)(3) and classified as other than a private foundation by reason of being described in Section 509(a)(1) or 509(a)(2) of the Code (collectively, with NYP/Lawrence Hospital, being referred to herein as the "Supported Organizations") by:

1. soliciting, receiving, acquiring, investing, maintaining and administering cash, securities and other real and personal property (collectively "Funds") by way of gifts, donations, grants or otherwise, and conveying, granting or otherwise distributing such Funds, together with the investment income and appreciation derived thereon, to the Supported Organizations to promote the charitable purposes thereof;
2. supporting, promoting and rendering assistance to the Supported Organizations in the community by interfacing with and serving as a liaison between the Supported Organizations and the community; and
3. subject to the limitations set forth herein, engaging in any and all other lawful acts or activities, and exercising all such powers, rights and privileges applicable to not-for-profit corporations organized under the

NPCL, that are incidental to and in furtherance of accomplishing the foregoing charitable purposes.

(B) The Corporation shall engage in activities in furtherance of the purposes described in paragraph (A) of this Article THIRD exclusively for charitable purposes within the meaning of Sections 170(c)(2)(B) and 501(c)(3) of the Code.

FOURTH: (A) Nothing in this Certificate of Incorporation shall authorize the Corporation within the State of New York, to: (i) provide hospital services or health related services, as such terms are defined in the New York State Public Health Law (the "PHL"); (ii) establish, operate or maintain a hospital, a home care services agency, a hospice, a managed care organization, or a health maintenance organization, as provided for by Articles 28, 36, 40, and 44, respectively, of the PHL and implementing regulations; (iii) establish or operate an independent practice association; (iv) establish, operate, construct, lease or maintain an adult home, an enriched housing program, a residence for adults or an assisted living program, as provided for by Article 7 of the New York State Social Services Law ("SSL"); (v) establish, operate, construct, lease or maintain an assisted living residence, as provided for by Article 46-B of the PHL; or (vi) otherwise engage in or include among its purposes any of the activities mentioned in Section 404(a) through (n), (p), (q), (r), (u), (v) and (w) of the NPCL or Section 460-a of the SSL, in each case without the Corporation first having obtained consent or approval from the appropriate governmental authority with respect thereto. Additionally, nothing in this Certificate of Incorporation shall authorize the Corporation within the State of New York, to (a) hold itself out as providing or (b) provide any health care professional services that require licensure or registration pursuant to either Title 8 of the New York State Education Law, or the PHL, including, but not limited to, medicine, nursing, psychology, social work, occupational therapy, speech therapy, physical therapy, or radiation technology.

(B) The Corporation shall not operate for the purpose of carrying on a trade or business for profit.

FIFTH: In furtherance of the foregoing purposes, the Corporation shall have all of the general rights, powers and privileges enumerated in the NPCL. The Corporation shall have the right to exercise all other powers which are, or hereafter may be, conferred by law upon a corporation organized for the above purposes or incidental to the conferred powers. Notwithstanding the foregoing, the Corporation shall not have the power to engage in any activities which are not in furtherance of its purposes as set forth in Article THIRD hereof.

SIXTH: No part of the Corporation's assets, net earnings, income or profit shall inure to the benefit of, or be distributable to, any member, trustee, director, officer or employee of the Corporation or other private person, except as permitted by law; provided, however, that the Corporation shall be authorized and empowered to pay reasonable compensation to any person for services rendered to or for the Corporation in furtherance of one or more of its purposes. No trustee, director, officer or employee of the Corporation or any private person shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation.

SEVENTH: No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (except to the extent



permitted by Section 501(h) of the Code if the Corporation makes an election thereunder), and the Corporation shall not participate in or intervene in (including the publishing or the distributing of statements in connection with) any political campaign on behalf of or in opposition to any candidate for public office.

EIGHTH: Notwithstanding anything to the contrary in this Certificate, the Corporation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity, that would invalidate its status: (a) as a corporation that is exempt from federal income taxation under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code; or (b) as a corporation contributions to which are deductible under Sections 170(c)(2), 2055(a) or 2522(a) of the Code.

NINTH: In the event of dissolution of the Corporation, all of the remaining assets and property of the Corporation shall, after payment of or due provision for all necessary expenses and liabilities thereof, be distributed to: (a) NYP/Lawrence Hospital and/or one or more subsidiaries or affiliates or successors thereof, as are then in good standing under Section 501(c)(3) of the Code; or (b) in the event that NYP/Lawrence Hospital, its subsidiaries and/or affiliates and successors have ceased to exist or are not then qualifying under Section 501(c)(3) of the Code, then to one or more charitable organizations as are then in existence and qualifying under Section 501(c)(3) of the Code, or to Federal, State and/or local governments for a related public purpose, in such proportions as the Board of Directors of the Corporation shall determine, in either case, subject to receipt of any and all approvals that may be required by applicable laws of the State of New York.

TENTH: The office of the Corporation shall be located in the County of Westchester within the State of New York.

ELEVENTH: The names and addresses of the initial Directors of the Corporation, each of whom is at least eighteen (18) years of age, are as follows:

Name	Address
Mary Taylor Behrens	303 Pondfield Road Bronxville, NY 10708
Edward M. Dinan	55 Palmer Avenue Bronxville, NY 10708
Laura L. Forese	525 East 68 <sup>th</sup> St. New York, NY 10065
Kimlee Roldan-Sanchez	525 East 68 <sup>th</sup> St. New York, NY 10065
Lisa A. Smith	8 Governors Road Bronxville, NY 10708

TWELFTH: In accordance with Section 508(e) of the Code, if in any taxable year the Corporation is a private foundation as defined in Section 509(a) of the Code, then in such year:

(a) The Corporation shall distribute such amounts for each taxable year at such time and in such manner so as not to subject the Corporation to tax on undistributed income under Section 4942 of the Code;

(b) The Corporation shall not engage in any act of self-dealing which is subject to tax under Section 4941(d) of the Code;

(c) The Corporation shall not retain any excess business holdings which are subject to tax under Section 4943(c) of the Code;

(d) The Corporation shall not make any investments in such manner so as to subject the Corporation to tax under Section 4944 of the Code; and

(e) The Corporation shall not make any taxable expenditures which are subject to tax under Section 4945 of the Code.

THIRTEENTH: The Secretary of State of New York is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation which is served upon him is:

The Foundation of NewYork-Presbyterian/Lawrence Hospital  
c/o NewYork-Presbyterian/Lawrence Hospital  
55 Palmer Avenue  
Bronxville, New York 10708  
Attention: Chief Executive Officer

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**[SIGNATURE PAGE TO FOLLOW]**

IN WITNESS WHEREOF this Certificate has been signed and the statements made herein affirmed as true under penalties of perjury this 6<sup>th</sup> day of March, 2015.

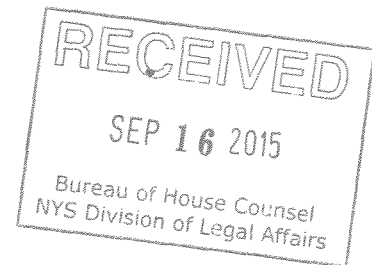
By:   
Name: Kimlee Roldan-Sanchez, Sole Incorporator

Address: 525 East 68<sup>th</sup> St. Box 182  
New York, NY 10065

September 15, 2015

**VIA FEDERAL EXPRESS**

Director, Bureau of House Counsel  
Division of Legal Affairs  
NYS Department of Health  
Corning Tower, Rm 2484  
Empire State Plaza  
Albany, New York 12237



**Re: Consent to File Certificate of Incorporation**  
**The Foundation of NewYork-Presbyterian/Lawrence Hospital**

Dear Sir or Madam:

The Foundation of NewYork-Presbyterian/Lawrence Hospital (the "Foundation") respectfully requests a letter of consent from the Public Health and Health Planning Council to permit the filing of the enclosed Certificate of Incorporation for the Foundation with the Secretary of State. The purpose of the Foundation is to support and benefit its sole member, Lawrence Hospital Center, doing business as NewYork-Presbyterian/Lawrence Hospital ("NYP/Lawrence Hospital"). The enclosed documents update and supercede in its entirety ~~our~~ submission dated March 6, 2015, which we recently resubmitted to the Department on September 1, 2015.

We submit the following information for review:

1. Certificate of Incorporation and Bylaws. Enclosed are an executed copy of the Foundation's Certificate of Incorporation and a copy of the proposed Bylaws of the Foundation.
2. Acknowledgement Letter from NYP/Lawrence Hospital. We enclose an original signed letter from the Chair of NYP/Lawrence Hospital, acknowledging the Hospital will accept funds raised by the Foundation.
3. Description of Fundraising Activities. It is anticipated that financial support for NYP/Lawrence Hospital will be obtained by the Foundation primarily from gifts, grants and contributions from the local community.

4. The Foundation intends to support NYP/Lawrence Hospital by conducting the following activities:
  - (a) Soliciting contributions for NYP/Lawrence Hospital;
  - (b) Functioning as a liaison between and among NYP/Lawrence Hospital, its affiliates and the community; and
  - (c) Promoting the work and charitable mission of NYP/Lawrence Hospital through activities including publications, appeals, public relations efforts and special events.

5. Initial Board of Directors. The following individuals will serve initially on the Foundation's Board of Directors. Please see attached for additional information.

Mary Taylor Behrens  
Michael J. Fosina  
Laura L. Forese  
Kimlee Roldan-Sanchez  
Lisa A. Smith

6. Organizational Relationship. NYP/Lawrence Hospital is the Foundation's sole member. NYP/Lawrence Hospital is a New York not-for-profit corporation that is licensed as a hospital under Article 28 of the Public Health Law. It is a tax-exempt entity under Section 501(c)(3) of the Internal Revenue Code.
7. Controlling Entities. The Foundation controls no entities. The Foundation's sole member is NYP/Lawrence Hospital. NYP/Lawrence Hospital's sole member is NYP Community Services, Inc., which has been established as the Hospital's active parent.

If you have any questions, please call me at 212-746-7905.

Very truly yours,



Kimlee Roldan-Sanchez

cc: Colleen Leonard

September 14, 2015

Director, Bureau of House Counsel  
Division of Legal Affairs  
NYS Department of Health  
Corning Tower, Rm 2484  
Empire State Plaza  
Albany, New York 12237

**Re: The Foundation of NewYork-Presbyterian/Lawrence Hospital**

Dear Sir or Madam:

I am writing on behalf of Lawrence Hospital Center, doing business as NewYork-Presbyterian/Lawrence Hospital, which is licensed under Article 28 of the New York State Public Health Law (the "Hospital"). This is to confirm that The Foundation of NewYork-Presbyterian/Lawrence Hospital (the "Foundation") is being created to support the Hospital, and the Hospital will accept funds raised for it by the Foundation.

Sincerely yours,



Laura L. Forese, MD, MPH  
Chairman, NYP/Lawrence Board of Governors

The Foundation of NewYork-Presbyterian/Lawrence Hospital, Inc. - Board Member Information – as of 9/15/2015

	1	2	3	4	5
<b>Name &amp; Address</b>	Mary Taylor Behrens 303 Pondfield Road Bronxville, NY 10708	Michael J. Fosina 57 Highview Avenue New Rochelle, NY10801	Laura L. Forese 849 Stonewall Court Franklin Lakes, NJ 07417	Kimlee Roldan-Sanchez One Belmont Place Staten Island, NY 10301	Lisa A. Smith 8 Governors Road Bronxville, NY. 10708
<b>Occupation</b>	President	President	Group Senior Vice President, Chief Operating Officer, NYP/Weill Cornell; President, NYP Healthcare System	Vice President & Chief Administrative Officer NewYork-Presbyterian Healthcare System and Regulatory Planning	Not Employed
<b>Employer Name &amp; Address</b>	Newfane Advisors, Inc.. 303 Pondfield Road Bronxville, NY 10708	NewYork- Presbyterian/Lawrence Hospital 55 Palmer Avenue Bronxville, New York 10708	NewYork-Presbyterian Hospital 525 East 68th Street New York, NY 10065	NewYork-Presbyterian Hospital 525 East 68th Street New York, NY 10065	Not Employed
<b>Past &amp; Present Affiliations w/ other charitable or non-profit organizations</b>	<p><u>PRESENT:</u></p> <ul style="list-style-type: none"> <li>Georgetown University Board of Regents – Regent Emeritus</li> </ul> <p><u>PAST:</u></p> <ul style="list-style-type: none"> <li>Bronxville School Foundation – Trustee</li> <li>Vestry of Christ Church Bronxville – Senior Warden</li> <li>YMCA of Greater New York – Board Member</li> </ul>	<p><u>PRESENT:</u></p> <ul style="list-style-type: none"> <li>Silvercrest Nursing Home, Briarwood</li> <li>Council of Senior Centers- NY</li> <li>City of New Rochelle, NY Sports Hall of Fame Committee</li> <li>City of New Rochelle, NY Ambulance Advisory Committee</li> <li>American College of Healthcare Executives</li> <li>Healthcare Leaders of New York</li> <li>University of Delaware, College of Health Sciences, Advisory Board</li> </ul>	<p><u>PRESENT:</u></p> <ul style="list-style-type: none"> <li>NewYork- Presbyterian/Lawrence Hospital – Trustee</li> <li>NewYork- Presbyterian/Hudson Valley Hospital - Trustee</li> <li>New York Hospital Queens – Trustee</li> <li>New York Methodist Hospital – Trustee</li> <li>Matthew Larson Foundation – Trustee</li> <li>Ortho Scientific Research Foundation – Trustee</li> </ul> <p><u>PAST:</u></p> <ul style="list-style-type: none"> <li>Weill Cornell Imaging at NewYork-Presbyterian, NYC – Trustee</li> <li>NY/NJ Super Bowl Host Committee – Trustee</li> <li>NY/NJ Snowflake Youth Foundation – Trustee</li> <li>Princeton University – Trustee</li> </ul>	<p><u>PRESENT:</u></p> <ul style="list-style-type: none"> <li>NewYork- Presbyterian/Hudson Valley Hospital - Trustee</li> <li>NY Community Hospital of Brooklyn – Trustee</li> <li>Rogosin Institute, NYC – Trustee</li> <li>NY Gracie Square Hospital, NYC – Trustee</li> <li>Silvercrest Nursing Home, Briarwood, NY – Trustee</li> </ul>	<p><u>PRESENT:</u></p> <ul style="list-style-type: none"> <li>Lawrence Hospital Center -Board of Governors</li> <li>Concordia Conservatory- Board of Advisors</li> <li>Bronxville School Foundation – Trustee</li> <li>Robin Hood Foundation- Former employee</li> </ul> <p><u>PAST:</u></p> <ul style="list-style-type: none"> <li>Gary Klinsky Children's Center - Board Member</li> </ul>

**CERTIFICATE OF INCORPORATION**  
**OF**  
**THE FOUNDATION OF NEW YORK-PRESBYTERIAN/LAWRENCE HOSPITAL**

Under Section 402 of the  
New York Not-for-Profit Corporation Law

The undersigned, desiring to form a corporation pursuant to the provisions of the New York Not-for-Profit Corporation Law (the "NPCL"), does hereby certify (this "Certificate") as follows:

FIRST: The name of the corporation is The Foundation of New York-Presbyterian/Lawrence Hospital (hereinafter referred to as the "Corporation").

SECOND: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL. The Corporation is a charitable corporation under Section 201 of the NPCL.

THIRD: (A) The Corporation is organized and shall be operated exclusively for the charitable purposes of benefiting and supporting Lawrence Hospital Center, doing business as NewYork-Presbyterian/Lawrence Hospital ("NYP/Lawrence Hospital"), a New York State not-for-profit corporation exempt from federal income tax pursuant to Section 501(c)(3) and Section 509(a)(1) of the Internal Revenue Code of 1986, as the same may be amended from time to time and any successor statute thereto (the "Code"), and direct or indirect subsidiary entities of NYP/Lawrence Hospital that qualify as exempt from federal income tax under Section 501(a) of the Code as organizations described in Section 501(c)(3) and classified as other than a private foundation by reason of being described in Section 509(a)(1) or 509(a)(2) of the Code (collectively, with NYP/Lawrence Hospital, being referred to herein as the "Supported Organizations"), and of improving the public health and well-being of the community in which the Corporation functions, by:

- ok ✓
- ✓ 1. soliciting, receiving, acquiring, investing, maintaining and administering cash, securities and other real and personal property (collectively "Funds") by way of gifts, donations, grants or otherwise, and conveying, granting or otherwise distributing such Funds, together with the investment income and appreciation derived thereon, to the Supported Organizations to promote the charitable purposes thereof;
  - ✓ 2. supporting, promoting and rendering assistance to the Supported Organizations in the community by interfacing with and serving as a liaison between the Supported Organizations and the community; and
  - ✓ 3. subject to the limitations set forth herein, engaging in any and all other lawful acts or activities, and exercising all such powers, rights and privileges applicable to not-for-profit corporations organized under the



NPCL, that are incidental to and in furtherance of accomplishing the foregoing charitable purposes.

(B) The Corporation shall engage in activities in furtherance of the purposes described in paragraph (A) of this Article THIRD exclusively for charitable purposes within the meaning of Sections 170(c)(2)(B) and 501(c)(3) of the Code.

FOURTH: (A) Nothing in this Certificate of Incorporation shall authorize the Corporation within the State of New York, to: (i) provide hospital services or health related services, as such terms are defined in the New York State Public Health Law (the "PHL"); (ii) establish, operate or maintain a hospital, a home care services agency, a hospice, a managed care organization, or a health maintenance organization, as provided for by Articles 28, 36, 40, and 44, respectively, of the PHL and implementing regulations; (iii) establish or operate an independent practice association; (iv) establish, operate, construct, lease or maintain an adult home, an enriched housing program, a residence for adults or an assisted living program, as provided for by Article 7 of the New York State Social Services Law ("SSL"); (v) establish, operate, construct, lease or maintain an assisted living residence, as provided for by Article 46-B of the PHL; or (vi) otherwise engage in or include among its purposes any of the activities mentioned in Section 404(a) through (n), (p), (q), (r), (u), (v) and (w) of the NPCL or Section 460-a of the SSL, in each case without the Corporation first having obtained consent or approval from the appropriate governmental authority with respect thereto. Additionally, nothing in this Certificate of Incorporation shall authorize the Corporation within the State of New York, to (a) hold itself out as providing or (b) provide any health care professional services that require licensure or registration pursuant to either Title 8 of the New York State Education Law, or the PHL, including, but not limited to, medicine, nursing, psychology, social work, occupational therapy, speech therapy, physical therapy, or radiation technology.

(B) The Corporation shall not operate for the purpose of carrying on a trade or business for profit.

FIFTH: In furtherance of the foregoing purposes, the Corporation shall have all of the general rights, powers and privileges enumerated in the NPCL. The Corporation shall have the right to exercise all other powers which are, or hereafter may be, conferred by law upon a corporation organized for the above purposes or incidental to the conferred powers. Notwithstanding the foregoing, the Corporation shall not have the power to engage in any activities which are not in furtherance of its purposes as set forth in Article THIRD hereof.

SIXTH: No part of the Corporation's assets, net earnings, income or profit shall inure to the benefit of, or be distributable to, any member, trustee, director, officer or employee of the Corporation or other private person, except as permitted by law; provided, however, that the Corporation shall be authorized and empowered to pay reasonable compensation to any person for services rendered to or for the Corporation in furtherance of one or more of its purposes. No trustee, director, officer or employee of the Corporation or any private person shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation.

SEVENTH: No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (except to the extent

permitted by Section 501(h) of the Code if the Corporation makes an election thereunder), and the Corporation shall not participate in or intervene in (including the publishing or the distributing of statements in connection with) any political campaign on behalf of or in opposition to any candidate for public office.

✓ EIGHTH: Notwithstanding anything to the contrary in this Certificate, the Corporation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity, that would invalidate its status: (a) as a corporation that is exempt from federal income taxation under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code; or (b) as a corporation contributions to which are deductible under Sections 170(c)(2), 2055(a) or 2522(a) of the Code. COO

NINTH: In the event of dissolution of the Corporation, all of the remaining assets and property of the Corporation shall, after payment of or due provision for all necessary expenses and liabilities thereof, be distributed to: (a) NYP/Lawrence Hospital and/or one or more subsidiaries or affiliates or successors thereof, as are then in good standing under Section 501(c)(3) of the Code; or (b) in the event that NYP/Lawrence Hospital, its subsidiaries and/or affiliates and successors have ceased to exist or are not then qualifying under Section 501(c)(3) of the Code, then to one or more charitable organizations as are then in existence and qualifying under Section 501(c)(3) of the Code, or to Federal, State and/or local governments for a related public purpose, in such proportions as the Board of Directors of the Corporation shall determine, in either case, subject to receipt of any and all approvals that may be required by applicable laws of the State of New York.

TENTH: The office of the Corporation shall be located in the County of Westchester within the State of New York.

✓ ELEVENTH: The names and addresses of the initial Directors of the Corporation, each of whom is at least eighteen (18) years of age, are as follows:

Name	Address
Mary Taylor Behrens	303 Pondfield Road Bronxville, NY 10708
Michael Fosina	55 Palmer Avenue Bronxville, NY 10708
Laura L. Forese	525 East 68 <sup>th</sup> St. New York, NY 10065
Kimlee Roldan-Sanchez	525 East 68 <sup>th</sup> St. New York, NY 10065
Lisa A. Smith	8 Governors Road Bronxville, NY 10708

TWELFTH: In accordance with Section 508(e) of the Code, if in any taxable year the Corporation is a private foundation as defined in Section 509(a) of the Code, then in such year:

(a) The Corporation shall distribute such amounts for each taxable year at such time and in such manner so as not to subject the Corporation to tax on undistributed income under Section 4942 of the Code;

(b) The Corporation shall not engage in any act of self-dealing which is subject to tax under Section 4941(d) of the Code;

(c) The Corporation shall not retain any excess business holdings which are subject to tax under Section 4943(c) of the Code;

(d) The Corporation shall not make any investments in such manner so as to subject the Corporation to tax under Section 4944 of the Code; and

(e) The Corporation shall not make any taxable expenditures which are subject to tax under Section 4945 of the Code.

THIRTEENTH: The Secretary of State of New York is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation which is served upon him is:

The Foundation of NewYork-Presbyterian/Lawrence Hospital  
c/o NewYork-Presbyterian/Lawrence Hospital  
55 Palmer Avenue  
Bronxville, New York 10708  
Attention: President

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**[SIGNATURE PAGE TO FOLLOW]**

**BYLAWS OF**  
**THE FOUNDATION OF NEWYORK-PRESBYTERIAN/LAWRENCE HOSPITAL**

**AS OF [EFFECTIVE DATE]**

BYLAWS OF  
THE FOUNDATION OF NEWYORK-PRESBYTERIAN/LAWRENCE HOSPITAL

ARTICLE I  
NAME AND PRINCIPAL OFFICE AND PURPOSES OF THE  
CORPORATION

*Section 1. Name*

The legal name of the corporation is The Foundation of NewYork-Presbyterian/Lawrence Hospital (the “Corporation” or the “Foundation”).

*Section 2. Principal Office*

The principal office of the Corporation shall be located in the Town of Bronxville, County of Westchester, State of New York.

*Section 3. Purposes*

The Foundation is organized, and shall be operated, exclusively for charitable purposes within the meaning of Sections 170(c)(2)(B) and 501(c)(3) of the Internal Revenue Code of 1986, as amended from time to time (the “Code”), and in furtherance thereof, the Foundation shall:

(a) In accordance with applicable law, the Certificate of Incorporation and the provisions of these Bylaws, support, promote and further the charitable activities and purposes of its Member and any direct or indirect charitable subsidiary thereof (collectively, the “Supported Organizations”) by receiving, maintaining and distributing cash, securities and other real or personal property and administering and applying the income and principal thereof for the charitable purposes of its Member and other Supported Organizations, and, in furtherance thereof, take and hold by bequest, devise, gift, grant, contribution, purchase, lease or otherwise, any property, real or personal, or any interest therein, and sell, convey or otherwise dispose of any such property and invest, reinvest or deal with the principal or the income thereof in such manner as will best promote the purposes of the Foundation, the Member and other Supported Organizations;

(b) Promote the Member and other Supported Organizations in the community and function as a liaison between and among the Member, its subsidiaries and the community; and

(c) Subject to the limitations set forth in these Bylaws, engage in any and all other lawful acts or activities, and exercise all such powers, rights and privileges applicable to nonprofit corporations organized under the New York Not-for-Profit Corporation Law (“NPCL”) in furtherance of accomplishing the foregoing charitable purposes.

The Foundation shall not operate for the purpose of carrying on a trade or business for pecuniary profit or gain.

***Section 4. Use of Income***

No part of the Foundation's assets, net earnings, income or profit shall inure to the benefit of, or be distributable to, any director, trustee, officer, manager, or employee of the Foundation or any private person; provided, however, that the Foundation shall be authorized and empowered to pay reasonable compensation to any person for services rendered to the Foundation and to make distributions in furtherance of the Foundation's charitable purposes.

***Section 5. Further Restrictions***

No substantial part of the activities of the Foundation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (except to the extent permitted by Section 501(h) of the Code if the Foundation makes an election thereunder) and the Foundation shall not participate in or intervene in (including the publishing or the distributing of statements in connection with) any political campaign on behalf of or in opposition to any candidate for public office.

***Section 6. Business Without Profit***

Notwithstanding anything to the contrary in these Bylaws, the Foundation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity, that would invalidate its status (i) as a corporation which is exempt from federal income taxation under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code, or (ii) as a corporation contributions to which are deductible under Sections 170(c)(2), 2055(a) or 2522(a) of the Code.

**ARTICLE II**  
**MEMBER**

***Section 1. Member***

The sole member of the Corporation shall be Lawrence Hospital Center, d/b/a NewYork-Presbyterian/Lawrence Hospital (the "Member" or the "Hospital") and its corporate successors by merger, consolidation or otherwise. There shall be no other member or classes of membership whatsoever.

***Section 2. Power and Rights***

In addition to such other rights, powers and authority as are vested in the Member in its capacity as the sole member of the Corporation by law or as may be set forth in the Certificate of Incorporation of the Corporation or these Bylaws, the Member shall have the following rights, powers and authorities with respect to the Corporation:

- (a) to approve a merger of, or consolidation by, the Foundation;
- (b) to approve any sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all of the Foundation's property and assets;
- (c) to approve any borrowing or the incurrence of debt by the Foundation;
- (d) to approve any acquisition, purchase, sale or other disposition of the assets of the Foundation;
- (e) to approve any budget of the Foundation;
- (f) to approve any restrictions on any contributions to the Corporation and any restrictions on the use of or the imposition of any other limitations or conditions in connection with grants, distributions or contributions of the Corporation;
- (g) to adopt or approve the adoption of any policies and procedures;
- (h) to approve the election of officers of the Corporation;
- (i) to approve the capital and other fundraising campaigns undertaken by the Corporation (including any advertising and use of media in connection therewith);
- (j) to approve any contracts for the management of the Corporation;
- (k) to approve settlements of administrative or other litigation or proceedings to which the Corporation is a party;
- (l) to adopt, amend or repeal these Bylaws or the Certificate of Incorporation of the Foundation;

- (m) to appoint and/or remove a Director of the Foundation;
- (n) to require the Foundation to make grants, contributions or other distributions to the Member or its subsidiaries subject to any restriction imposed by donor interest;
- (o) to require the transfer of assets from the Foundation to the Member or its subsidiaries, subject to any restrictions imposed by donor interest; and
- (p) to approve a liquidation, dissolution, or winding up of the Foundation.

***Section 3. Annual Meeting***

The annual meeting of the Member shall be held as provided in the Amended and Restated Bylaws of the Member.

***Section 4. Special Meetings***

Special Meetings of the Member may be called pursuant to the Amended and Restated Bylaws of the Member.

***Section 5. Notice of Meeting***

Notice of all meetings of the Member shall be given in accordance with the Amended and Restated Bylaws of the Member.

***Section 6. Action by the Member***

Any action required or permitted to be taken by the Member in its capacity as the sole member of the Corporation shall be taken and evidenced pursuant to the Amended and Restated Bylaws of the Member.

***Section 7. Quorum***

Presence of the Member shall constitute a quorum for the transaction of business or of any specified item of business of the Member.

***Section 8. Action Without a Meeting***

Any action required or permitted to be taken by the Member may be taken without a meeting if the Member consents in writing or electronically, in either case as provided by the NPCL, to the adoption of a resolution approving such action.

***Section 9. Minutes***

The Corporation shall keep, at its office, correct and complete minutes of the proceedings of the Member.



***Section 10. Termination of Member***

The status of the Member as sole member of the Foundation shall not be terminated without the affirmative written consent of the Member, provided that the membership of the Member shall be terminated automatically and without further action on the part of the Foundation or the Member in the event that the Member is determined by the Internal Revenue Service not to be an organization qualifying for tax-exempt status under Section 501(c)(3) of the Code. In the event the membership of the Member is automatically terminated pursuant to this section, a successor section 501(c)(3) exempt organization shall be selected by the Member as member.

**ARTICLE III**  
**BOARD OF DIRECTORS**

***Section 1. Governance***

(a) Subject to the rights of the Member set forth in Article II, Section 2 of these Bylaws, the governance of the Corporation is hereby vested in the Board of Directors, which shall have full legal authority and overall responsibility for the conduct of the activities of the Corporation and for management of the properties, affairs and operations of the Corporation in a manner consonant with the Corporation's objectives as set forth in these Bylaws and actions taken and resolutions duly adopted by the Member.

(b) Directors shall act in all matters as a Board and the power of the Board of Directors shall not reside in any Director individually.

***Section 2. Composition of Board of Directors***

(a) The number of Directors comprising the entire Board of Directors of the Corporation (each, a "Director" and, collectively, the "Directors") shall be set from time to time by the Member. As of the Effective Date, there shall be five (5) Directors.

(b) Two (2) Directors shall serve as ex-officio members of the Board, with vote, and shall be as follows: the President of the Member and the Chairman of the Board of the Member or their respective designees.

(c) All members of the Board of Directors shall serve in accordance with, and be subject to, the provisions of these Bylaws and applicable law that pertain to persons who serve on the Board of Directors, including as to termination, removal and resignation.

***Section 3. Term of Office of Board of Directors***

(a) Each Director shall be elected by the Member to a term of office of two (2) years, with the initial term of each Director to begin on the Effective Date. Directors shall, upon election by the Member, immediately enter upon the performance of their duties, and shall continue in office until their successors shall be duly elected and qualified.

***Section 4. Qualifications and Nomination***

(a) Each Director shall be at least eighteen (18) years of age or the minimum age prescribed by the NPCL and, at a minimum, shall: (i) serve or have served on the Board of Governors of the Member or (ii) have or have had a residence in or work or have worked in the community served by the Member or (iii) otherwise maintain close ties in or with the community served by the Member. In no event shall the ex-officio directors be required to meet the foregoing residency or place of business requirements.

(b) Exclusive of ex-officio membership, the nominations and election of Directors shall be made by the Member after consideration of any recommendations made by the Board Development Committee.

***Section 5. Election of Directors***

(a) The Member shall elect Directors at the annual meeting of the Member or as otherwise determined by the Member.

(b) Voting for the election of Directors shall be in such form and manner as may be prescribed by the Member.

***Section 6. Filling of Vacancies***

Vacancies occurring on the Board of Directors for any reason including newly created positions, may only be filled by the Member. Such Directors elected to fill vacancies shall only hold office until the next annual meeting of the Member, or until the successors of such Directors are elected, qualified and assume office, or until death, resignation or removal. In the event of any vacancy in any position on the Board of Directors, including in connection with the expiration of the term of service, or the resignation or removal, of any member of the Board, the Member may consult the Board Development Committee.

**Section 7. Resignation and Removal of Directors**

(a) Any Director may resign at any time by giving written notice of such resignation to the Secretary. Unless otherwise specified therein, such resignation shall take effect upon receipt thereof by the Secretary.

(b) Any Director may be removed with or without cause by the Member.

(c) Resignation or removal as a Board Member also shall constitute resignation or removal as an officer.

**Section 8. Meetings of the Board of Directors**

(a) The annual meeting of the Board of Directors for the transaction of such business as may properly come before such meeting shall be held each year as soon as practicable after the annual meeting of the Member. Written notice of the time and place of the annual meeting of the Board of Directors shall be delivered to each Director not less than ten (10) days prior to the annual meeting.

(b) Regular business meetings of the Board of Directors shall be held as may be determined by the Chairman or the Board of Directors, at such place within or outside the State of New York as may be fixed by the notice of meeting. Written notice of the time and place of all regular meetings of the Board of Directors shall be delivered to each Director not less than ten (10) days prior to such regular meeting.

(c) Special Meetings of the Board of Directors may be called at any time by the Chairman or by the President or Secretary of the Corporation. A special meeting called by the Chairman or President shall be held at such time as deemed appropriate by the Chairman or President, as applicable. Notice of the time and place of any special meeting of the Board of Directors shall be delivered to each Director: (i) if by mail, not less than five (5) business days prior to such special meeting; or (ii) if by facsimile, telecommunications or electronic mail, one (1) business day prior to such special meeting. Notice of any special meeting of the Board of Directors shall state the purpose or purposes for which the meeting is called. No business other than specified in the notice of special meeting shall be transacted at such special meeting.

(d) A majority of the Directors present at any meeting, whether or not a quorum is present, may adjourn the meeting to another time and place. At least one (1) days' notice of any adjournment of a meeting of the Board of Directors to another time or place shall be given to the

Directors who were not present at the time of the adjournment and, unless such time and place are announced at the meeting, to the other Directors.

***Section 9. Action Without a Meeting***

(a) Any action required or permitted to be taken by the Board of Directors, or any committee thereof, may be taken without a meeting if all members of the Board or such committee, as the case may be, consent in writing or electronically, in either case as provided by the NPCL, to the adoption of a resolution approving such action.

(b) Any one (1) or more Directors who is not physically present at a meeting of the Board of Directors, or any committee thereof, may participate in such meeting by means of a conference telephone or similar communications equipment or by electronic video screen communication. Participation by such means shall constitute presence in person at a meeting as long as all persons participating in the meeting can hear each other at the same time and each Director can participate in all matters before the Board of Directors or such committee, including, without limitation, the ability to propose, object to, and vote upon a specific action to be taken by the Board of Directors or such committee.

***Section 10. Minutes of Meetings***

Minutes shall be maintained of all meetings of the Board of Directors, and any committee thereof, which minutes shall reflect all business conducted thereat, including findings, conclusions and recommendations. Such minutes shall regularly be distributed to the Directors.

***Section 11. Quorum and Voting Requirements***

(a) Except as otherwise required by law or in these Bylaws, a majority of the total number of Directors then in office shall constitute a quorum for the transaction of any business at any meeting of directors. In the absence of a quorum, a majority of those present may adjourn any meeting to another time and place, provided, that notice of the meeting shall be given to the Directors not present at the time of adjournment.

(b) Except as otherwise provided by law or in these Bylaws, all matters shall be decided by vote of a majority of the Directors present at the time of the vote, if a quorum is present at such time. Each Director shall be entitled to one (1) vote.

***Section 12. Duties, Liabilities, Powers and Restrictions of Individual Directors and of the Board of Directors***

(a) No Director shall receive compensation for any services performed as a Director. Nothing herein shall be construed to preclude any Director from serving the Corporation in any other capacity as an Officer, agent, or otherwise and receiving compensation therefor, as authorized by the Board of Directors, except no employee of the Corporation may serve as Chair of the Board of Directors or hold any other position with similar responsibilities.

(b) Directors shall discharge their duties in good faith and with that degree of diligence, care and skill which ordinarily prudent individuals would exercise under similar circumstances in like positions. In discharging their duties, Directors, when acting in good faith, may rely upon financial statements of the Corporation represented to them to be correct by the Chairman or the Treasurer of the Corporation, or stated in a written report by an independent public or certified public accountant or firm of such accountants fairly to reflect the financial condition of the Corporation.

(c) The liability of Directors, whether joint or several, shall be limited to the cases set forth in Section 719 of the NPCL and shall be subject to indemnification by the Corporation as set forth in Article VI of these Bylaws.

(d) The Board of Directors shall take reasonable steps to conform to all applicable federal, state and local laws, ordinances, codes and regulations.

***Section 13. Policies***

(a) Subject to Article II, Section 2 of these Bylaws, the Board of Directors shall adopt a Conflict of Interest Policy of the Corporation, and shall review that policy from time-to-time to assure that it provides appropriate guidance and protections. The Conflict of Interest Policy of the Corporation shall include: (i) a definition of circumstances that constitute a conflict of interest; (ii) procedures for disclosing a conflict of interest to the Committee or the Board of Directors, as applicable; (iii) procedures for disclosing, addressing and documenting “related party transactions” (as defined in the NPCL); and (iv) such other matters as are required to be included or addressed in such Conflict of Interest Policy pursuant to Section 715-a(b) of the NPCL to the extent applicable to the Corporation.

(b) Subject to Article II, Section 2 of these Bylaws, the Board of Directors shall adopt additional policies, as it sees fit and from time to time, in order to facilitate the efficient

administration of the Corporation's affairs, and in order to protect and promote the quality and integrity of the Corporation's pursuits.

**ARTICLE IV**  
**OFFICERS**

***Section 1. Officers***

(a) The Officers shall be a Chairman, one (1) or more Vice-Chairmen, a President (who shall be the Chief Executive Officer), Vice Presidents, a Secretary, a Treasurer and such other officers as the Board of Directors may authorize. The President of the Member shall be the President of the Corporation, ex officio. All other officers shall be elected by the Board of Directors at its annual meeting and all such officers shall serve for one (1) year, or until their successors shall be duly elected and qualify. Neither the Chairman nor any of the other Officers shall be employees of the Corporation and the Corporation shall otherwise have no employees.

(b) The Chairman of the Board of Directors shall preside at all meetings of the Board of Directors, and shall be a member *ex-officio*, with the right to vote, of all Committees of the Board of Directors. The Chairman shall, at the annual meeting of the Member or of the Board of Directors, and at such other times as he or she shall deem proper, communicate to the Member or the Board of Directors, as applicable, such matters, and make such suggestions as may, in his or her opinion, tend to promote the prosperity, welfare and usefulness of the Corporation, and shall perform such other duties as are incidental to the office.

(c) The Vice-Chairmen, if any, of the Board of Directors, in the order of their seniority of service in such office, shall, in the absence or disability of the Chairman, perform the duties of that office. The power to determine any question of seniority of service, and the nature, extent and probable duration of any absence or disability of the Chairman shall be vested in the Board of Directors.

(d) The President shall be the highest administrative officer of the Corporation and shall preside at all meetings of the Board of Directors in the absence of the Chairman, shall generally supervise the business of the Corporation, and shall execute documents as necessary to evidence actions of the Corporation. The President may also bear the title "Chief Executive Officer" or "Executive Director".

(e) The Secretary shall keep the minutes of Meetings of the Board of Directors, attend to the serving of notices of meetings of the Directors, have custody of all books and records of the Corporation and perform such other duties as are incidental to his or her office and such further duties as the Board of Directors shall direct or as may be required by law. Any Assistant Secretaries elected by the Board of Directors shall assist the Secretary with duties as directed by the Board of Directors of the Corporation. During the absence of the Secretary or when the Secretary is otherwise unable to act, the Assistant Secretaries shall perform all duties usually devolving on the Secretary.

(f) The Treasurer shall have supervision and care of all receipts and monies of the Corporation, and shall be responsible to see that accurate accounts of all receipts and disbursements are kept. The Treasurer shall cause to be deposited all receipts in such banks as authorized by the Board of Directors. The funds, books and vouchers in the hands of the Treasurer shall at all times be under the supervision of the Finance Committee, and subject to its inspection and control. The Treasurer shall render a statement of accounts at each annual meeting of the Corporation and at each regular meeting of the Board of Directors. The Treasurer shall also perform such other duties as are incidental to the office, and such further duties as the Board of Directors or the Finance Committee may direct. Any Assistant Treasurers elected by the Board of Directors shall assist the Treasurer with duties as directed by the Board of Directors. During the absence of the Treasurer or when the Treasurer is otherwise unable to act, the Assistant Treasurers shall perform all duties usually devolving on the Treasurer.

## **ARTICLE V**

### **COMMITTEES**

#### ***Section 1. Board Committees***

(a) The Committees of the Board shall be the Finance Committee and the Board Development Committee. Except as otherwise expressly provided herein, the Board of Directors shall, by resolution adopted by a majority of the entire Board, appoint the members of the Committees, all of whom shall be members of the Board.

(b) All Committees shall consist of three or more members of the Board, unless otherwise provided, and shall report to the Board at all Regular Meetings.

(c) Unless otherwise provided by law, the Foundation's Certificate of Incorporation or these Bylaws, the Chair of each of the Committees, subject to approval of the Board Chair, shall have the power and authority to appoint from among its Committee members one or more sub committees, each composed of one or more Board members, as the Chair of the Committee shall determine, in order to assist the Committee in the performance of its duties and responsibilities.

(d) The Board may provide for individuals who are not members of the Board of Directors to attend and participate in meetings of Board committees and sub-committees. Such individuals may vote on matters involving recommendations to the Board, but may not vote on any matters which have been delegated to the committee or sub-committee for final action on behalf of the Board. Individuals who are not members of the Board of Directors may be appointed to any task force which may be established by the Board or any committee to address any specific issue.

(e) Subject to the provisions of these Bylaws and to any relevant action of the Board of Directors, the committees shall establish their own rules of procedure, including as to meeting schedule, quorum and voting requirements.

***Section 2. Duties, Powers and Functions of the Board Committees***

(a) Subject to Article II, Section 2 of these Bylaws, the Finance Committee shall exercise general supervision of the financial affairs of the funds and investments of the Corporation. The Finance Committee shall meet in advance of all regular meetings of the Board of Directors, and as often as is necessary in between such regular meetings as the Finance Committee or the Board of Directors may deem necessary. The Finance Committee shall review and monitor the financial performance and operation of the Corporation to secure and maintain certainty in the collection, handling and disbursement of the Corporation's current and permanent funds, review and monitor the Corporation's insurance needs and coverage, and attend to the investment and reinvestment of the Corporation's endowment, reserve, surplus and other funds. The Finance Committee shall prepare and submit annually to the Board of Directors and the Member the capital and operating budgets of the Corporation. The Finance Committee shall also assure that appropriate policies and procedures are in place to safeguard the assets of the Corporation.



(b) Audit and compliance oversight for the Corporation shall be exercised by the Audit and Corporate Compliance Committee of NYP Community Services, Inc., the member of the Member, as set forth in its Amended and Restated Bylaws.

(c) The Board Development Committee shall assist in identifying and recruiting appropriate prospective members of the Board of Directors, shall prepare and recommend to the Member candidates for offices to be filled and candidates to fill any vacancies in the Board, and perform other duties as assigned by the Chair and approved by the Board, subject to the approval of the Member.

***Section 3. Other Committees and Task Forces***

(a) The Board of Directors, by resolution adopted by a majority of its members, may designate from among its members an Executive Committee or other Committee of the Board, consisting of three or more directors, with full authority to take actions and exercise oversight in areas as the Board of Directors shall designate in its resolution; provided, however, that the Board of Directors shall not give the Executive Committee authority as to the matters listed in Section 4 below.

(b) Other Committees of the Corporation, including temporary committees and task forces for specific purposes, may be appointed from time-to-time by a majority vote of the Board of Directors.

***Section 4. Authority***

(a) The Executive Committee, if one shall be constituted, shall have such authority as is specified in these Bylaws or as may be delegated by resolution of the Board of Directors, except that it shall not have authority as to the following matters:

- (i) the submission to the Member of any action requiring the Member's approval under the Certificate of Incorporation of the Corporation, these Bylaws or the NPCL;
- (ii) the filling of vacancies on the Board of Directors or any Committee;
- (iii) the fixing of compensation of any individual for serving as a Director or on any Committee;
- (iv) the amendment, or repeal of these Bylaws or adoption of new Bylaws; or
- (v) the amendment or repeal of any resolution of the Board of Directors which by its terms shall not be so amendable or repealable.

(b) The designation of the Executive Committee and the delegation thereto of authority as specified in these Bylaws shall not operate to relieve the Board of Directors, or any individual Director, of any responsibility imposed on it or him or her by law.

**Section 5. Indemnification**

The members of any committee of the Board of Directors or of the Corporation, whether or not they are members of the Board of Directors, shall be entitled to the right of indemnification as set forth in Article VII of these Bylaws, and shall be deemed entitled to the same coverage as is or may be afforded to Directors under the Corporation's professional liability insurance policy.

**ARTICLE VI  
INDEMNIFICATION**

**Section 1. Indemnification**

(a) Consistent with the restrictions set forth in the NPCL, the Corporation shall indemnify each person who is or was a Director or Officer of the Corporation against any and all liability and reasonable expenses that may be incurred in connection with or resulting from any action, claim, suit or proceeding, other than one which is brought by or in the right of the Corporation, whether civil or criminal, in which he may become involved by reason of his being or having been a Director or Officer of the Corporation, or by reason of any past or future action taken or not taken in his capacity as such Director or Officer, whether or not he continues to be such at the time that such liability or expenses are incurred; provided, however:

(i) such Director or Officer acted in good faith for a purpose which he or she reasonably believed to be in the best interest of the Corporation; and

(ii) in any criminal action or proceeding, such Director or Officer had no reasonable cause to believe that his or her conduct was unlawful.

(b) For the purposes of Article VI, Section 1(a), the phrase "liability and reasonable expenses" shall include, but shall not be limited to, attorneys' fees, reasonable expenses, amounts of judgments, fines or penalties, and amounts paid in settlement by such Director or Officer of the Corporation.

(c) Consistent with the restrictions set forth in the NPCL, the Corporation shall indemnify each person who is or was a Director or Officer of the Corporation against any and all

liability and reasonable expenses that may be incurred by him in connection with or resulting from any action, claim, suit, or proceeding, brought by or in the right of the Corporation to procure a judgment in its favor, in which he may become involved by reason of his being or having been a Director or Officer of the Corporation, or by reason of past or future action taken or not taken in his capacity as such Director or Officer, whether or not he or she continues to be such at the time that such liability or expenses are incurred, except in relation to matters as to which he is adjudged to have breached his duty to the Corporation to act in good faith and exercise that degree of diligence, care and skill which ordinarily prudent persons exercise under similar circumstances in like positions.

(d) For the purposes of Article VI, Section 1(c) of these Bylaws, the phrase “liability and reasonable expenses” shall include attorneys’ fees, but shall in no case include amounts paid in settling or otherwise disposing of a threatened or pending action, with or without court approval, or expenses incurred in defending a threatened or pending action which is settled or otherwise disposed of without court approval

(e) In the event that a person is wholly successful in defending an action for which indemnification is available, the Corporation shall so indemnify him in accordance with Article VI, Sections 1(a)-(d) of these Bylaws. In any case where a person is less than wholly successful, indemnification shall only be made if authorized: (i) by the Board of Directors acting by a quorum consisting of Directors who are not involved in the claim, suit or proceeding, upon a finding that the Director or Officer has met the standard of conduct required in Article VI, Section 1(a) of these Bylaws or Article VI, Section 1(c) of these Bylaws; or (ii) if a quorum is not obtainable with due diligence, by the Board of Directors upon the written opinion of independent legal counsel selected by the Corporation that indemnification is proper because of the applicable standard of conduct contained in Article VI, Section 1(a) or Article VI, Section 1(c) of these Bylaws.

(f) If any action with respect to indemnification of any person described in Section 1(a) of this Article VI is taken by way of amendment of the Bylaws, resolution of Directors, or by agreement, the Corporation will, not later than the next Annual Meeting of the Member or Members, unless such meeting is held within three (3) months from the date of such action, and in any event, within fifteen (15) months from the date of such action, mail to the Member or

Members at the time entitled to vote for the election of Directors a statement specifying the action taken.

**Section 2. Insurance**

(a) Except as provided in Article VI, Section 2(b) of these Bylaws, the Corporation shall have the power to purchase and maintain insurance:

(i) to indemnify the Corporation for any obligation which it incurs as a result of the indemnification of Directors and Officers under the provisions of this Article VI;

(ii) to indemnify Directors and Officers in instances in which they may be indemnified by the Corporation under the provisions of this Article VI; and

(iii) to indemnify Directors and Officers in instances in which they may not otherwise be indemnified by the Corporation under the provisions of this Article VI under the conditions set forth in Section 726 of the NPCL.

(b) No insurance may provide for any payments other than the cost of defense, to or on behalf of any Director or Officer:

(i) if a judgment or other final adjudication adverse to the insured Director or Officer establishes that his acts of active and deliberate dishonesty were material to the cause of action so adjudicated, or that he personally gained, in fact, a financial profit or other advantage to which he was not legally entitled; or

(ii) in relation to any risk the insurance of which is prohibited under the Insurance Law of the State of New York.

(c) The Corporation shall, within the time and to the persons provided in Article VI, Section 1(f) of these Bylaws, mail a statement specifying any insurance it has purchased or renewed for the indemnification of Directors or Officers, setting forth the insurance carrier, date of contract, cost of the insurance, corporate positions insured and a statement explaining all sums, not previously reported in a statement to the Member or Members, paid under any indemnification insurance contract.

**Section 3. Right Not Exclusive**

The foregoing right of indemnification shall not be deemed exclusive of any other right to which such Director or Officer may be entitled apart from this Article VI.

**ARTICLE VII**  
**FISCAL YEAR**

The fiscal year of the Corporation shall be from the 1st day of January to the 31st day of December, inclusive, each year, or such other twelve (12) consecutive months as the Board of Directors may from time to time designate.

**ARTICLE VIII**  
**WRITTEN NOTICE; WAIVER OF NOTICE**

(a) Whenever written notice is required to be delivered to any person under these Bylaws, it may be given to such person either personally or by sending a copy thereof by mail, or by facsimile, telecommunications or electronic mail, to the address, fax number or email address as it appears on the records of the Corporation or as filed with the Secretary of the Corporation..

(b) The giving of any notice pursuant to these Bylaws may be waived pursuant to the provisions set forth in the NPCL.

**ARTICLE IX**  
**CONSTRUCTION OF BYLAWS**

The determination of the Member shall be conclusive with respect to all questions of construction of these Bylaws.

**ARTICLE X**  
**AMENDMENTS**

The Member shall have the sole right to adopt, amend or repeal these Bylaws.

DRAFT  
3/6/2015

**BYLAWS OF  
THE FOUNDATION OF NEWYORK-PRESBYTERIAN/LAWRENCE HOSPITAL**

**AS OF [EFFECTIVE DATE]**

BYLAWS OF  
THE FOUNDATION OF NEWYORK-PRESBYTERIAN/LAWRENCE HOSPITAL

ARTICLE I  
NAME AND PRINCIPAL OFFICE AND PURPOSES OF THE  
CORPORATION

***Section 1. Name***

The legal name of the corporation is The Foundation of NewYork-Presbyterian/Lawrence Hospital (the “Corporation” or the “Foundation”).

***Section 2. Principal Office***

The principal office of the Corporation shall be located in the Town of Bronxville, County of Westchester, State of New York.

***Section 3. Purposes***

The Foundation is organized, and shall be operated, exclusively for charitable purposes within the meaning of Sections 170(c)(2)(B) and 501(c)(3) of the Internal Revenue Code of 1986, as amended from time to time (the “Code”), and in furtherance thereof, the Foundation shall:

(a) In accordance with applicable law, the Certificate of Incorporation and the provisions of these Bylaws, support, promote and further the charitable activities and purposes of its Member and any direct or indirect charitable subsidiary thereof (collectively, the “Supported Organizations”) by receiving, maintaining and distributing cash, securities and other real or personal property and administering and applying the income and principal thereof for the charitable purposes of its Member and other Supported Organizations, and, in furtherance thereof, take and hold by bequest, devise, gift, grant, contribution, purchase, lease or otherwise, any property, real or personal, or any interest therein, and sell, convey or otherwise dispose of any such property and invest, reinvest or deal with the principal or the income thereof in such manner as will best promote the purposes of the Foundation, the Member and other Supported Organizations;

(b) Promote the Member and other Supported Organizations in the community and function as a liaison between and among the Member, its subsidiaries and the community; and

(c) Subject to the limitations set forth in these Bylaws, engage in any and all other lawful acts or activities, and exercise all such powers, rights and privileges applicable to nonprofit corporations organized under the New York Not-for-Profit Corporation Law ("NPCL") in furtherance of accomplishing the foregoing charitable purposes.

The Foundation shall not operate for the purpose of carrying on a trade or business for pecuniary profit or gain.

***Section 4. Use of Income***

No part of the Foundation's assets, net earnings, income or profit shall inure to the benefit of, or be distributable to, any director, trustee, officer, manager, or employee of the Foundation or any private person; provided, however, that the Foundation shall be authorized and empowered to pay reasonable compensation to any person for services rendered to the Foundation and to make distributions in furtherance of the Foundation's charitable purposes.

***Section 5. Further Restrictions***

No substantial part of the activities of the Foundation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (except to the extent permitted by Section 501(h) of the Code if the Foundation makes an election thereunder) and the Foundation shall not participate in or intervene in (including the publishing or the distributing of statements in connection with) any political campaign on behalf of or in opposition to any candidate for public office.

***Section 6. Business Without Profit***

Notwithstanding anything to the contrary in these Bylaws, the Foundation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity, that would invalidate its status (i) as a corporation which is exempt from federal income taxation under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code, or (ii) as a corporation contributions to which are deductible under Sections 170(c)(2), 2055(a) or 2522(a) of the Code.



ARTICLE II  
MEMBER

*Section 1. Member*

The sole member of the Corporation shall be Lawrence Hospital Center, d/b/a NewYork-Presbyterian/Lawrence Hospital (the "Member" or the "Hospital") and its corporate successors by merger, consolidation or otherwise. There shall be no other member or classes of membership whatsoever.

*Section 2. Power and Rights*

In addition to such other rights, powers and authority as are vested in the Member in its capacity as the sole member of the Corporation by law or as may be set forth in the Certificate of Incorporation of the Corporation or these Bylaws, the Member shall have the following rights, powers and authorities with respect to the Corporation:

- (a) to approve a merger of, or consolidation by, the Foundation;
- (b) to approve any sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all of the Foundation's property and assets;
- (c) to approve any borrowing or the incurrence of debt by the Foundation;
- (d) to approve any acquisition, purchase, sale or other disposition of the assets of the Foundation;
- (e) to approve any budget of the Foundation;
- (f) to approve any restrictions on any contributions to the Corporation and any restrictions on the use of or the imposition of any other limitations or conditions in connection with grants, distributions or contributions of the Corporation;
- (g) to adopt or approve the adoption of any policies and procedures;
- (h) to approve the election of officers of the Corporation;
- (i) to approve the capital and other fundraising campaigns undertaken by the Corporation (including any advertising and use of media in connection therewith);
- (j) to approve any contracts for the management of the Corporation;
- (k) to approve settlements of administrative or other litigation or proceedings to which the Corporation is a party;
- (l) to adopt, amend or repeal these Bylaws or the Certificate of Incorporation of the Foundation;

- (m) to appoint and/or remove a Director of the Foundation;
- (n) to require the Foundation to make grants, contributions or other distributions to the Member or its subsidiaries subject to any restriction imposed by donor interest;
- (o) to require the transfer of assets from the Foundation to the Member or its subsidiaries, subject to any restrictions imposed by donor interest; and
- (p) to approve a liquidation, dissolution, or winding up of the Foundation.

***Section 3. Annual Meeting***

The annual meeting of the Member shall be held as provided in the Amended and Restated Bylaws of the Member.

***Section 4. Special Meetings***

Special Meetings of the Member may be called pursuant to the Amended and Restated Bylaws of the Member.

***Section 5. Notice of Meeting***

Notice of all meetings of the Member shall be given in accordance with the Amended and Restated Bylaws of the Member.

***Section 6. Action by the Member***

Any action required or permitted to be taken by the Member in its capacity as the sole member of the Corporation shall be taken and evidenced pursuant to the Amended and Restated Bylaws of the Member.

***Section 7. Quorum***

Presence of the Member shall constitute a quorum for the transaction of business or of any specified item of business of the Member.

***Section 8. Action Without a Meeting***

Any action required or permitted to be taken by the Member may be taken without a meeting if the Member consents in writing or electronically, in either case as provided by the NPCL, to the adoption of a resolution approving such action.

***Section 9. Minutes***

The Corporation shall keep, at its office, correct and complete minutes of the proceedings of the Member.

***Section 10. Termination of Member***

The status of the Member as sole member of the Foundation shall not be terminated without the affirmative written consent of the Member, provided that the membership of the Member shall be terminated automatically and without further action on the part of the Foundation or the Member in the event that the Member is determined by the Internal Revenue Service not to be an organization qualifying for tax-exempt status under Section 501(c)(3) of the Code. In the event the membership of the Member is automatically terminated pursuant to this section, a successor section 501(c)(3) exempt organization shall be selected by the Member as member.

**ARTICLE III  
BOARD OF DIRECTORS**

***Section 1. Governance***

(a) Subject to the rights of the Member set forth in Article II, Section 2 of these Bylaws, the governance of the Corporation is hereby vested in the Board of Directors, which shall have full legal authority and overall responsibility for the conduct of the activities of the Corporation and for management of the properties, affairs and operations of the Corporation in a manner consonant with the Corporation's objectives as set forth in these Bylaws and actions taken and resolutions duly adopted by the Member.

(b) Directors shall act in all matters as a Board and the power of the Board of Directors shall not reside in any Director individually.

***Section 2. Composition of Board of Directors***

(a) The number of Directors comprising the entire Board of Directors of the Corporation (each, a "Director" and, collectively, the "Directors") shall be set from time to time by the Member. As of the Effective Date, there shall be five (5) Directors.

(b) Two (2) Directors shall serve as ex-officio members of the Board, with vote, and shall be as follows: the President of the Member and the Chairman of the Board of the Member or their respective designees.

(c) All members of the Board of Directors shall serve in accordance with, and be subject to, the provisions of these Bylaws and applicable law that pertain to persons who serve on the Board of Directors, including as to termination, removal and resignation.

**Section 3. Term of Office of Board of Directors**

(a) Each Director shall be elected by the Member to a term of office of two (2) years, with the initial term of each Director to begin on the Effective Date. Directors shall, upon election by the Member, immediately enter upon the performance of their duties, and shall continue in office until their successors shall be duly elected and qualified.

**Section 4. Qualifications and Nomination**

(a) Each Director shall be at least eighteen (18) years of age or the minimum age prescribed by the NPCL and, at a minimum, shall: (i) serve or have served on the Board of Governors of the Member or (ii) have or have had a residence in or work or have worked in the community served by the Member or (iii) otherwise maintain close ties in or with the community served by the Member. In no event shall the ex-officio directors be required to meet the foregoing residency or place of business requirements.

(b) Exclusive of ex-officio membership, the nominations and election of Directors shall be made by the Member after consideration of any recommendations made by the Board Development Committee.

**Section 5. Election of Directors**

(a) The Member shall elect Directors at the annual meeting of the Member or as otherwise determined by the Member.

(b) Voting for the election of Directors shall be in such form and manner as may be prescribed by the Member.

**Section 6. Filling of Vacancies**

Vacancies occurring on the Board of Directors for any reason including newly created positions, may only be filled by the Member. Such Directors elected to fill vacancies shall only hold office until the next annual meeting of the Member, or until the successors of such Directors are elected, qualified and assume office, or until death, resignation or removal. In the event of any vacancy in any position on the Board of Directors, including in connection with the expiration of the term of service, or the resignation or removal, of any member of the Board, the Member may consult the Board Development Committee.

**Section 7.     *Resignation and Removal of Directors***

- (a) Any Director may resign at any time by giving written notice of such resignation to the Secretary. Unless otherwise specified therein, such resignation shall take effect upon receipt thereof by the Secretary.
- (b) Any Director may be removed with or without cause by the Member.
- (c) Resignation or removal as a Board Member also shall constitute resignation or removal as an officer.

**Section 8.     *Meetings of the Board of Directors***

- (a) The annual meeting of the Board of Directors for the transaction of such business as may properly come before such meeting shall be held each year as soon as practicable after the annual meeting of the Member. Written notice of the time and place of the annual meeting of the Board of Directors shall be delivered to each Director not less than ten (10) days prior to the annual meeting.
- (b) Regular business meetings of the Board of Directors shall be held as may be determined by the Chairman or the Board of Directors, at such place within or outside the State of New York as may be fixed by the notice of meeting. Written notice of the time and place of all regular meetings of the Board of Directors shall be delivered to each Director not less than ten (10) days prior to such regular meeting.
- (c) Special Meetings of the Board of Directors may be called at any time by the Chairman or by the President or Secretary of the Corporation. A special meeting called by the Chairman or President shall be held at such time as deemed appropriate by the Chairman or President, as applicable. Notice of the time and place of any special meeting of the Board of Directors shall be delivered to each Director: (i) if by mail, not less than five (5) business days prior to such special meeting; or (ii) if by facsimile, telecommunications or electronic mail, one (1) business day prior to such special meeting. Notice of any special meeting of the Board of Directors shall state the purpose or purposes for which the meeting is called. No business other than specified in the notice of special meeting shall be transacted at such special meeting.
- (d) A majority of the Directors present at any meeting, whether or not a quorum is present, may adjourn the meeting to another time and place. At least one (1) days' notice of any adjournment of a meeting of the Board of Directors to another time or place shall be given to the

Directors who were not present at the time of the adjournment and, unless such time and place are announced at the meeting, to the other Directors.

***Section 9. Action Without a Meeting***

(a) Any action required or permitted to be taken by the Board of Directors, or any committee thereof, may be taken without a meeting if all members of the Board or such committee, as the case may be, consent in writing or electronically, in either case as provided by the NPCL, to the adoption of a resolution approving such action.

(b) Any one (1) or more Directors who is not physically present at a meeting of the Board of Directors, or any committee thereof, may participate in such meeting by means of a conference telephone or similar communications equipment or by electronic video screen communication. Participation by such means shall constitute presence in person at a meeting as long as all persons participating in the meeting can hear each other at the same time and each Director can participate in all matters before the Board of Directors or such committee, including, without limitation, the ability to propose, object to, and vote upon a specific action to be taken by the Board of Directors or such committee.

***Section 10. Minutes of Meetings***

Minutes shall be maintained of all meetings of the Board of Directors, and any committee thereof, which minutes shall reflect all business conducted thereat, including findings, conclusions and recommendations. Such minutes shall regularly be distributed to the Directors.

***Section 11. Quorum and Voting Requirements***

(a) Except as otherwise required by law or in these Bylaws, a majority of the total number of Directors then in office shall constitute a quorum for the transaction of any business at any meeting of directors. In the absence of a quorum, a majority of those present may adjourn any meeting to another time and place, provided, that notice of the meeting shall be given to the Directors not present at the time of adjournment.

(b) Except as otherwise provided by law or in these Bylaws, all matters shall be decided by vote of a majority of the Directors present at the time of the vote, if a quorum is present at such time. Each Director shall be entitled to one (1) vote.

***Section 12. Duties, Liabilities, Powers and Restrictions of Individual Directors and of the Board of Directors***

(a) No Director shall receive compensation for any services performed as a Director. Nothing herein shall be construed to preclude any Director from serving the Corporation in any other capacity as an Officer, agent, or otherwise and receiving compensation therefor, as authorized by the Board of Directors, except no employee of the Corporation may serve as Chair of the Board of Directors or hold any other position with similar responsibilities.

(b) Directors shall discharge their duties in good faith and with that degree of diligence, care and skill which ordinarily prudent individuals would exercise under similar circumstances in like positions. In discharging their duties, Directors, when acting in good faith, may rely upon financial statements of the Corporation represented to them to be correct by the Chairman or the Treasurer of the Corporation, or stated in a written report by an independent public or certified public accountant or firm of such accountants fairly to reflect the financial condition of the Corporation.

(c) The liability of Directors, whether joint or several, shall be limited to the cases set forth in Section 719 of the NPCL and shall be subject to indemnification by the Corporation as set forth in Article VI of these Bylaws.

(d) The Board of Directors shall take reasonable steps to conform to all applicable federal, state and local laws, ordinances, codes and regulations.

***Section 13. Policies***

(a) Subject to Article II, Section 2 of these Bylaws, the Board of Directors shall adopt a Conflict of Interest Policy of the Corporation, and shall review that policy from time-to-time to assure that it provides appropriate guidance and protections. The Conflict of Interest Policy of the Corporation shall include: (i) a definition of circumstances that constitute a conflict of interest; (ii) procedures for disclosing a conflict of interest to the Committee or the Board of Directors, as applicable; (iii) procedures for disclosing, addressing and documenting “related party transactions” (as defined in the NPCL); and (iv) such other matters as are required to be included or addressed in such Conflict of Interest Policy pursuant to Section 715-a(b) of the NPCL to the extent applicable to the Corporation.

(b) Subject to Article II, Section 2 of these Bylaws, the Board of Directors shall adopt additional policies, as it sees fit and from time to time, in order to facilitate the efficient

administration of the Corporation's affairs, and in order to protect and promote the quality and integrity of the Corporation's pursuits.

#### ARTICLE IV OFFICERS

##### *Section 1. Officers*

(a) The Officers shall be a Chairman, one (1) or more Vice-Chairmen, a President (who shall be the Chief Executive Officer), Vice Presidents, a Secretary, a Treasurer and such other officers as the Board of Directors may authorize. The President of the Member shall be the President of the Corporation, ex officio. All other officers shall be elected by the Board of Directors at its annual meeting and all such officers shall serve for one (1) year, or until their successors shall be duly elected and qualify. Neither the Chairman nor any of the other Officers shall be employees of the Corporation and the Corporation shall otherwise have no employees.

(b) The Chairman of the Board of Directors shall preside at all meetings of the Board of Directors, and shall be a member ex-officio, with the right to vote, of all Committees of the Board of Directors. The Chairman shall, at the annual meeting of the Member or of the Board of Directors, and at such other times as he or she shall deem proper, communicate to the Member or the Board of Directors, as applicable, such matters, and make such suggestions as may, in his or her opinion, tend to promote the prosperity, welfare and usefulness of the Corporation, and shall perform such other duties as are incidental to the office.

(c) The Vice-Chairmen, if any, of the Board of Directors, in the order of their seniority of service in such office, shall, in the absence or disability of the Chairman, perform the duties of that office. The power to determine any question of seniority of service, and the nature, extent and probable duration of any absence or disability of the Chairman shall be vested in the Board of Directors.

(d) The President shall be the highest administrative officer of the Corporation and shall preside at all meetings of the Board of Directors in the absence of the Chairman, shall generally supervise the business of the Corporation, and shall execute documents as necessary to evidence actions of the Corporation. The President may also bear the title "Chief Executive Officer" or "Executive Director".



(e) The Secretary shall keep the minutes of Meetings of the Board of Directors, attend to the serving of notices of meetings of the Directors, have custody of all books and records of the Corporation and perform such other duties as are incidental to his or her office and such further duties as the Board of Directors shall direct or as may be required by law. Any Assistant Secretaries elected by the Board of Directors shall assist the Secretary with duties as directed by the Board of Directors of the Corporation. During the absence of the Secretary or when the Secretary is otherwise unable to act, the Assistant Secretaries shall perform all duties usually devolving on the Secretary.

(f) The Treasurer shall have supervision and care of all receipts and monies of the Corporation, and shall be responsible to see that accurate accounts of all receipts and disbursements are kept. The Treasurer shall cause to be deposited all receipts in such banks as authorized by the Board of Directors. The funds, books and vouchers in the hands of the Treasurer shall at all times be under the supervision of the Finance Committee, and subject to its inspection and control. The Treasurer shall render a statement of accounts at each annual meeting of the Corporation and at each regular meeting of the Board of Directors. The Treasurer shall also perform such other duties as are incidental to the office, and such further duties as the Board of Directors or the Finance Committee may direct. Any Assistant Treasurers elected by the Board of Directors shall assist the Treasurer with duties as directed by the Board of Directors. During the absence of the Treasurer or when the Treasurer is otherwise unable to act, the Assistant Treasurers shall perform all duties usually devolving on the Treasurer.

## ARTICLE V COMMITTEES

### *Section 1. Board Committees*

(a) The Committees of the Board shall be the Finance Committee and the Board Development Committee. Except as otherwise expressly provided herein, the Board of Directors shall, by resolution adopted by a majority of the entire Board, appoint the members of the Committees, all of whom shall be members of the Board.

(b) All Committees shall consist of three or more members of the Board, unless otherwise provided, and shall report to the Board at all Regular Meetings.

(c) Unless otherwise provided by law, the Foundation's Certificate of Incorporation or these Bylaws, the Chair of each of the Committees, subject to approval of the Board Chair, shall have the power and authority to appoint from among its Committee members one or more sub committees, each composed of one or more Board members, as the Chair of the Committee shall determine, in order to assist the Committee in the performance of its duties and responsibilities.

(d) The Board may provide for individuals who are not members of the Board of Directors to attend and participate in meetings of Board committees and sub-committees. Such individuals may vote on matters involving recommendations to the Board, but may not vote on any matters which have been delegated to the committee or sub-committee for final action on behalf of the Board. Individuals who are not members of the Board of Directors may be appointed to any task force which may be established by the Board or any committee to address any specific issue.

(e) Subject to the provisions of these Bylaws and to any relevant action of the Board of Directors, the committees shall establish their own rules of procedure, including as to meeting schedule, quorum and voting requirements.

***Section 2. Duties, Powers and Functions of the Board Committees***

(a) Subject to Article II, Section 2 of these Bylaws, the Finance Committee shall exercise general supervision of the financial affairs of the funds and investments of the Corporation. The Finance Committee shall meet in advance of all regular meetings of the Board of Directors, and as often as is necessary in between such regular meetings as the Finance Committee or the Board of Directors may deem necessary. The Finance Committee shall review and monitor the financial performance and operation of the Corporation to secure and maintain certainty in the collection, handling and disbursement of the Corporation's current and permanent funds, review and monitor the Corporation's insurance needs and coverage, and attend to the investment and reinvestment of the Corporation's endowment, reserve, surplus and other funds. The Finance Committee shall prepare and submit annually to the Board of Directors and the Member the capital and operating budgets of the Corporation. The Finance Committee shall also assure that appropriate policies and procedures are in place to safeguard the assets of the Corporation.

(b) Audit and compliance oversight for the Corporation shall be exercised by the Audit and Corporate Compliance Committee of NYP Community Services, Inc., the member of the Member, as set forth in its Amended and Restated Bylaws.

(c) The Board Development Committee shall assist in identifying and recruiting appropriate prospective members of the Board of Directors, shall prepare and recommend to the Member candidates for offices to be filled and candidates to fill any vacancies in the Board, and perform other duties as assigned by the Chair and approved by the Board, subject to the approval of the Member.

***Section 3. Other Committees and Task Forces***

(a) The Board of Directors, by resolution adopted by a majority of its members, may designate from among its members an Executive Committee or other Committee of the Board, consisting of three or more directors, with full authority to take actions and exercise oversight in areas as the Board of Directors shall designate in its resolution; provided, however, that the Board of Directors shall not give the Executive Committee authority as to the matters listed in Section 4 below.

(b) Other Committees of the Corporation, including temporary committees and task forces for specific purposes, may be appointed from time-to-time by a majority vote of the Board of Directors.

***Section 4. Authority***

(a) The Executive Committee, if one shall be constituted, shall have such authority as is specified in these Bylaws or as may be delegated by resolution of the Board of Directors, except that it shall not have authority as to the following matters:

- (i) the submission to the Member of any action requiring the Member's approval under the Certificate of Incorporation of the Corporation, these Bylaws or the NPCL;
- (ii) the filling of vacancies on the Board of Directors or any Committee;
- (iii) the fixing of compensation of any individual for serving as a Director or on any Committee;
- (iv) the amendment, or repeal of these Bylaws or adoption of new Bylaws; or
- (v) the amendment or repeal of any resolution of the Board of Directors which by its terms shall not be so amendable or repealable.

(b) The designation of the Executive Committee and the delegation thereto of authority as specified in these Bylaws shall not operate to relieve the Board of Directors, or any individual Director, of any responsibility imposed on it or him or her by law.

***Section 5. Indemnification***

The members of any committee of the Board of Directors or of the Corporation, whether or not they are members of the Board of Directors, shall be entitled to the right of indemnification as set forth in Article VII of these Bylaws, and shall be deemed entitled to the same coverage as is or may be afforded to Directors under the Corporation's professional liability insurance policy.

**ARTICLE VI  
INDEMNIFICATION**

***Section 1. Indemnification***

(a) Consistent with the restrictions set forth in the NPCL, the Corporation shall indemnify each person who is or was a Director or Officer of the Corporation against any and all liability and reasonable expenses that may be incurred in connection with or resulting from any action, claim, suit or proceeding, other than one which is brought by or in the right of the Corporation, whether civil or criminal, in which he may become involved by reason of his being or having been a Director or Officer of the Corporation, or by reason of any past or future action taken or not taken in his capacity as such Director or Officer, whether or not he continues to be such at the time that such liability or expenses are incurred; provided, however:

(i) such Director or Officer acted in good faith for a purpose which he or she reasonably believed to be in the best interest of the Corporation; and

(ii) in any criminal action or proceeding, such Director or Officer had no reasonable cause to believe that his or her conduct was unlawful.

(b) For the purposes of Article VI, Section 1(a), the phrase "liability and reasonable expenses" shall include, but shall not be limited to, attorneys' fees, reasonable expenses, amounts of judgments, fines or penalties, and amounts paid in settlement by such Director or Officer of the Corporation.

(c) Consistent with the restrictions set forth in the NPCL, the Corporation shall indemnify each person who is or was a Director or Officer of the Corporation against any and all

liability and reasonable expenses that may be incurred by him in connection with or resulting from any action, claim, suit, or proceeding, brought by or in the right of the Corporation to procure a judgment in its favor, in which he may become involved by reason of his being or having been a Director or Officer of the Corporation, or by reason of past or future action taken or not taken in his capacity as such Director or Officer, whether or not he or she continues to be such at the time that such liability or expenses are incurred, except in relation to matters as to which he is adjudged to have breached his duty to the Corporation to act in good faith and exercise that degree of diligence, care and skill which ordinarily prudent persons exercise under similar circumstances in like positions.

(d) For the purposes of Article VI, Section 1(c) of these Bylaws, the phrase “liability and reasonable expenses” shall include attorneys’ fees, but shall in no case include amounts paid in settling or otherwise disposing of a threatened or pending action, with or without court approval, or expenses incurred in defending a threatened or pending action which is settled or otherwise disposed of without court approval

(e) In the event that a person is wholly successful in defending an action for which indemnification is available, the Corporation shall so indemnify him in accordance with Article VI, Sections 1(a)-(d) of these Bylaws. In any case where a person is less than wholly successful, indemnification shall only be made if authorized: (i) by the Board of Directors acting by a quorum consisting of Directors who are not involved in the claim, suit or proceeding, upon a finding that the Director or Officer has met the standard of conduct required in Article VI, Section 1(a) of these Bylaws or Article VI, Section 1(c) of these Bylaws; or (ii) if a quorum is not obtainable with due diligence, by the Board of Directors upon the written opinion of independent legal counsel selected by the Corporation that indemnification is proper because of the applicable standard of conduct contained in Article VI, Section 1(a) or Article VI, Section 1(c) of these Bylaws.

(f) If any action with respect to indemnification of any person described in Section 1(a) of this Article VI is taken by way of amendment of the Bylaws, resolution of Directors, or by agreement, the Corporation will, not later than the next Annual Meeting of the Member or Members, unless such meeting is held within three (3) months from the date of such action, and in any event, within fifteen (15) months from the date of such action, mail to the Member or

Members at the time entitled to vote for the election of Directors a statement specifying the action taken.

**Section 2. Insurance**

(a) Except as provided in Article VI, Section 2(b) of these Bylaws, the Corporation shall have the power to purchase and maintain insurance:

(i) to indemnify the Corporation for any obligation which it incurs as a result of the indemnification of Directors and Officers under the provisions of this Article VI;

(ii) to indemnify Directors and Officers in instances in which they may be indemnified by the Corporation under the provisions of this Article VI; and

(iii) to indemnify Directors and Officers in instances in which they may not otherwise be indemnified by the Corporation under the provisions of this Article VI under the conditions set forth in Section 726 of the NPCL.

(b) No insurance may provide for any payments other than the cost of defense, to or on behalf of any Director or Officer:

(i) if a judgment or other final adjudication adverse to the insured Director or Officer establishes that his acts of active and deliberate dishonesty were material to the cause of action so adjudicated, or that he personally gained, in fact, a financial profit or other advantage to which he was not legally entitled; or

(ii) in relation to any risk the insurance of which is prohibited under the Insurance Law of the State of New York.

(c) The Corporation shall, within the time and to the persons provided in Article VI, Section 1(f) of these Bylaws, mail a statement specifying any insurance it has purchased or renewed for the indemnification of Directors or Officers, setting forth the insurance carrier, date of contract, cost of the insurance, corporate positions insured and a statement explaining all sums, not previously reported in a statement to the Member or Members, paid under any indemnification insurance contract.

**Section 3. Right Not Exclusive**

The foregoing right of indemnification shall not be deemed exclusive of any other right to which such Director or Officer may be entitled apart from this Article VI.

**ARTICLE VII**  
**FISCAL YEAR**

The fiscal year of the Corporation shall be from the 1st day of January to the 31st day of December, inclusive, each year, or such other twelve (12) consecutive months as the Board of Directors may from time to time designate.

**ARTICLE VIII**  
**WRITTEN NOTICE; WAIVER OF NOTICE**

(a) Whenever written notice is required to be delivered to any person under these Bylaws, it may be given to such person either personally or by sending a copy thereof by mail, or by facsimile, telecommunications or electronic mail, to the address, fax number or email address as it appears on the records of the Corporation or as filed with the Secretary of the Corporation..

(b) The giving of any notice pursuant to these Bylaws may be waived pursuant to the provisions set forth in the NPCL.

**ARTICLE IX**  
**CONSTRUCTION OF BYLAWS**

The determination of the Member shall be conclusive with respect to all questions of construction of these Bylaws.

**ARTICLE X**  
**AMENDMENTS**

The Member shall have the sole right to adopt, amend or repeal these Bylaws.

February 9, 2015

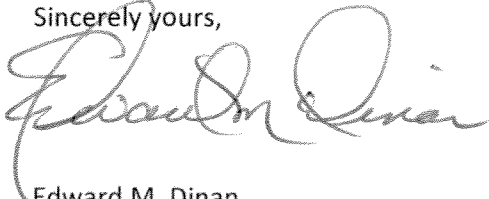
Mary T. Callahan, Esq.  
Director, Bureau of House Counsel  
Division of Legal Affairs  
NYS Department of Health  
Corning Tower, Rm 2484  
Empire State Plaza  
Albany, New York 12237

Re: The Foundation of NewYork-Presbyterian/Lawrence Hospital

Dear Ms. Callahan:

I am writing on behalf of Lawrence Hospital Center, doing business as NewYork-Presbyterian/Lawrence Hospital, which is licensed under Article 28 of the New York State Public Health Law (the "Hospital"). This is to confirm that The Foundation of NewYork-Presbyterian/Lawrence Hospital (the "Foundation") is being created to support the Hospital, and the Hospital will accept funds raised for it by the Foundation.

Sincerely yours,



Edward M. Dinan  
President/CEO



March 6, 2015

**VIA FEDERAL EXPRESS**

Mary Callahan, Esq.  
Director, Bureau of House Counsel  
Division of Legal Affairs  
NYS Department of Health  
Corning Tower, Rm 2484  
Empire State Plaza  
Albany, New York 12237

Re: Consent to File Certificate of Incorporation  
The Foundation of New York-Presbyterian/Lawrence Hospital

Dear Ms. Callahan:

The Foundation of New York-Presbyterian/Lawrence Hospital (the "Foundation") respectfully requests a letter of consent from the Public Health and Health Planning Council to permit the filing of the enclosed Certificate of Incorporation for the Foundation with the Secretary of State. The purpose of the Foundation is to support and benefit its sole member, Lawrence Hospital Center, doing business as New York-Presbyterian/Lawrence Hospital ("NYP/Lawrence Hospital").

We submit the following information for review:

1. Certificate of Incorporation and Bylaws. Enclosed are an executed copy of the Foundation's Certificate of Incorporation and a copy of the proposed Bylaws of the Foundation.
2. Acknowledgement Letter from NYP/Lawrence Hospital. We enclose an original signed letter from the Chief Executive Officer of NYP/Lawrence Hospital, acknowledging the Hospital will accept funds raised by the Foundation.
3. Description of Fundraising Activities. It is anticipated that financial support for NYP/Lawrence Hospital will be obtained by the Foundation primarily from gifts, grants and contributions from the local community. The

Foundation intends to support NYP/Lawrence Hospital by conducting the following activities:

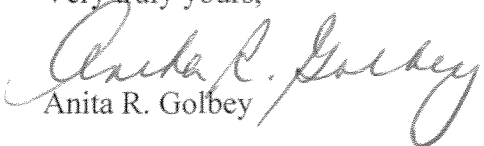
- (a) Soliciting contributions for NYP/Lawrence Hospital;
  - (b) Functioning as a liaison between and among NYP/Lawrence Hospital, its affiliates and the community; and
  - (c) Promoting the work and charitable mission of NYP/Lawrence Hospital through activities including publications, appeals, public relations efforts and special events.
4. Initial Board of Directors. The following individuals will serve initially on the Foundation's Board of Directors. Please see attached for additional information.

Mary Taylor Behrens  
Edward M. Dinan  
Laura L. Forese  
Kimlee Roldan-Sanchez  
Lisa A. Smith

5. Organizational Relationship. NYP/Lawrence Hospital is the Foundation's sole member. NYP/Lawrence Hospital is a New York not-for-profit corporation that is licensed as a hospital under Article 28 of the Public Health Law. It is a tax-exempt entity under Section 501(c)(3) of the Internal Revenue Code.
6. Controlling Entities. The Foundation controls no entities. The Foundation's sole member is NYP/Lawrence Hospital. NYP/Lawrence Hospital's sole member is NYP Community Services, Inc., which has been established as the Hospital's active parent.

If you have any questions, please call me at 212-746-1387.

Very truly yours,

  
Anita R. Golbey

Encs.

The Foundation of NewYork-Presbyterian/Lawrence Hospital - Board Member Information

	1	2	3	4	5
<b>Name &amp; Address</b>	Mary Taylor Behrens 303 Pondfield Road Bronxville, NY 10708	Edward M. Dinan 15 Flying Cloud Road Stamford, CT 06902	Laura L. Forese 849 Stonewall Court Franklin Lakes, NJ 07417	Kimlee Roldan-Sanchez One Belmont Place Staten Island, NY 10301	Lisa A. Smith 8 Governors Road Bronxville, NY. 10708
<b>Occupation</b>	President	President/CEO	Group Senior Vice President, Chief Operating Officer, NYP/Weill Cornell; President, NYP Healthcare System	Vice President & Chief Administrative Officer NewYork-Presbyterian Healthcare System and Regulatory Planning	Not Employed
<b>Employer Name &amp; Address</b>	Newfane Advisors, Inc.. 303 Pondfield Road Bronxville, NY 10708	NewYork- Presbyterian/Lawrence Hospital 55 Palmer Avenue Bronxville, New York 10708	NewYork-Presbyterian Hospital 525 East 68th Street New York, NY 10065	NewYork-Presbyterian Hospital 525 East 68th Street New York, NY 10065	Not Employed
<b>Past &amp; Present Affiliations w/ other charitable or non-profit organizations</b>	<p><b>PRESENT:</b></p> <ul style="list-style-type: none"> <li>Georgetown Univeristy Board of Regents – Regent Emeritus</li> </ul> <p><b>PAST:</b></p> <ul style="list-style-type: none"> <li>Bronxville School Foundation – Trustee</li> <li>Vestry of Christ Church Bronxville – Senior Warden</li> <li>YMCA of Greater New York – Board Member</li> </ul>	<p><b>PRESENT:</b></p> <ul style="list-style-type: none"> <li>Stellaris Health Network – Board Member</li> <li>American Hospital Association - Board Member</li> <li>American College of Healthcare Executives - Board Member</li> <li>Hospital Association of New York State - Board Member</li> <li>Northern Metropolitan Hospital Association - Board Member</li> </ul>	<p><b>PRESENT:</b></p> <ul style="list-style-type: none"> <li>NewYork-Presbyterian/Lawrence Hospital – Trustee</li> <li>NewYork-Presbyterian/Hudson Valley Hospital - Trustee</li> <li>New York Hospital Queens – Trustee</li> <li>New York Methodist Hospital – Trustee</li> <li>Matthew Larson Foundation – Trustee</li> <li>Ortho Scientific Research Foundation – Trustee</li> </ul> <p><b>PAST:</b></p> <ul style="list-style-type: none"> <li>Weill Cornell Imaging at NewYork-Presbyterian, NYC – Trustee</li> <li>NY/NJ Super Bowl Host Committee – Trustee</li> <li>NY/NJ Snowflake Youth Foundation – Trustee</li> <li>Princeton University – Trustee</li> </ul>	<p><b>PRESENT:</b></p> <ul style="list-style-type: none"> <li>NewYork-Presbyterian/Hudson Valley Hospital - Trustee</li> <li>NY Community Hospital of Brooklyn – Trustee</li> <li>Rogosin Institute, NYC – Trustee</li> <li>NY Gracie Square Hospital, NYC – Trustee</li> <li>Silvercrest Nursing Home, Briarwood, NY – Trustee</li> </ul>	<p><b>PRESENT:</b></p> <ul style="list-style-type: none"> <li>Lawrence Hospital Center -Board of Governors</li> <li>Concordia Conservatory-Board of Advisors</li> <li>Bronxville School Foundation - Trustee</li> <li>Robin Hood Foundation-Former employee</li> <li>University of Virginia College Foundation Board - Trustee</li> </ul> <p><b>PAST:</b></p> <ul style="list-style-type: none"> <li>Gary Klinsky Children's Center - Board Member</li> </ul>


RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 10th day of December, 2015, approves the filing of the Certificate of Incorporation of The Foundation of New York-Presbyterian/Lawrence Hospital, dated March 6, 2015.



## MEMORANDUM

**TO:** Public Health and Health Planning Council

**FROM:** Richard J. Zahnleuter,   
Acting General Counsel

**DATE:** November 3, 2015

**SUBJECT:** Proposed Certificate of Amendment to the Restated Certificate of Incorporation of the Metropolitan Jewish Health System Foundation.

---

Metropolitan Jewish Health System Foundation, Inc. ("Corporation") requests Public Health and Health Planning Council approval of its proposed Certificate of Amendment to its Restated Certificate of Incorporation, in accordance with the requirements of Sections 404 and 804 of the Not-For-Profit Corporation Law, and Section 2801-a of the Public Health Law.

The Corporation's initial Certificate of Incorporation, and a previous amendment, changed the corporate purpose to operate exclusively for the benefit of Bensonhurst Housing for the Elderly, HDFC, Inc., Brooklyn Cares, Inc., Caregivers Inc., Elderplan, Inc., First to Care Home Care, Inc., Institute for Applied Gerontology, Inc., M.J.G. Nursing Home Company, Inc., Shorefront Jewish Geriatric Center, Shorefront Towers Housing Development Fund Corporation, HomeFirst, Inc., OLOM Home Care, Inc., Metropolitan Jewish Health System, Inc., and Metropolitan Jewish Homecare, Inc.

This amendment adds to the corporate purposes, and is described in the attached letter from Corporation's counsel.

Attached are the following with regard to this matter:

1. Letter dated April 27, 2015 from the Corporation's counsel, Marsena M. Farris, requesting Public Health and Health Planning Council approval of the proposed Certificate of Amendment, and setting forth the reasons for the request.
2. A copy of the November 18, 1998 Restated Certificate of Incorporation of the Corporation and all the amendments thereto.
3. A copy of the proposed Certificate of Amendment executed on behalf of corporation on April 9, 2015,
4. A copy of the current bylaws of the corporation.
5. A letter from a duly authorized representative of Menorah Home and Hospital for the Aged and Infirm which will accept funds from the Corporation raised on its behalf.

The proposed Certificate of Amendment is in legally acceptable form.

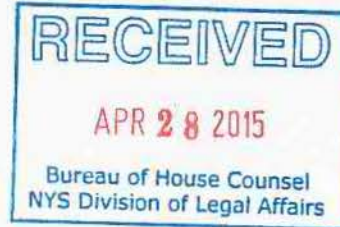
**Attachments**

# CADWALADER

Cadwalader, Wickersham & Taft LLP  
One World Financial Center, New York, NY 10281  
Tel +1 212 504 6000 Fax +1 212 504 6666  
www.cadwalader.com

New York London Charlotte Washington  
Houston Beijing Hong Kong Brussels

April 27, 2015



## VIA FEDERAL EXPRESS

Michael M. Stone, Esq.  
Assistant Counsel  
Bureau of House Counsel  
New York State Department of Health  
Corning Tower – 24<sup>th</sup> Floor  
Empire State Plaza  
Albany, New York 12237-0031

Re: Metropolitan Jewish Health System Foundation  
(Proposed Certificate of Amendment to Restated Certificate of Incorporation)

Dear Mr. Stone:

We are the attorneys for Metropolitan Jewish Health System Foundation (the "Corporation") which seeks approval of the Public Health and Health Planning Council for a proposed Certificate of Amendment to the Restated Certificate of Incorporation ("Certificate of Amendment"). For your review, please find enclosed:

- (i) a copy of the November 18, 1998 Restated Certificate of Incorporation of the Corporation and all amendments thereto;
- (ii) a copy of the proposed Certificate of Amendment which was executed on behalf of the Corporation on April 9, 2015;
- (iii) a copy of the current by-laws of the Corporation; and
- (iv) a letter from a duly-authorized representative of Menorah Home and Hospital for the Aged and Infirm ("Menorah"), which is an Article 28 facility that would be added as an organization to be supported by the Corporation ("Supported Organization"). The letter acknowledges that Menorah will accept funds from the Corporation raised on its behalf.

The Certificate of Amendment would amend the purposes of the Corporation set forth in Paragraph 3(a) of the Restated Certificate of Incorporation by changing the list of Supported Organizations set forth therein to do the following:

- (i) add Menorah to the list of Supported Organizations;
- (ii) add MJHS Hospice and Palliative Care, Inc., Home First LHCSA, Inc. and M.J.H.S. Medical Associates, PC to the list of Supported Organizations, none of which organizations are licensed under Article 28 of the Public Health Law or Social Services Law Article 7;
- (iii) delete M.J.G. Nursing Home Company, Inc. and Shorefront Jewish Geriatric Center, Inc. from the list of Supported Organizations as they no longer operate any Article 28 or other facilities; and
- (iv) delete Brooklyn Cares, Inc., Caregivers, Inc., First to Care Home Care, Inc., Homefirst, Inc. and OLOM Home Care, Inc. from the list of Supported Organizations as these corporations have either been dissolved or are no longer active.

The Corporation's fund-raising activities have not changed since the Restated Certificate of Incorporation was approved by the Public Health and Health Planning Council by letter dated November 25, 1997 (which approval letter is attached to the enclosed Restated Certificate of Incorporation). The Corporation is not controlled by, nor does it control, any Article 28 facilities.

Thank you in advance for your assistance. Please call me at (212) 504-6095 with any questions or comments you may have.

Sincerely,



Marsena M. Farris

Enclosures

cc: Paul W. Mourning, Esq.



*State of New York* }  
*Department of State* } *ss.*

*I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.*

*Witness my hand and seal of the Department of State on* NOV 19 1998



A handwritten signature in black ink, appearing to read "J. Clark", written over a horizontal line.

*Special Deputy Secretary of State*

F 98111800049

VANGUARD-52

RESTATED CERTIFICATE OF INCORPORATION

OF

METROPOLITAN JEWISH GERIATRIC CENTER

(Under Section 805 of the New York Not-For-Profit Corporation Law)

111

We, the undersigned, the President and Secretary respectively of METROPOLITAN JEWISH GERIATRIC CENTER, hereby certify:

1. The name of the corporation is METROPOLITAN JEWISH GERIATRIC CENTER (the "Corporation"). It was formed under the name of Brooklyn Ladies Hebrew Home for the Aged. The Corporation thereafter changed its name to Brooklyn Hebrew Home for the Aged; thereafter, the Corporation changed its name to Brooklyn Hebrew Home and Hospital for the Aged; and thereafter, the Corporation changed its name to its present one, Metropolitan Jewish Geriatric Center.

2. The Certificate of Incorporation of the Corporation was filed by the Department of State on August 10, 1907 under the Membership Corporation Law of the State of New York.

3. The Certificate of Incorporation is amended to effect the following changes:

- (a) To change its name to "Metropolitan Jewish Geriatric Foundation."
- (b) To delete the power of the Corporation to operate a home and hospital for the aged pursuant to Article 28 of the Public Health Law.
- (c) To delete the power of the Corporation to operate a long term home health care program and a certified home health agency pursuant to Article 36 of the Public Health Law.

1

- (d) To replace such deleted powers with the power of the Corporation to operate exclusively for the benefit of (by providing support, advice, assistance, making grants to, and performing fundraising and investment management functions for) certain named "supported organizations" which are public charities described in Section 509(a)(1) or Section 509(a)(2) of the Internal Revenue Code of 1986, as amended.
- (e) To name certain supported organizations in the Restated Certificate of Incorporation and to add other provisions so that the Corporation qualifies as a "supporting organization" described in Section 509(a)(3) of the Internal Revenue Code of 1986, as amended.
- (f) To change the address to which the Secretary of State of the State of New York shall mail a copy of any process against the Corporation served upon him or her.
- (g) To provide for the distribution of assets upon any dissolution of the Corporation.

4. This Restated Certificate of Incorporation was authorized by a vote of a majority of all members entitled to vote thereon at a meeting of the members.

5. The Certificate of Incorporation is restated to set forth its entire text as amended, as follows:

**CERTIFICATE OF INCORPORATION  
OF  
METROPOLITAN JEWISH GERIATRIC FOUNDATION**

1. The name of the corporation is METROPOLITAN JEWISH GERIATRIC FOUNDATION (the "Corporation").

2. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 (Definitions) of the Not-For-Profit Corporation Law, and shall be a Type B corporation under Section 201 of the Not-For-Profit Corporation Law.

3. The Corporation is formed for the following purposes, which are exclusively charitable, scientific and educational within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or the corresponding provision of any future United States internal revenue law) (the "Code"):

(a) To operate exclusively for the benefit of (by providing support, advice, assistance, making grants to, and performing fundraising and investment management functions for) the following organizations: Bensonhurst Housing for the Elderly HDFC Inc., Brooklyn Cares, Inc., Caregivers, Inc., Elderplan, Inc., First to Care Home Care, Inc., Institute for Applied Gerontology, Inc., M.J.G. Nursing Home Company, Inc., Sand Castle Child Care Center, Inc., Shorefront Jewish Geriatric Center, and Shorefront Towers Housing Development Fund Corporation (the "Supported Organizations"), provided, however, that a Supported Organization must be qualified as an organization described in Section 509(a)(1) or Section 509(a)(2) of the Code.

(b) To engage in any other activity that is incidental to, connected with, or in advancement of the foregoing purposes and that is within the definition of charitable, scientific and educational for purposes of Section 501(c)(3) of the Code and consistent with the Corporation's status as an organization described in Section 509(a)(3) of the Code.

4. In furtherance and to the extent of the foregoing corporate purposes, the Corporation shall have all of the general powers set forth in Section 202 of the Not-For-Profit Corporation Law, including, but without limitation thereon, the power to solicit and receive gifts, grants, devises, bequests, donations, and contributions in any form, and to use, apply, invest, and reinvest the principal therefrom or distribute the same for the above purposes.

(a) Nothing herein contained shall authorize the Corporation to establish, operate or maintain a hospital or to provide hospital services or health related services or to operate a home care services agency, a hospice, or a health maintenance organization or to provide a comprehensive health services plan as provided for by Article 28, 36, 40 and 44, respectively, of the Public Health Law.

(b) Nothing herein contained shall be construed as authorizing the Corporation to operate a nursery school, an elementary school, a secondary school, an institution of higher learning, a library, a museum, an historical society, a cable television

facility, or educational television station; nor shall the Corporation engage in the practice of law or any of the professions designated in Title VIII of the Education Law.

5. It is intended that the Corporation shall have the status of a corporation which is exempt from federal income taxation under Section 501(c)(3) of the Code and is described in Section 509(a)(3) of the Code, and in connection therewith:

(a) The Corporation is organized exclusively for one or more of the purposes specified in Sections 501(c)(3) and 509(a)(3) of the Code, and shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under Section 501(c)(3) of the Code and described in Section 509(a)(3) of the Code or (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Code;

(b) The Corporation is not formed for pecuniary profit or for financial gain and no part of the assets, income or profit of the Corporation shall be distributed or inure to the benefit of any member, trustee, director, officer of the Corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation), and no member, trustee, director, or officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the Corporation's assets on dissolution of the Corporation;

(c) Nothing herein shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes any of the activities listed in Section 404(b) through 404(v) of the Not-For-Profit Corporation Law, except for fundraising activities permitted pursuant to Sections 404(o) and 404 (t); and

(d) No substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided by Section 501(c)(3) of the Code), and the Corporation shall not participate in or intervene (including the publication or distribution of statements) in any political campaign on behalf of or in opposition to any candidate for public office.

6. In any year in which the Corporation is a private foundation as described in Section 509(a) of the Code, the Corporation shall distribute its income for said period in such time and manner as not to subject it to tax under Section 4942 of the Code, and the Corporation shall not (a) engage in any act of self-dealing that would subject it to tax under Section 4941(d) of the Code, (b) retain any excess business holdings that would subject it to tax under Section 4943(c) of the Code, (c) make any investments in such a manner as to subject the organization to tax under Section 4944 of the Code, or (d) make any taxable expenditures that would subject it to tax under Section 4945(d) of the Code.

7. The office of the Corporation shall be located in Kings County, New York.

8. Each of the members of the Board of Directors of the Corporation must be a director of one or more of the Supported Organizations. Each of the Supported

Organizations will be represented on the Board of Directors of the Corporation through said directors.

9. The officers and directors of the Corporation must maintain a close and continuous working relationship with the officers and directors of the Supported Organizations.

10. The Corporation hereby designates the Secretary of State of the State of New York as its agent upon whom process against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him or her is c/o the Corporation, 6323 Seventh Avenue, Brooklyn, New York 11220.


11. Upon the dissolution of the Corporation, the Board of Directors, after paying or making provisions for the payment of all of the liabilities of the Corporation, shall distribute all of the assets of the Corporation exclusively for charitable, educational or scientific purposes to the Supported Organizations, or any successors thereof, or, if none, to an affiliated organization or organizations of the Supported Organizations, which is an organization described in Section 501(c)(3) of the Code and which is other than a private foundation. Any of such assets not so distributed shall be distributed by a court of competent jurisdiction, exclusively for the aforesaid purposes of the Corporation or to such other affiliates of the Corporation that are described in Section 501(c)(3) of the Code and that are other than private foundations as said court shall determine.


12. Prior to the delivery of this Restated Certificate of Incorporation to the Department of State for filing, all approvals or consents required will be endorsed upon or annexed hereto.

\* \* \* \* \*

IN WITNESS WHEREOF, we hereby affirm, under penalties of perjury, that the statements made in the foregoing Restated Certificate of Incorporation of Metropolitan Jewish Geriatric Center are true.

Dated: November 25, 1997

  
\_\_\_\_\_  
John H. Wolff  
President

  
\_\_\_\_\_  
Eli S. Feldman  
Secretary

5



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

November 25, 1997

Peter G. Bergmann, Esq.  
Cadwalader, Wickersham & Taft  
100 Maiden Lane  
New York, New York 10038

Re: Restated Certificate of Incorporation of Metropolitan Jewish Geriatric Center

Dear Mr. Bergmann:

AFTER INQUIRY and INVESTIGATION, and in accordance with action taken at a meeting of the Public Health Council held on the 21st day of November, 1997, I hereby certify that the Public Health Council consents to the filing of the Restated Certificate of Metropolitan Jewish Geriatric Center, dated November 1997.

Sincerely,

Karen S. Westervelt  
Executive Secretary

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RESOLUTION

RESOLVED, that the Public Health Council, on this 21st day of November, 1997, approves the filing of the Restated Certificate of Incorporation of Metropolitan Jewish Geriatric Center, dated November 1997.

7



The undersigned has no objection to the granting of Judicial approval hereon and waives statutory notice.

THE UNDERSIGNED HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON AND WAIVES STATUTORY NOTICE  
DENNIS C. VACCO, ATTORNEY GEN.  
STATE OF NEW YORK

DENNIS C. VACCO  
ATTORNEY GENERAL  
STATE OF NEW YORK

by:

*Laura Weiner*  
*November 2, 1998*  
*(Assistant Attorney General)*

Date: \_\_\_\_\_

I, HON. IRVING S. ARONIN, a Justice of the Supreme Court of the State of New York for the Second Judicial District do hereby approve the foregoing ~~Certificate of Amendment~~ <sup>Restated</sup> ~~of the~~ Certificate of Incorporation of Metropolitan Jewish Geriatric Center and consent that the same be filed.

Date: NOV 9 1998

*IRVING S. ARONIN*

J.S.C

HON. IRVING S. ARONIN

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F 981118000049

RESTATED CERTIFICATE OF INCORPORATION

OF

METROPOLITAN JEWISH GERIATRIC CENTER

Under Section 805 of the Not-For-Profit Corporation Law

1cc  
STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED NOV 18 1998

TAX \$

BY: SAC

VANGUARD-52 *Kung*

RECEIVED

Nov 16 2 16 PM '98

*SAC*

BILLED

FILER:

Cadwalader, Wickersham & Taft  
100 Maiden Lane  
New York, New York 10038

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981118000050

***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and the official seal of the  
Department of State, at the City of Albany, on  
February 14, 2008.

*Paul LaPointe*

Paul LaPointe  
Special Deputy Secretary of State

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
METROPOLITAN JEWISH GERIATRIC FOUNDATION  
(Under Section 803 of the Not-for-Profit Corporation Law)**

The undersigned, being the Assistant Secretary of METROPOLITAN JEWISH GERIATRIC FOUNDATION does hereby certify:

1. The name of the corporation is METROPOLITAN JEWISH GERIATRIC FOUNDATION (the "Corporation").

2. The Certificate of Incorporation of the Corporation was filed by the Department of State on the 10<sup>th</sup> day of August, 1907 under the original name of Brooklyn Ladies' Hebrew Home for the Aged. The Corporation was formed under the Membership Corporations Law of the State of New York. Its Restated Certificate of Incorporation was filed by the Department of State on the 18<sup>th</sup> day of November, 1998 and a Certificate of Amendment was filed on the 5<sup>th</sup> day of April, 2004.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law and is a Type B corporation under Section 201 of said law. The Corporation shall hereafter continue to be a Type B corporation under section 201 of the Not-for-Profit Corporation Law.

4. Paragraph 1 of the Restated Certificate of Incorporation of the Corporation which sets forth the name of the Corporation is hereby amended to read as follows:


"1. The name of the corporation is METROPOLITAN JEWISH HEALTH SYSTEM FOUNDATION (the "Corporation")."

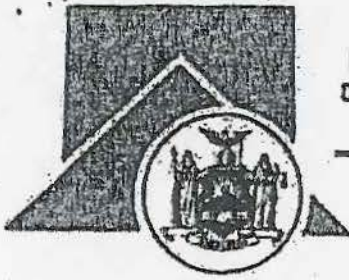
5. This Certificate of Amendment to the Certificate of Incorporation of the Corporation was authorized by the majority of the entire Board of Directors entitled to vote thereon at a duly called meeting of the Corporation.

6. The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him/her as agent of the Corporation is 6323 Seventh Avenue, Brooklyn, New York 11220.

IN WITNESS WHEREOF, the undersigned has executed this Certificate this 5<sup>th</sup> day of October, 2007, and affirms under penalties of perjury that the statements made herein are true.

By:

  
Robert Leiner  
Assistant Secretary



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

January 30, 2008

Ms. Marsena M. Farris  
Cadwalader, Wickersham & Taft, LLP  
One World Financial Center  
New York, New York 10281

Re: Certificate of Amendment of the Certificate of Incorporation Metropolitan Jewish  
Geriatric Foundation

Dear Ms. Farris:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 25th day of January, 2008, I hereby certify that the Public Health Council consents to the filing of the Certificate of Amendment of the Certificate of Incorporation of Metropolitan Jewish Geriatric Foundation, dated October 5, 2007.

Sincerely,

Colleen M. Frost  
Executive Secretary

/s/

080213000 689

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF

METROPOLITAN JEWISH GERIATRIC FOUNDATION

Under Section 803 of the Not-For-Profit Corporation Law

100

STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED FEB 13 2008

TAXS: \_\_\_\_\_  
BY: King

FILER:

Cadwalader, Wickersham & Taft LLP  
One World Financial Center  
New York, New York 10281

080213000774

**DRAWDOWN ACCOUNT #52**  
Vanguard Corporate Services, Ltd.  
Customer Reference: 109251

RECEIVED  
2008 FEB 11 PM 3:13

State of New York )  
Department of State ) ss:

*I hereby certify that the annexed copy has been compared with the original document filed by the Department of State and that the same is a true copy of said original.*

*Witness my hand and seal of the Department of State on*      **April 9, 2004**



A handwritten signature in black ink, appearing to read "R. A. S.", is written over the printed title.

*Secretary of State*



F 04040500 0 007

DRAWN DOWN ACCOUNT #52  
Virginia Corporate Services, Ltd.

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF

METROPOLITAN JEWISH GERIATRIC FOUNDATION

Under Section 803 of the Not-for-Profit Corporation Law

The undersigned, being the President and Assistant Secretary of Metropolitan Jewish Geriatric Foundation (the "Corporation"), do hereby certify and set forth as follows:

FIRST: The name of the Corporation is METROPOLITAN JEWISH GERIATRIC FOUNDATION.

SECOND: The Certificate of Incorporation of the Corporation was filed by the Department of State on August 10, 1907 under the Membership Corporation Law of the State of New York under the name of Brooklyn Ladies Hebrew Home For the Aged. The Restated Certificate of Incorporation was filed by the Department of State on November 18, 1998, under the New York Not-for-Profit Corporation Law.

THIRD: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law, and is a Type B corporation under Section 201 of said law. The Corporation shall remain a Type B corporation under Section 201 of the Not-for-Profit Corporation Law.

FOURTH: The Certificate of Incorporation is hereby amended to effect a change in the corporate purpose by deleting one organization from the list of Supported

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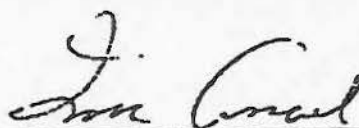
Organizations set forth in Paragraph (3)(a), and adding four organizations. Paragraph (3)(a) is hereby deleted in its entirety and replaced with the following:

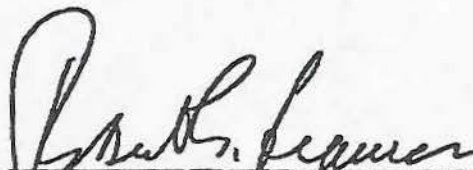
(a) To operate exclusively for the benefit of (by providing support, advice, assistance, making grants to, and performing fundraising and investment management functions for) the following organizations: Bensonhurst Housing for the Elderly HDPC Inc., Brooklyn Cares, Inc., Caregivers, Inc., Elderplan, Inc., First to Care Home Care, Inc., Institute for Applied Gerontology, Inc., M.J.G. Nursing Home Company, Inc., Shorefront Jewish Geriatric Center, Shorefront Towers Housing Development Fund Corporation, HomeFirst, Inc., OLOM Home Care, Inc., Metropolitan Jewish Health System, Inc., and Metropolitan Jewish Home Care, Inc. (the "Supported Organizations"), provided, however, that a Supported Organization must be qualified as an organization described in Section 509(a)(1) or Section 509(a)(2) of the Code.

FIFTH: This amendment to the Certificate of Incorporation was authorized by the unanimous vote of the members of the entire Board of Directors at a meeting held on September 16, 2003.

SIXTH: The Secretary of State is hereby designated as agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him or her is: c/o the Corporation, 6323 Seventh Avenue, Brooklyn, New York 11220.

IN WITNESS WHEREOF, this Certificate of Amendment has been subscribed this 9<sup>th</sup> day of January, 2004, by the undersigned who affirm that the statements made herein are true under the penalties of perjury.

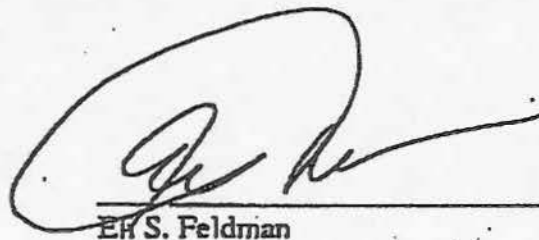
  
\_\_\_\_\_  
Isaac Assael  
President

  
\_\_\_\_\_  
Robert E. Leamer  
Assistant Secretary

**METROPOLITAN JEWISH GERIATRIC FOUNDATION**

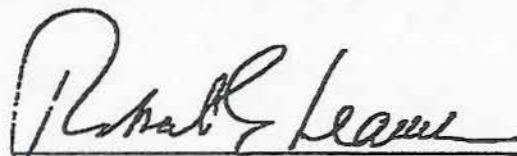
**Statement of Officer**

I, Eli S. Feldman, being the Executive Vice President of Metropolitan Jewish Geriatric Foundation (the "Corporation"), do hereby confirm that the current assets of the Corporation will be used for current purposes, and future assets will be used for purposes as provided in the Certificate of Amendment of the Certificate of Incorporation of the Corporation executed on January 9, 2004.

  
\_\_\_\_\_  
Eli S. Feldman

STATE OF NEW YORK    )  
                                  ) ss:  
COUNTY OF KINGS    )

On this 15<sup>th</sup> day of January, 2004, before me personally appeared Eli S. Feldman, to me known and known to me to be the Executive Vice-President of Metropolitan Jewish Geriatric Foundation, and who executed the foregoing Statement of Officer and duly acknowledged to me that he executed the same.

  
\_\_\_\_\_  
Notary Public    **ROBERT E. LEAMER**  
Notary Public, State of New York  
No. 02LE4642197  
Qualified in Broomfield County  
Commission Expires January 31, 2005  
My Commission Expires:



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12231

Antonia C. Novello, M.D., M.P.H., Dr.P.H.  
Commissioner

Dennis P. Whalen  
Executive Deputy Commissioner

February 11, 2004

Melissa M. Bradley, Esq.  
Cadwalader, Wickersham & Taft LLP  
100 Maiden Lane  
New York, New York 10038

Re: Certificate of Amendment of the Certificate of Incorporation of  
Metropolitan Jewish Geriatric Foundation

Dear Ms. Bradley:

Your January 28, 2004 letter to Karen Westervelt and related enclosures, relating to the above referenced matter, were referred to this office for review.

The Certificate of Amendment of the Certificate of Incorporation of Metropolitan Jewish Geriatric Foundation (the "Corporation"), dated January 9, 2004, does not require the approval of the Public Health Council or the Department of Health for filing with the Department of State, since the Certificate neither alters the Corporation's purposes under Article 28 of the Public Health Law nor changes the Corporation's name.

According to your letter, the reason for the Certificate of Amendment is to amend the purposes of the Corporation set forth in the Certificate of Incorporation to add additional supported organizations to, and to delete one organization from, the list of supported organizations set forth therein for which the Corporation is authorized to solicit contributions. None of the additional supported organizations, nor the supported organization to be deleted from the list, are licensed under Article 28 of the Public Health Law.

Sincerely,

Frank Barry  
Attorney  
Bureau of House Counsel

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CERTIFICATE OF AMENDMENT

F 040405000 007

OF THE

CERTIFICATE OF INCORPORATION

OF

METROPOLITAN JEWISH GERIATRIC FOUNDATION

Ice

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STATE OF NEW YORK  
DEPARTMENT OF STATE

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FILED  
TAXS  
BY:

*[Signature]*

Cadwalader, Wickersham & Taft LLP  
100 Maiden Lane  
New York, New York 10038

*[Signature]*

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SUPREME COURT  
KINGS COUNTY  
14572

*[Handwritten mark]*

DRAWDOWN ACCOUNT #52

Vanguard Corporate Services, Ltd.  
Customer Reference: 93268

006

CERTIFICATE OF AMENDMENT  
TO THE RESTATED CERTIFICATE OF INCORPORATION  
OF  
METROPOLITAN JEWISH HEALTH SYSTEM FOUNDATION

Under Section 803 of the Not-for-Profit Corporation Law

The undersigned, being the Assistant Secretary of Metropolitan Jewish Health System Foundation, does hereby certify:

**FIRST:** The name of the corporation is METROPOLITAN JEWISH HEALTH SYSTEM FOUNDATION (the "Corporation"). The Corporation was formed under the name Brooklyn Ladies Hebrew Home for the Aged.

**SECOND:** The Certificate of Incorporation of was filed by the Department of State on the 10<sup>th</sup> day of August, 1907. The Corporation was formed under the Membership Corporation Law of the State of New York.

**THIRD:** Paragraph 2 of the Restated Certificate of Incorporation, regarding the type of the Corporation under the Not-for-Profit Corporation Law, shall be amended to read as follows:

"2. The Corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-for-Profit Corporation Law and is a charitable corporation as defined in Section 201(c) of said law."

**FOURTH:** Paragraph 3(a) of the Restated Certificate of Incorporation, regarding the purposes for which the Corporation is organized, shall be amended to read as follows:

"(a) To operate exclusively for the benefit of (by providing support, advice, assistance making grants to, and performing fund-raising and investment management functions for) Bensonhurst Housing for the Elderly HDFC Inc., Elderplan, Inc., Institute for Applied Gerontology, Inc., Shorefront Towers Housing Development Fund Corporation, Metropolitan Jewish Health System, Inc., Metropolitan Jewish Home Care, Inc., Menorah Home and Hospital for the Aged and Infirm, MJHS Hospice and Palliative Care, Inc., Home First LHCSA, Inc., and M.J.H.S. Medical Associates, PC (the "Supported Organizations"), provided, however, that a Supported Organization must be qualified as an organization described in Section 509(a)(1) or Section 509(a)(2) of the Code."

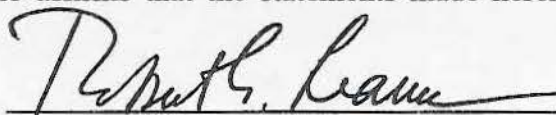
**FIFTH:** Paragraph 4(a) of the Restated Certificate of Incorporation, regarding services which the Corporation is not authorized to establish, operate or maintain, shall be amended to read as follows:

“(a) Nothing in this Certificate of Incorporation shall authorize the Corporation within the State of New York to (1) provide hospital services or health related services, as such terms are defined in the New York State Public Health Law (“PHL”); (2) establish, operate or maintain a hospital, a home care services agency, a hospice, a managed care organization or a health maintenance organization, as provided for by Articles 28, 36, 40 and 44 respectively, of the PHL and implementing regulations; (3) establish and operate an independent practice association, (4) establish, operate, construct, lease, or maintain an adult home, an enriched housing program, a residence for adults, or an assisted living program, as provided for by Article 7 of the New York State Social Services Law; or (5) establish, operate, construct, lease or maintain an assisted living residence, as provided for by Article 46-B of the PHL. Additionally, nothing in this Certificate of Incorporation shall authorize the Corporation within the State of New York, to (a) hold itself out as providing or (b) provide any health care professional services that require licensure or registration pursuant to either Title 8 of the New York State Education Law, or the PHL, including, but not limited to, medicine, nursing, psychology, social work, occupational therapy, speech therapy, physical therapy, or radiation technology.”

SIXTH: This Amendment to the Restated Certificate of Incorporation was duly authorized by the unanimous vote of the members of the entire Board of Directors at a meeting held on February 17, 2015.

SEVENTH: The Secretary of State is hereby designated by the Corporation as agent upon whom process against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon the Secretary is: c/o the Corporation, 6323 Seventh Avenue, Brooklyn, New York 11220.

IN WITNESS WHEREOF, this Certificate of Amendment to the Restated Certificate of Incorporation of Metropolitan Jewish Health System Foundation has been subscribed this 9<sup>th</sup> day of April, 2015 by the undersigned, who affirms that the statements made herein are true under the penalties of perjury.



Robert E. Leamer  
Assistant Secretary

*BY-LAWS*  
*OF*  
*METROPOLITAN JEWISH HEALTH SYSTEM FOUNDATION*  
*(A NEW YORK NOT-FOR-PROFIT CORPORATION)*

ADOPTED: 2/17, 2015



*BY-LAWS*  
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**BY-LAWS OF**

**METROPOLITAN JEWISH HEALTH SYSTEM FOUNDATION**

**ARTICLE I  
TITLE AND LOCATION**

This corporation shall be known as Metropolitan Jewish Health System Foundation (hereinafter referred to as the "Corporation"). The principal location of the Corporation shall be in Brooklyn, New York. The Corporation may have such other offices located at such other places within or without the State of New York as the Board of Directors may from time to time determine.

**ARTICLE II  
PURPOSES**

The Corporation is organized under the Not-For-Profit Corporation Law of the State of New York for the purposes as stated in its restated certificate of incorporation, as amended from time to time.

**ARTICLE III  
MEMBERS**

The Corporation shall have no members.

**ARTICLE IV  
BOARD OF DIRECTORS**

**SECTION 1. POWERS AND DUTIES.** The Board of Directors shall have general power to control and manage the affairs and property of the Corporation.

**SECTION 2. NUMBER AND TERM.**

(a) **Number.** The Board of Directors shall consist of no less than five directors, who shall be elected at the Annual Meeting of the Board of Directors. Subject to the specified minimum, the number of directors may be increased or decreased from time to time, by resolution of the Board of Directors, provided that such action by the Board of Directors shall require a vote of a majority of the Board of Directors then in office and no decrease shall shorten the term of any incumbent director.

(b) **Qualification.** An individual shall only be qualified to serve on the Board if the individual also serves as a director of one or more of the supported organizations listed in the Corporation's certificate of incorporation, as amended from time to time ( each an "MJHS participating entity"), provided that at least fifty percent of the directors shall have served in one or more of such capacities for three or more years. The officers and directors of the Corporation shall maintain a close and continuous working relationship with the officers and directors of the MJHS participating entities.

(c) **Term of Office.** The term of office of each director shall be for one year, except that the

director shall continue to serve thereafter until a successor shall have been duly elected and shall have qualified.

**SECTION 3. VACANCIES.** In case of a vacancy in the Board of Directors for any reason, a majority of the directors then in office, although less than a quorum, may at any regular meeting, or at a special meeting called for that purpose, elect a successor to hold office for the remainder of the term of the director for which there was a vacancy.

**SECTION 4. PLACE OF MEETING.** The Board of Directors shall meet at such place within or without the State of New York as it may from time to time determine.

**SECTION 5. ANNUAL AND REGULAR MEETINGS.** An annual meeting of the Board of Directors shall be held for the election of directors and officers and the transaction of other business. Such meeting shall be held on the second Thursday in December unless otherwise determined by the Board of Directors, at the principal location of the Corporation, or at such other place within or without the State of New York as the Board of Directors may from time to time determine. At least one director from each of the MJHS participating entities will be invited to attend and to advise the Board of Directors of the MJHS participating entities needs for funding. Regular meetings of the Board of Directors may be held at such times and places as may be fixed from time to time by the Chair.

**SECTION 6. SPECIAL MEETINGS.** Special meetings of the Board of Directors may be called by the Chair or by such number of directors as shall constitute a quorum for the conduct of business.

**SECTION 7 NOTICE OF MEETINGS.** Notice of the time and place of each annual, regular and special meeting of the Board of Directors shall be given to each director by (i) mailing such notice at least ten days before the meeting addressed to the director's residence or usual place of business, or (ii) by hand delivery, electronic mail, facsimile telecommunication or telephone at least two business days before the meeting. Notice need not be given to any director who submits a written or electronic waiver of notice complying with New York law before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice. Notice of any adjourned meeting need not be given, other than by announcement, at the meeting at which such adjournment shall be taken.

**SECTION 8. TELEPHONIC OR VIDEOCONFERENCE PARTICIPATION.** Any one or more members of the Board of Directors or any Board committee thereof may participate in a meeting of the Board of Directors or Board committee by means of a conference telephone, videoconference or similar communications equipment allowing all directors participating in the meeting to hear each other at the same time and to participate in all matters before the Board of Directors or Board committee. Participation by such means shall constitute presence at the meeting.

**SECTION 9. ACTION BY UNANIMOUS CONSENT.** Any action required or permitted to be taken by the Board of Directors or any Board committee may be taken without a meeting, if all members of the Board or Board committee consent to the adoption of a resolution authorizing the action. Consent may be written or electronic, and shall comply with New York law. The resolution and the written or electronic consents thereto by the members of the Board of Directors or Board committee shall be filed with the minutes of the proceedings of the Board or Board committee.

**SECTION 10. RESIGNATION AND REMOVAL OF DIRECTORS.** Any director may resign at any time. One or more directors may be removed by a majority vote of the Board of Directors then in office. A director who ceases for any reason to be a director of any MJHS participating entity shall be deemed to have resigned from the Board of Directors of the Corporation and from any of its committees on which such director serves.

**SECTION 11. QUORUM AND MANNER OF ACTING.** A majority of the directors of the Board of Directors then in office shall constitute a quorum for the transaction of business at any meeting.

(a) Except where otherwise required by law or these By-Laws, the vote of a majority of the entire board shall be the act of the Board of Directors. The following actions by the Board of Directors shall require a three-quarters (3/4) vote of the entire board: a merger; liquidation; the initiation of proceedings under any United States bankruptcy laws; entering into any obligation, contract, debt instrument, commitment or other transfer in the amount of \$5 million or 5% of the endowment corpus, whichever is greater.

(b) Any approvals, resolutions or other actions of the Board of Directors, the Executive/Audit Committee or other committee of the Board of Directors with respect to audit oversight, conflict of interest policies and/or whistleblower policies shall be adopted solely by independent directors (as defined in the New York Not For Profit Corporation Law).

**SECTION 12. EXECUTION OF CONTRACTS, CHECKS AND OTHER INSTRUMENTS AND AUTHORIZATION OF LOANS.** The Board of Directors may authorize any officer or officers, agent or agents, in the name of and on behalf of the Corporation to (i) enter into any contracts or execute and deliver any instruments, checks and other order for the payment of money, (ii) deposit funds in such banks, trust companies or other depositories as the Board of Directors may select, and (iii) enter into loans as authorized by the Board of Directors.

**SECTION 13. AUDIT OVERSIGHT POLICY.** The Board of Directors shall adopt an audit oversight policy for the Corporation which shall include all of the obligations for audit oversight specified by law, including but not limited to section 712-a of the New York Not For Profit Corporation Law.

**SECTION 14. CONFLICT OF INTEREST POLICY; RELATED PARTY TRANSACTIONS.**

(a) **Conflict of Interest Policy.** The Board of Directors shall adopt a conflict of interest policy for the Corporation in compliance with law, including but not limited to section 715-a of the New York Not For Profit Corporation Law, and which shall include policies and procedures regarding a related party transaction in accordance with section 715 of the New York Not For Profit Corporation Law.

(b) **Authorization of a Related Party Transaction.** The Board of Directors may approve by vote of three quarters of the entire number of independent directors a related party transaction provided that Board of Directors has, prior to authorizing the related party transaction, (i) determined that the transaction is fair, reasonable and in the best interest of the Corporation, and (ii) considered alternative transactions to the extent available. The Board of Directors may request a related party present

information at a meeting of the Board of Directors regarding the related party transaction prior to the commencement of deliberations or voting on the related party transaction. No related party shall participate in deliberations or voting relating to a related party transaction.

(c) Oversight. The Board of Directors shall oversee the Corporation's implementation of and compliance with the conflict of interest policy.

(d) Transactions with an MJHS Participating Entity. A director, officer or key employee, as defined in the New York Not For Profit Corporation Law, of the Corporation who is also a director, officer or key employee of another entity that is an MJHS participating entity shall not be considered a related party, and a transaction between or among the Corporation and an entity or entities that is an MJHS participating entity shall not be considered a related party transaction.

#### SECTION 15. WHISTLEBLOWER POLICY.

(a) The Board of Directors shall adopt a whistleblower policy for the Corporation in compliance with the New York Not For Profit Corporation Law, including but not limited to section 715-b.

(b) Oversight. The Board of Directors shall oversee the Corporation's implementation of and compliance with the whistleblower policy.

SECTION 16. ANNUAL REPORT. At the annual meeting of the Board of Directors, the Chair and the Treasurer shall present a report or reports as deemed appropriate by the Board of Directors. Such report or reports shall be filed with the records of the Corporation by attaching the same to the minutes of the proceedings of the annual meeting.

SECTION 17. ATTENDANCE. At the discretion of the Board of Directors, three consecutive, unexcused absences by a director from meetings of the Board of Directors shall constitute cause for removal of the director by the Board of Directors.

SECTION 18. DIRECTORS EMERITUS. The directors may from time to time elect such individuals as they shall deem appropriate Directors Emeritus of the Corporation. Directors Emeritus shall have no voting rights of any kind, and no right, title and interest in or to the Corporation or its property. They may attend meetings of the Board of Directors but they shall not be counted for the purposes of determining a quorum.

SECTION 19. OBSERVERS. The Chair and Vice-Chair of any MJHS participating entity may attend any Annual Meeting of the Board of Directors as a non-voting observer and participate in discussions relating to (a) the Corporation's investment policies, (b) the timing of the Corporation's grants, and the manner by which the Corporation makes its grants, and (c) the use of the Corporation's income or assets.

### ARTICLE V COMMITTEES

SECTION 1. COMMITTEES. The Corporation shall have an Executive/Audit Committee, an

Investment Committee and such other committees as the Board of Directors may establish by resolution approved by a majority of the entire board. Each such committee shall have the powers and duties set forth in these By-Laws and incident thereto, and such additional powers as may be delegated to it from time to time by the Board of Directors.

(a) The Executive/Audit Committee shall be a committee of the Board of Directors, and shall consist of the Chair, Vice-Chair, President, Secretary, Treasurer, the immediate past Chair of the Corporation, and up to two members of the Board of Directors as the Board of Directors may, in its discretion, from time to time, determine.

(b) The Investment Committee shall be a committee of the Corporation, and shall consist of no less than three members, of which a majority shall be directors.

(c) The Chair and Vice-Chair shall be a member of each committee. The Chair shall appoint the other members of each committee and shall name a chairperson of each such committee, subject to Board of Directors approval. Each member and chairperson of a committee shall serve at the pleasure of the Chair and Board of Directors.

(d) Each committee shall fix its own rules and procedures.

(e) Committees of the Corporation. In addition to committees of the Board, the Board of Directors may establish committees of the Corporation, consisting of a majority of directors. A committee of the Corporation shall be an advisory committee.

## SECTION 2. EXECUTIVE/AUDIT COMMITTEE.

(a) The Executive/Audit Committee

(i) shall oversee implementation of and compliance with audit oversight policy as specified in section 3 below.

(ii) as determined from time to time by resolution of the Board of Directors, shall have the authority of the Board of Directors to direct and determine the policies of the Corporation other than those policies relating to audit oversight, between meetings of the Board of Directors, provided, however, that a majority of the entire committee is present at the Executive/Audit Committee meeting and one-half of the entire committee votes in favor of any such matter before the Executive/Audit Committee, and further provided that any such action taken by the Executive/Audit Committee shall not conflict with the policies established by the Board of Directors and shall not be contrary to applicable law regarding actions permitted to be taken by an executive committee.

(b) Any action of the Executive/Audit Committee shall be reported to the Board of Directors at its meeting next succeeding such action.

## SECTION 3. IMPLEMENTATION OF AND COMPLIANCE WITH AUDIT OVERSIGHT POLICY.

(a) The Executive/Audit Committee shall oversee implementation of and compliance with the Corporation's audit oversight policy for the Corporation. Any approval or other action of the

Executive/Audit Committee with respect to audit oversight may only be taken at a meeting at which a majority of the entire committee is present and one-half of the entire committee votes in favor of any such matter.

(b) The President and any member of the Executive/Audit Committee who is not an independent director shall not participate in Executive/Audit Committee deliberations or voting relating to implementation of and compliance with the Corporation's audit oversight policy. In performing audit oversight the number of members of the Executive/Audit Committee shall be correspondingly reduced for the purpose of quorum and votes required for approval by the Executive/Audit Committee.

(c) The Executive/Audit Committee shall report annually to the Corporation's Board of Directors with respect to its audit oversight activities.

**SECTION 4. INVESTMENT COMMITTEE.** The Board may establish an Investment Committee. The Investment Committee shall evaluate and recommend investment policies for the Corporation to the Board of Directors; authorize investments and reinvestment activities upon approval of the Board of Directors; and perform such other activities relating to investments as may be assigned by the Board of Directors. Any actions of the Investment Committee must be presented to and approved by the Board of Directors. The Investment Committee shall report annually to the Board of Directors with respect its activities.

**SECTION 5. SUBCOMMITTEES OF COMMITTEES.** Committees may establish subcommittees to consider policy matters and issues in further depth. Each chairperson of a subcommittee shall be recommended by the chairperson of the Committee establishing the subcommittee and appointed by the Chair.

## **ARTICLE VI OFFICERS AND APPOINTEES**

**SECTION 1. NUMBER AND ELIGIBILITY OF OFFICERS.** The officers of the Corporation shall consist of a Chair of the Board of Directors, President, Vice Chair, Treasurer, Chief Financial Officer, Secretary, and Assistant Secretary, all of whom, except for the President, Chief Financial Officer, and Assistant Secretary, shall be chosen from among the members of the Board of Directors. No person may hold more than one office of the Corporation.

**SECTION 2. ELECTION OF OFFICERS; FILLING OF VACANCIES.** The Chair, Vice Chair, Treasurer, and Secretary shall be elected by a majority vote of the directors present at an Annual Meeting of the Board of Directors at which a quorum is present, or, if not elected at such meeting, at any subsequent meeting of the Board of Directors. Any vacancy in any such office caused by any reason whatsoever may be filled by the Board of Directors at any regular or special meeting.

**SECTION 3. TERM OF OFFICE; REMOVAL OF OFFICERS.** The term of office of each of the elected officers specified in Section 2 shall be until the next succeeding Annual Meeting of the Board of Directors, except that an officer shall continue to serve thereafter until a successor shall have been duly elected; provided, however, that the Board of Directors, by a majority vote of the

directors then in office, may at any time remove any officer of the Corporation.

**SECTION 4. OTHER OFFICERS AND AGENTS.** The Board of Directors shall appoint a President, Chief Financial Officer and Assistant Secretary, and may appoint such other officers and agents as it may deem advisable, who shall each hold his or her respective office for such term and shall exercise such powers and perform duties as shall be determined from time to time by the Board of Directors.

**SECTION 5. CHAIR.** The Chair shall preside at all meetings of the Board of Directors, and shall have general charge and supervision of the affairs of the Corporation. The Chair shall perform such other duties as directed to perform by resolution of the Board of Directors not inconsistent with the provisions of law or these By-Laws. The Chair shall be a member *ex-officio* with vote of all committees and subcommittees. The Chair shall not be eligible to serve in the same office for more than five consecutive years.

**SECTION 6. PRESIDENT.** The President shall be the chief executive officer of the Corporation and shall perform all duties incident to the office of President and chief executive officer. The President shall have direct supervision over the business and operations of the Corporation and primary responsibility for the implementation of the operating policies of the Corporation subject to the supervision of the Board of Directors. The President shall see that all orders and resolutions of the Board of Directors are carried into effect. The President shall, when required by the Board of Directors, make a full written report with respect to any designated matter in connection with the Corporation or its affairs, and may execute and acknowledge on behalf of the Corporation all contracts, documents, checks, bonds or other instruments authorized by the Board of Directors, and, in general shall perform all duties incident to the office of President and such other duties as may from time to time be delegated by the Board of Directors. The President shall be a member *ex-officio* with vote on the Board of Directors, all committees and subcommittees, except as otherwise specified in these By-laws.

**SECTION 7. VICE CHAIR.** The Vice Chair shall have such powers and duties as may be from time to time be delegated by the Board of Directors. In the absence or disability of the Chair, the Vice Chair shall be vested with all the powers and perform all the duties of the Chair.

**SECTION 8. TREASURER.** The Treasurer shall keep or cause to be kept the books of account, and shall have charge and custody of, and be responsible for, all funds and securities of the Corporation, and shall deposit or cause to be deposited all such funds in the name of and to the credit of the Corporation. The Treasurer shall perform all duties incident to the office of Treasurer and such duties as are assigned from time to time by the Board of Directors or the Chair. In the absence or disability of the Chair and the Vice Chair, the Treasurer shall be vested with all the powers and perform all the duties of the Chair.

**SECTION 9. SECRETARY.** The Secretary shall act as Secretary at all meetings of the Board of Directors; shall give or cause to be given all required notices of meetings of the Board of Directors; shall record all meetings of the Board of Directors in a book to be kept for that purpose; and, in general, shall perform all duties incident to the office of Secretary, and have such other powers and duties as may from time to time be delegated by the Board of Directors. The Secretary shall have custody of the seal of the Corporation and shall affix the same to any



instrument when duly authorized to do so and shall attest the same. In the absence or disability of the Chair, the Vice Chair and the Treasurer, the Secretary shall be vested with all the powers and perform all the duties of the Chair. The offices of Chair and Secretary may not be held by the same person.

**SECTION 10. CHIEF FINANCIAL OFFICER.** The Chief Financial Officer shall (i) keep accurate financial records for the Corporation; (ii) deposit all monies, drafts and checks in the name of and to the credit of the Corporation in such banks and depositories as the Board of Directors shall designate from time to time; (iii) endorse for deposit all notes, checks and drafts received by the Corporation as ordered by the Board of Directors, making proper vouchers therefore; (iv) disburse corporate funds and issue checks and drafts in the name of the Corporation; (v) exercise general supervision over auditing activities, including the coordination of auditing activities with the independent accountants of the Corporation; (vi) render to the Chair, Vice Chair, President, Treasurer and the Board of Directors, whenever requested, an account of all of the transactions and of the financial condition of the Corporation; and (vii) perform such other duties as may be prescribed by the Board of Directors or the President from time to time.

**SECTION 11. ASSISTANT SECRETARY.** The Assistant Secretary shall have such powers and duties as may from time to time be delegated by the Board of Directors. In the absence or disability of the Secretary, the Assistant Secretary shall exercise the powers and perform all the duties of the Secretary. The offices of Chair and Assistant Secretary may not be held by the same person.

**SECTION 12. COMPENSATION.** No officer shall receive compensation from the Corporation for the officer's services to the Corporation except for the President, Chief Financial Officer, the Assistant Secretary and other officers appointed by Board of Directors pursuant to Section 4 above who are not directors of the Corporation.

## **ARTICLE VII INDEMNIFICATION OF THE DIRECTORS AND OFFICERS**

**SECTION 1. INDEMNIFICATION.** In the event an individual is made or threatened to be made a party to an action, by reason of the fact that such individual is or was a director or officer of the Corporation (or is or was serving in any capacity at the request of the Corporation in some other corporation, organization or other enterprise), such individual shall be entitled to (i) advancement of expenses in connection with a threatened or actual action or proceeding, or in any proceeding to obtain indemnification, and (ii) indemnification from the Corporation to the full extent permitted by law.

**SECTION 2. CONTRACT, INSURANCE AND OTHER RIGHTS.** This Article shall be deemed to constitute a contract between the Corporation and each director and each officer of the Corporation who serves as such at any time while this Article is in effect. The Corporation may, but need not, maintain insurance insuring the Corporation or persons entitled to indemnification under this Article for liabilities against which they are entitled to indemnification under this Article or, to the extent permitted by law, insuring such persons for liabilities against which they are not entitled to indemnification under this Article. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which any person covered hereby may be entitled other

than pursuant to this Article.

**ARTICLE VIII  
FISCAL YEAR**

The fiscal year of the Corporation shall be the calendar year.

**ARTICLE IX  
CORPORATE SEAL**

The corporate seal shall be in such form as the Board of Directors shall prescribe.

**ARTICLE X  
AMENDMENTS**

**SECTION 1. AMENDMENT OF THE CERTIFICATE OF INCORPORATION OF THE CORPORATION.** Except as otherwise required by law, the Board of Directors, by the vote of a three-quarters of the entire board at any meeting of the Board of Directors, and provided the directors shall have received at least ten days notice of the proposed action, may amend or change the certificate of incorporation of the Corporation.

**SECTION 2. AMENDMENT OF THE BY-LAWS OF THE CORPORATION.** Except as otherwise required by law, the Board of Directors, by the vote of a three-quarters of the entire board at any meeting of the Board of Directors, and provided the directors shall have received at least ten days notice of the proposed action, may amend, repeal or adopt by-laws of the Corporation.

**SECTION 3. RATIFICATION BY THE BOARD OF METROPOLITAN JEWISH HEALTH SYSTEM, INC.** No amendment of the certificate of incorporation or of the by-laws of the Corporation shall take effect unless and until such amendment is ratified by vote of two-thirds of the entire board of Metropolitan Jewish Health System, Inc.

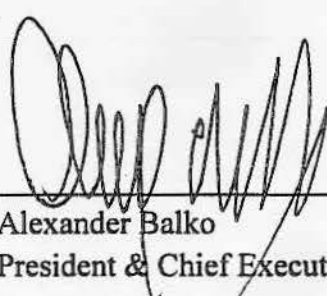
# MENORAH HOME AND HOSPITAL

1516 Oriental Boulevard  
Brooklyn, New York 11235

Tel: (718) 646-4441  
Fax: (718) 615-6381

Menorah Home and Hospital for the Aged and Infirm is aware that Metropolitan Jewish Health System Foundation will solicit funds on behalf of Menorah Home and Hospital for the Aged and Infirm and Menorah Home and Hospital for the Aged and Infirm will accept such funds.

By: \_\_\_\_\_

  
Alexander Balko  
President & Chief Executive Officer

Dated: \_\_\_\_\_

3.25.15

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 10th day of December, 2015, approves the filing of the Certificate of Amendment to the Restated Certificate of Incorporation of Metropolitan Jewish Health System Foundation, dated April 9, 2015.



## MEMORANDUM

**TO:** Public Health and Health Planning Council

**FROM:** Richard Zahnleuter, Acting General Counsel

**DATE:** October 23, 2015

**SUBJECT:** Certificate of Amendment of the Certificate of Incorporation of ECMC Lifeline Foundation, Inc. ("The Foundation")

---

Attached is the proposed Certificate of Amendment of the Certificate of Incorporation of ECMC Lifeline Foundation, Inc. This not-for profit corporation seeks approval to change its name to "ECMC Foundation Inc." The Public Health Council established the corporation in 1993 to conduct fund-raising activities, promotions, events and to solicit, raise, procure, receive, accept, hold, invest and administer any funds, grants, gifts, bequests, devices, contributions and property for the use and benefit of the Erie County Medical Center. Public Health and Health Planning Council approval for a change of corporate name is therefore required by Not-for-Profit Corporation Law § 804 (a) and 10 NYCRR § 600.11 (a) (1).

Also attached is a letter dated February 24, 2015 from Jennifer L. Albrecht, paralegal to Kathryn A. Lisandrelli, attorney for the corporation.

The Department has no objection to the proposed name change.

The proposed Certificate of Amendment is in legally acceptable form.

Attachments

New York State  
Department of State  
Division of Corporations  
One Commerce Plaza, 99 Washington Avenue  
Albany New York 12231

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
ECMC LIFELINE FOUNDATION, INC.**

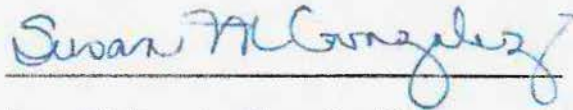
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Under Section 803 of the Not-for-Profit Corporation Law

- FIRST:** The name of the Corporation is: ECMC Lifeline Foundation, Inc.
- SECOND:** The certificate of incorporation was filed by the Department of State on: October 5, 1993.
- THIRD:** The law the corporation was formed under is: New York State Not-for-Profit Corporation Law Section 402.
- FOURTH:** The Corporation is a corporation as defined in subparagraph (5) of paragraph (a) of Section 102 of the Not-for-Profit Corporation Law.
- FIFTH:** The amendment effected by this certificate of amendment is as follows: Paragraph First of the Certificate of Incorporation relating to the corporation name is hereby amended to read as follows:
- FIRST:** The name of the corporation is ECMC Foundation, Inc.
- SIXTH:** The Secretary of State is designated as agent of the corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the corporation is:

462 Grider Street  
Buffalo, New York 14215

**SEVENTH:** The certificate of amendment was authorized by: The vote of a majority of the entire Board of Directors. The corporation has no members.



Susan M. Gonzalez, Executive Director

New York State  
Department of State  
Division of Corporations  
One Commerce Plaza, 99 Washington Avenue  
Albany New York 12231

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
ECMC LIFELINE FOUNDATION, INC.**

---

Under Section 803 of the Not-for-Profit Corporation Law

Filed by: Kathryn A. Lisandrelli, Esq.  
Colucci & Gallaher, P.C.  
2000 Liberty Building  
Buffalo, New York 14202



F931005000470  
INFO

CERTIFICATE OF INCORPORATION

OF

ECMC LIFELINE FOUNDATION, INC.

Under Section 402 of the Not-For-Profit Corporation Law

THE UNDERSIGNED HEREBY CERTIFIES:

1. The name of the Corporation is ECMC Lifeline Foundation, Inc.
2. The corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law.
3. The purpose of the corporation shall be exclusively charitable within the meaning of Section 501(c)(3) of the United States Internal Revenue Code of 1954, as the same may be amended from time to time, and without limiting the generality of the foregoing, shall include the following purposes:
  - (a) To conduct fund-raising activities, promotions, events, and to solicit, raise, collect, procure, receive, accept, hold, invest and administer any funds, grants, gifts, bequests, devises, contributions and property of any sort, whether real, personal, tangible or intangible without limitation as to amount or value and to use, disperse or donate the income or principal therefor for the use and benefit of the Erie County Medical Center, or as the same may be known by any subsequent name or successor in interest in such manner as in the judgment

of the Board of Directors shall best promote the purposes of the corporation without limitation, except such limitations as may be contained in the instrument under which such property is received, this Certificate of Incorporation or any laws applicable thereto; and

(b) To do any other lawful thing incidental to, connected with or useful, suitable or proper for the furtherance or accomplishment of the foregoing purposes.

4. (a) As a means of accomplishing the foregoing purposes, the corporation shall have all the powers set forth in Section 202 of the Not-For-Profit Corporation Law of the State of New York and, in general, to exercise such powers which are now or hereafter may be conferred by law upon a corporation organized for the purposes hereinabove set forth or necessary or incidental to the powers so conferred, or conducive to the attainment of the purposes of the corporation, subject to such limitations as are or may be prescribed by law;

(b) Notwithstanding anything to the contrary contained herein, the corporation shall have the power to engage in the public solicitation of funds and grants and to enter into contracts and hire personnel in connection with its above designated purposes.

5. Notwithstanding any other provisions contained herein, the corporation shall not carry on any activities or have or exercise any powers not permitted to be carried on or exercised;

2

(a) by a corporation exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, or

(b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1954, as amended.

6. It is the intention of the corporation to qualify and remain qualified as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended.

Accordingly:

(a) the corporation shall not have authority to issue capital stock;

(b) the corporation shall not be conducted or operate for profit and no part of the net earnings of the corporation shall inure to the benefit of any individual; provided that nothing contained in this Certificate shall prevent the payment in good faith of reasonable and proper remuneration to any officer, director or employee of the corporation, or to any other person, organization, firm, association, corporation or institution in return for services rendered to the corporation in furtherance of the corporate purposes as permitted under Article 5 of the Not-For-Profit Corporation Law;

(c) no substantial part of the activities of the corporation shall consist of carrying on propaganda or otherwise attempting to influence legislation; nor shall the corporation participate in or intervene in (including the publishing or

distributing of statements) any political campaign on behalf of any candidate for public office;

(d) upon the dissolution of the corporation, the Board of Directors shall, after paying or making provision for the payment of all of the liabilities of the corporation, dispose of all of the assets of the corporation in such manner, or to such organization or organizations organized and operated exclusively for charitable, education, or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law), as the Board of Directors shall determine, upon and subject to the approval of a Justice of the Supreme Court of the State of New York; and

(e) in the event that in any year the corporation qualifies as a "private foundation", as that term is defined in Section 509 of the Internal Revenue Code of 1954, as amended,

(i) the corporation shall distribute its income for such taxable year at such time and in such manner as not to subject it to tax under Section 4942 of said Code; and

(ii) the corporation shall not:

- (A) engage in any act of self-dealing as defined in Section 4941(d) of said Code;
  - (B) retain any excess business holdings as defined in Section 4943(c) of said Code;
  - (C) make any investments in such manner as to subject the corporation to tax under Section 4944 of said Code; or
- 4

(D) make any taxable expenditures as defined in Section 4945 of said Code.

7. The corporation is not formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency or other body without such consent or approval first being obtained.

8. The corporation shall be a Type B corporation under Section 201 of the Not-For-Profit Corporation Law of the State of New York.

9. Notwithstanding any other provision of this Certificate of Incorporation, the corporation shall not be authorized to establish, operate or maintain a hospital or to provide hospital service or health related service or to operate a home care services agency or hospice or health maintenance organization or a comprehensive health services plan, as provided for by Article 28, 36, 40 and 44, respectively of the Public Health Law of the State of New York.

10. The names and addresses of the persons constituting the first Board of Directors of the corporation are:

	<u>Name</u>	<u>Address</u>
Road	Richard E. Hauck	5960 Old Lake Shore Lakeview, New York 14085
	Mauréen Maguire	205 Depew Avenue Buffalo, New York 14214
14224	Joan P. Lillis	25 Leocrest Court West Seneca, New York

5

11. The office of the corporation shall be located in the County of Erie, State of New York.

12. The corporation is not an instrumentality of or affiliated with the County of Erie.

13. The approval of the Board of Managers of the Erie County Medical Center is endorsed hereon for the purpose of approving the use of a portion of the name of the Erie County Medical Center in the corporate name.

14. The affidavit of service of the petition to the Supreme Court and the proposed certificate of incorporation upon the Attorney General and the approval of the New York State Public Health Council are annexed hereto.

15. The Secretary of State, pursuant to Chapter 564 of N.Y.S. Laws of 1981 Section 402(a)(7), is hereby designated as agent of the corporation upon whom process against it may be served. The post office address to which the Secretary shall mail a copy of any process against the corporation served upon him is 462 Grider Street, Buffalo, New York 14215.

16. This Certificate of Incorporation is not for the incorporation of an existing unincorporated group.

IN WITNESS WHEREOF, the undersigned Incorporator, being at least 18 years of age, has made and affirmed the statements contained herein as true under the penalties of perjury.

*Joan F. Lielis*

JOAN F. LIELIS, INCORPORATOR  
25 LEOCREST COURT  
WEST SENeca, NY 14224

STATE OF NEW YORK  
COUNTY OF ERIE

}  
} ss:

On this 1<sup>ST</sup> day of OCTOBER, 1993,  
before me personally came JOAN F. LILLIS, to me  
known and known to me to be the person described in and who  
executed the foregoing Certificate of Incorporation and she  
acknowledged to me that she executed the same.

Betty A. Booth

BETTY A. BOOTH  
Notary Public, State of New York  
Qualified in Erie County 4/1  
My Commission Expires Oct. 31, 1994

8





STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

September 27, 1993

Ms. Tracie Carpinello  
Service Representative  
Prentice Hall Legal & Financial Services  
500 Central Avenue  
Albany, New York 12206

Re: Certificate of Incorporation of ECMC Lifeline Foundation, Inc.

Dear Ms. Carpinello:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 24th day of September, 1993, I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of ECMG Lifeline Foundation, Inc. dated July 30, 1993.

Sincerely,

Karen S. Westervelt  
Executive Secretary

9

RESOLUTION

RESOLVED, that the Public Health Council, on this 24th day of September, 1993, approves the filing of the Certificate of Incorporation of BMC Lifeline Foundation, Inc., dated July 30, 1993.

F93100500070

**INFO.**

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CERTIFICATE OF INCORPORATION  
OF

ECMC LIFELINE FOUNDATION, INC.

RECEIVED  
OCT 11 1993

162  
STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED OCT 05 1993

TAX \$           

BY:           

ERIC

*Handwritten signature/initials*

FILED:  
MARGARET L. SNAJCZUK, ESQ.  
9 QUAKER LAKE TERRACE  
ORCHARD PARK, NY 14127

**BILLED**

11

931005000529


RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 10th day of December, 2015, approves the filing of the Certificate of Amendment of the Certificate of Incorporation of ECMC Lifeline Foundation, Inc., as attached.



## MEMORANDUM

**TO:** Public Health and Health Planning Council

**FROM:** Richard J. Zahnleuter,   
Acting General Counsel

**DATE:** November 4, 2015

**SUBJECT:** Certificate of Amendment of the Certificate of Incorporation of the Foundation of Hudson Valley Hospital Center, Inc.

---

Attached is the proposed Certificate of Amendment of the Certificate of Incorporation of The Foundation of Hudson Valley Hospital Center, Inc. This not-for profit corporation seeks approval to change its name to "The Foundation of New York-Presbyterian/Hudson Valley Hospital." The purpose of the foundation is to support and benefit, including soliciting funds for, its sole member, Hudson Valley Hospital Center, doing business as New York-Presbyterian Hudson Valley Hospital. A name change for the Foundation is requested so that it is consistent with the name of the hospital. Public Health and Health Planning Council approval for a change of corporate name is therefore required by Not-for-Profit Corporation Law § 804 (a) and 10 NYCRR § 600.11 (a) (1).

Also attached is a letter dated February 24, 2015 from Kimlee Roldan-Sanchez, Vice President and Chief Administrative Officer of the applicant, which outlines the reasons for the name change.

The Department has no objection to the proposed name change.

The proposed Certificate of Amendment is in legally acceptable form.

Attachments

NewYork-Presbyterian

Kimlee Roldan-Sanchez  
Vice President and  
Chief Administrative Officer

NewYork-Presbyterian  
Healthcare System and  
Regulatory Planning

Mail  
NewYork-Presbyterian/Weill Cornell  
525 East 68th Street  
Box 208  
New York, NY 10021

Office  
Helmsley Medical Tower, 7<sup>th</sup> Floor  
1320 York Avenue  
New York, New York 10021

TEL 212 746-7905  
FAX 212 746-7902

kir9001@nyp.org

October 20, 2015

VIA FEDERAL EXPRESS

Colleen M. Leonard  
Executive Secretary  
Public Health and Health Planning Council  
Empire State Plaza  
Corning Tower, Rm 1805  
Albany, New York 12237

Re: Consent to File Change of Name  
The Foundation of NewYork-Presbyterian/Hudson Valley Hospital

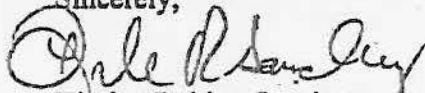
Dear Ms. Leonard:

On behalf of The Foundation of Hudson Valley Hospital Center, Inc. (the "Foundation"), I respectfully submit this request for a letter of consent from the Public Health and Health Planning Council to permit the filing with the Secretary of State of the enclosed Certificate of Amendment to the Certificate of Incorporation of the Foundation to have its name changed to "The Foundation of NewYork-Presbyterian/Hudson Valley Hospital". The purpose of the Foundation is to support and benefit, including to solicit funds for, its sole member, Hudson Valley Hospital Center, doing business as NewYork-Presbyterian/Hudson Valley Hospital ("NYP/Hudson Valley Hospital"). We request this change in name for the Foundation to be consistent with the name of the hospital. See attached NYSDOH operating certificate for reference.

Enclosed for your review is an executed copy of the proposed Certificate of Amendment to the Certificate of Incorporation of the Foundation.

If you have any questions, please call me at 212-746-7905.

Sincerely,

  
Kimlee Roldan-Sanchez

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
THE FOUNDATION OF HUDSON VALLEY HOSPITAL CENTER, INC.**

Under Section 803 of the  
New York Not-for-Profit Corporation Law

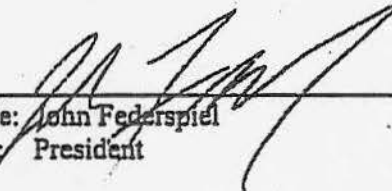
The undersigned, John Federspiel, certifies that he is the President of The Foundation of Hudson Valley Hospital Center, Inc. (the "Corporation"), a corporation formed and existing under the Not-for-Profit Corporation Law of the State of New York ("NPCL"), and does hereby further certify (this "Certificate") as follows:

1. The name of the Corporation is The Foundation of Hudson Valley Hospital Center, Inc. The name under which the Corporation was formed was the Peekskill Community Hospital Foundation, Inc.
2. The Certificate of Incorporation of the Corporation was filed by the Department of State of the State of New York on June 5, 1987 under the NPCL.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL. The Corporation is a charitable corporation under Section 201 of the NPCL.
4. Paragraph FIRST of the Certificate of Incorporation is hereby amended to effect a change in the name of the Corporation so that Paragraph FIRST reads in its entirety as follows:

"FIRST: The name of the Corporation is The Foundation of NewYork-Presbyterian/Hudson Valley Hospital."
5. This Amendment to the Certificate of Incorporation was authorized by the sole member of the Corporation entitled to vote thereon in accordance with NPCL Section 802(a).
6. The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is:

The Foundation of New York-Presbyterian/Hudson Valley Hospital  
c/o New York-Presbyterian/Hudson Valley Hospital  
1980 Crompond Road  
Cortlandt Manor, New York 10567  
Attention: President

IN WITNESS WHEREOF this Certificate has been signed and the statements made herein affirmed as true under penalties of perjury this 19 day of October, 2015.

By:   
Name: John Federspiel  
Title: President



## RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 10th day of December, 2015, approves the filing of the Certificate of Amendment of the Certificate of Incorporation of The Foundation of Hudson Valley Hospital Center, Inc., dated October 19, 2015.



## MEMORANDUM

**To:** Public Health and Health Planning Council  
**From:** Richard Zahnleute, Acting General Counsel  
**Date:** October 23, 2015  
**Subject:** Proposed Dissolution of Baptist Health Family Medical Care, Inc.

---

Baptist Health Family Medical Care, Inc. ("Family Health Care") requests Public Health and Health Planning Council approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law § 1002(c) and § 1003, as well as 10 NYCRR Part 650.

The Public Health Council approved Family Health Care pursuant to § 2801-a (6) to solicit contributions for the benefit of the Facility in April 1998. Family Health Care ceased its operations effective April 30, 2013 and surrendered its operating certificate to the Department of Health. Family Medical Care has not carried on any business or activities since that time, has no assets or liabilities and has no reason to continue its existence.

Attached are a copy of the proposed Certificate of Dissolution, a letter from the Family Health Care's attorney explaining the need for the proposed dissolution, a proposed Plan of Dissolution and Distribution of Assets and a proposed Verified Petition seeking the Supreme Court's approval of Family Health Care's Certificate of Dissolution.

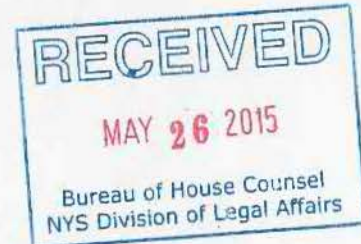
The proposed Certificate of Dissolution is in legally acceptable form.

Attachments.

THOMAS W. SIMCOE  
tsimcoe@bsk.com  
P: 518.533.3235  
F: 518.533.3299

May 22, 2015

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**



Ms. Colleen Frost  
Executive Secretary  
Public Health & Health Planning Council  
New York State Department of Health  
Corning Tower, Room 1441  
Albany, NY 12223

**Re: *Dissolution of Baptist Health Family Medical Care, Inc.***

Dear Ms. Frost:

This office represents Baptist Health Family Medical Care, Inc. ("Family Medical Care"), a charitable New York Not-for-Profit Corporation established for the purpose of operating a diagnostic and treatment center. By this submission we are requesting approval from the Public Health and Planning Council ("PHHPC") of Family Medical Care's voluntary dissolution pursuant to Section 1002(c) of the New York Not-for-Profit Corporation Law.

Family Medical Care was established in 1998 for purposes of operating a diagnostic and treatment center and thus is a hospital under Section 2801 of the New York Public Health Law.<sup>1</sup> It ceased its operations effective April 30, 2013 and surrendered its operating certificate to the New York State Department of Health on or about such date. Family Medical Care has not carried on any business or activities since that time, has no assets or liabilities, and has no reason to continue its existence. Accordingly, there is a public need for the dissolution of Family Medical Care because it is now a corporate shell and its continued existence is economically inefficient.

Pursuant to 10 NYCRR Section 650.1, enclosed please find the following exhibits in support of this submission:

1. A copy of Family Medical Care's proposed Plan of Dissolution;
2. A copy of Family Medical Care's proposed Certificate of Dissolution;

<sup>1</sup> A copy of Family Medical Care's Certificate of Incorporation with attached consent of the Public Health Counsel of the New York State Department of Health is enclosed as Attachment A to Exhibit 3 to this application.

Ms. Colleen Frost  
May 22, 2015  
Page 2

3. A copy of Family Medical Care's Verified Petition to the Attorney General of the State of New York for approval of the filing of its Certificate of Dissolution, with attached exhibits, including proposed Certificate of Dissolution (as Exhibit B).

An additional separate copy of the proposed Certificate of Dissolution is provided for your convenience.

Please note that because Family Medical Care has no assets to distribute, it is not necessary for it to petition the New York State Supreme Court for judicial approval of its Plan of Dissolution or its Certificate of Dissolution. Please note further that judicial approval is no longer automatically required for the distribution of the assets of dissolving charitable Not-for-Profit Corporations under Section 1002 of the Not-for-Profit Corporation Law.

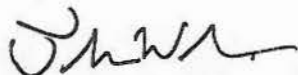
On behalf of Family Medical Care, we respectfully request that this application for the approval of the dissolution of Family Medical Care and the filing of the Certificate of Dissolution with the New York State Department of State be submitted to the PHHC for consideration at its first available meeting. If you should require any additional information in connection with this request, please do not hesitate to contact the undersigned.

A copy of this letter, including all attachments, is also being provided by cc to the Bureau of House Counsel in the New York State Department of Health's Office of Counsel.

Thank you for your attention and consideration of this matter.

Very truly yours,

BOND, SCHOENECK & KING, PLLC



Thomas W. Simcoe

TWS/mem  
Enclosures

cc: Sandra Jensen, Esq., Bureau of House Counsel

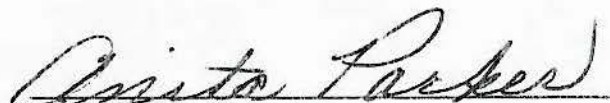
PLAN OF DISSOLUTION  
OF  
BAPTIST HEALTH FAMILY MEDICAL CARE, INC.

The Board of Directors of Baptist Health Family Medical Care, Inc., at a meeting duly convened on the 27th day of April, 2015, to consider the advisability of voluntarily dissolving the corporation and it being the unanimous opinion of the Board that it is advisable and in the best interest of the corporation to effect such a resolution and the Board having adopted, by the unanimous vote of the directors, a plan for the voluntary dissolution of this corporation, does hereby authorize that this corporation be dissolved in accordance with the following plan.

PROCEDURE FOR DISSOLUTION

1. The corporation has no assets to distribute and no liabilities at the time of dissolution.
2. Upon resolution of the Board of Directors adopting this Plan of Dissolution, the Board shall submit it to a vote of the corporation's Member for approval.
3. The approval of the dissolution of this corporation shall be obtained from the Public Health and Health Planning Council of the New York State Department of Health and the Attorney General of the State of New York.
4. A Certificate of Dissolution shall be signed by an authorized director or officer and all required approvals shall be attached thereto.

Dated: April 27, 2015

  
Anita Parker, Secretary  
Board of Directors

CERTIFICATE OF DISSOLUTION  
OF  
BAPTIST HEALTH FAMILY MEDICAL CARE, INC.  
UNDER SECTION 1003  
OF  
THE NOT-FOR-PROFIT CORPORATION LAW

The undersigned, the Secretary of Baptist Health Family Medical Care, Inc., hereby certifies:

1. The name of the corporation is Baptist Health Family Medical Care, Inc.

2. The Certificate of Incorporation of Baptist Health Family Medical Care, Inc. was filed by the Department of State on the 21<sup>st</sup> day of April, 1998.

3. The names, titles and addresses of the Directors and Officers of the Corporation are as follows:

<u>Name and Title</u>	<u>Address</u>
Harry Wood, Chairperson/Director	44 Vosburg Road, Mechanicville, NY 12118
Anita Parker, Secretary/Director	2 Overlook Court, Saratoga Springs, NY 12866
Alan Freestone, Treasurer/Director	7 Wilshire Blvd, Saratoga Springs, NY 12866
Timothy W. Bartos, President and Chief Executive Officer	17 Timberwick Drive, Clifton Park, NY 12065

4. At the time of dissolution, Baptist Health Family Medical Care, Inc. is a Charitable Corporation.

5. When the Board of Directors authorized and the Member approved the Plan of Dissolution, Baptist Health Family Medical Care, Inc. had no assets or liabilities and did not hold any corporation assets for distribution which are legally required to be used for a particular purpose.

6. Baptist Health Family Medical Care, Inc. elects to dissolve.


7. The dissolution of Baptist Health Family Medical Care, Inc. was authorized by the unanimous vote of its Board of Directors. The dissolution of Baptist Health Family Medical

Care, Inc. was then approved by its sole Member, Baptist Health System, Inc., by the unanimous vote of the Member's Board of Directors at a meeting of the Member at which a quorum and at least two-thirds of the Member's Board of Directors was present and acting throughout.

8. Baptist Health Family Medical Care, Inc. will file with the Attorney General a petition for approval of the Certificate of Dissolution with the original certified Plan of Dissolution.

9. Prior to the filing of this Certificate of Dissolution with the Department of State, the endorsement of the Attorney General will be attached and the approval of the Public Health and Health Planning Council of the New York State Department of Health will be annexed hereto.

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Dissolution on this 27th day of April, 2015.

  
Anita Parker, Secretary  
Board of Directors

**CERTIFICATE OF DISSOLUTION  
OF  
BAPTIST HEALTH FAMILY MEDICAL CARE, INC.  
UNDER SECTION 1003  
OF  
THE NOT-FOR-PROFIT CORPORATION LAW**

**Bond Schoeneck & King  
22 Corporate Woods  
Albany, New York 12211  
(518) 533-3000 – phone  
(518) 533-3299 - fax**



ATTORNEY GENERAL  
The Capitol - Albany, New York 12224-0341

---

In the Matter of the Application of

**VERIFIED PETITION**

BAPTIST HEALTH FAMILY MEDICAL CARE, INC.

For Approval of Certificate of Dissolution pursuant to Section  
1003 of the Not-for-Profit Corporation Law.

---

TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK

Petitioner, Baptist Health Family Medical Care, Inc. (hereinafter the "Corporation"), by Timothy W. Bartos, President and Chief Executive Officer, for its Verified Petition alleges:

1. The Corporation was incorporated pursuant to Section 402 of the New York Not-for-Profit Corporation Law on April 21, 1998. A copy of the Corporation's Certificate of Incorporation dated November 10, 1997 and filed with the New York State Department of State on April 21, 1998 is annexed hereto and made a part hereof as Exhibit "A". There are no amendments to the Corporation's Certificate of Incorporation.

2. The names, titles and addresses of the Directors and Officers of the Corporation are as follows:

<u>Name</u>	<u>Address</u>
Harry M. Wood, Chairperson/Director	44 Vosburg Road Mechanicville, New York 12118
Anita Parker, Secretary/Director	2 Overlook Court Saratoga Springs, New York 12866
Alan Freestone, Treasurer/Director	7 Wilshire Boulevard Saratoga Springs, New York 12866

9. A diagnostic and treatment center is a hospital under Section 2801 of the New York Public Health Law. As such, the Corporation is exempt from registration with the New York State Attorney General under the New York Estates Powers and Trust Law. In addition, since the Corporation has not solicited contributions in New York or elsewhere during its existence, the Corporation is also exempt from registration with the New York State Attorney General under the New York Executive Law.

10. Approval of the Corporation's dissolution must be obtained from the New York State Public Health and Health Planning Council, as successor to the New York State Public Health Council. Annexed hereto and made a part hereof as Exhibit "E" is a copy of the approval of the New York State Public Health and Health Planning Council.

11. With this Petition, the original Certificate of Dissolution is being submitted to the Attorney General pursuant to Not-for-Profit Corporation Law Section 1003. A copy of the Certificate of Dissolution is attached hereto as Exhibit "F".

WHEREFORE, Petitioner requests that the Attorney General approve the Certificate of Dissolution of Baptist Health Family Medical Care, Inc., a not-for-profit corporation, pursuant to Not-for-Profit Corporation Law Section 1003.

IN WITNESS WHEREFORE, the Corporation has caused this Petition to be executed

This \_\_\_ day of June, 2015, by

By: \_\_\_\_\_

Timothy Bartos, President and Chief Executive Officer

*State of New York* }  
*Department of State* } *ss:*

*I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.*

*Witness my hand and seal of the Department of State on*

APR 23 1998



A handwritten signature in cursive script, appearing to read "J. Clark", followed by a horizontal line extending to the right.

*Special Deputy Secretary of State*

Y. S. DEPARTMENT OF STATE  
VISION OF CORPORATIONS AND STATE RECORDS

ALBANY, NY 12231-0000

FILING RECEIPT

ENTITY NAME : BAPTIST HEALTH FAMILY MEDICAL CARE, INC.

DOCUMENT TYPE : DOMESTIC (NOT-FOR-PROFIT) CORPORATION TYPE: B COUNTY: SCHE

SERVICE COMPANY : \*\* NO SERVICE COMPANY \*\* SERVICE CODE: 00

FILED: 04/21/1998 DURATION: PERPETUAL CASH #: 980421000632 FILM #: 98042100063

ADDRESS FOR PROCESS

EXIST DAI

THE CORPORATION  
297 NORTH BALLSTON AVENUE  
SCOTIA, NY 12302

04/21/199

REGISTERED AGENT



FILED	FEES	120.00	PAYMENTS	120.00
TUBIN & DEMPF 33 ELK STREET ALBANY, NY 12207	FILING : TAX : CERT : COPIES : HANDLING :	75.00 0.00 0.00 20.00 25.00	CASH : CHECK : BILLED:	0.00 120.00 0.00
			REFUND:	0.00

**CERTIFICATE OF INCORPORATION**

**OF**

**F980421000619**

**Baptist Health Family Medical Care, Inc.**

**Under Section 402 of the  
Not-For-Profit Corporation Law**

**THE UNDERSIGNED, for the purpose of forming a corporation under Section 402 of the Not-For-Profit Corporation Law, hereby certifies:**

**FIRST: The name of the corporation is Baptist Health Family Medical Care, Inc.**

**SECOND: The corporation is not formed for pecuniary profit or financial gain. All income and earnings of the corporation shall be used exclusively for its corporate purposes. The corporation is a corporation as defined in subparagraph (a)(5) of Section 102 (Definitions) of the Not-For-Profit Corporation Law.**

**THIRD: The purposes for which the corporation is to be formed are as follows:**

- (a) To establish, operate and maintain a diagnostic and treatment center, as same is currently or hereinafter defined in the New York State Public Health Law and Title 10 of the Official Compilation, Codes, Rules and Regulations of the State of New York.**
- (b) To do any other act of thing incidental to or in connection with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its individual members, directors or officers, except as provided under Article 5 of the Not-For-Profit Corporation Law.**
- (c) To operate exclusively for charitable and benevolent purposes as defined by Section 501(c)(3) of the Internal Revenue Code of 1986 (or corresponding provisions of any future United States Internal Revenue Law).**

**1**

**FOURTH:** This corporation is a Type "B" corporation as defined in Section 201 of the Not-For-Profit Corporation Law.

**FIFTH:** The principal office of the corporation is to be located in the County of Schenectady, State of New York.

**SIXTH:** The names and addresses of the directors of the corporation until the first annual meeting are:

<u>NAME</u>	<u>ADDRESS</u>
Rev. Alfred Kahler	57 Fairmount Avenue, Amsterdam, New York 12010
Arthur N. Crossman	19 Roslyn Drive, Ballston Spa, New York 12019
Harry M. Wood	44 Vosburg Road, Mechanicville, New York 12118
Alice Duncan	47 Washington Road, Scotia, New York 12302

**SEVENTH:** The name and residence of the incorporator to this Certificate of Incorporation is as follows: David A. Ruffo, 23 Van Buren Avenue, East Greenbush, New York 12061

The incorporator is of the age of 18 years or over and each person named as a Director of the corporation is 18 years or older.

**EIGHTH:** The duration of the corporation shall be perpetual.

**NINTH:** The corporation is organized and shall be operated as a non-profit organization, and shall not have power to issue certificates of stock or to declare or pay any dividends, and shall be operated exclusively for the purposes enumerated in Paragraph Third hereof, thereby to lessen the burdens of government and promote social welfare.

**TENTH:** No part of the net income or net earnings of the corporation shall inure to the benefit or profit of any individual member, or any trustee, director or officer of the

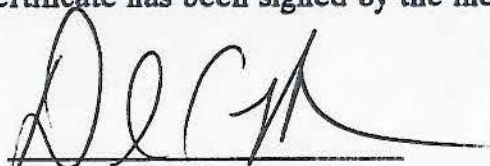
Revenue Code of 1986 (or corresponding provisions of any future United States Internal Revenue Law).

THIRTEENTH: Baptist Health Family Medical Care, Inc., designates the Secretary of State of the State of New York as its agent upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process served upon him is as follows:

Baptist Health Family Medical Care, Inc.  
297 North Ballston Avenue  
Scotia, New York 12302

FOURTEENTH: Notwithstanding any other provision of this Certificate of Incorporation, the Corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986 (or corresponding provision of any future United States Internal Revenue Law) or (b) by a corporation contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code of 1986 (or corresponding provision of any future United States Internal Revenue law).

IN WITNESS WHEREOF, this certificate has been signed by the incorporator this 10th day of November, 1997.

  
\_\_\_\_\_  
David A. Ruffo  
23 Van Buren Avenue  
East Greenbush, New York 12061

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF ALBANY )

On this 10th day of November, 1997 before me personally came DAVID A. RUFFO, to me known and known to me to be the person described in and who executed the foregoing Certificate of Incorporation of Baptist Health Family Medical Care, Inc., and he duly acknowledged to me that he executed the same.

*Gail A. Whitefield*  
\_\_\_\_\_  
Notary Public

GAIL A. WHITEFIELD  
Notary Public, State of New York  
No. 5000943  
Qualified in Rensselaer County  
Commission Expires Aug. 24, 1998

5





STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

---

March 30, 1998

Mr. Christopher J. Wilkes  
Vice President  
HANYS Services, Inc.  
74 North Pearl Street  
Albany, New York 12207

Re: Certificate of Incorporation of Baptist Health Family Medical Care, Inc.

Dear Mr. Wilkes:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 20th day of March, 1998, I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of Baptist Health Family Medical Care, Inc., dated November 10, 1997.

Sincerely,

Karen S. Westervelt  
Executive Secretary

6

f 980421000619

CERTIFICATE OF INCORPORATION  
OF  
Baptist Health Family Medical Care, Inc.

Under Section 402 of the  
Not-for-Profit Corporation Law

*Icc's*

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED APR 21 1998

TAXS *B*

BY: *JAH*

*Secretary  
type: B D*

APR 21 10 29 AM '98

*7/10/98  
21000619  
121000*


*7*

980421000632

CERTIFICATION

The undersigned, being the Secretary of Baptist Health Family Medical Care, Inc., does hereby certify, under the penalties of perjury, that the following is a true copy of the Plan of Dissolution of said corporation: (1) duly adopted by the unanimous vote of the Board of Directors at a meeting of the Board of Directors held on the 27th day of April, 2015, at which a quorum was present and acting throughout; and (2) approved by the sole Member, Baptist Health System, Inc., by the unanimous vote of the Member's Board of Directors at a meeting of the Member held on the 27th day of April, 2015, at which a quorum and at least two-thirds of the Member's Board of Directors was present and acting throughout; and that same is in full force and effect.

Dated: April 27, 2015

  
Anita Parker, Secretary  
Board of Directors


PLAN OF DISSOLUTION  
OF  
BAPTIST HEALTH FAMILY MEDICAL CARE, INC.

The Board of Directors of Baptist Health Family Medical Care, Inc., at a meeting duly convened on the 27th day of April, 2015, to consider the advisability of voluntarily dissolving the corporation and it being the unanimous opinion of the Board that it is advisable and in the best interest of the corporation to effect such a resolution and the Board having adopted, by the unanimous vote of the directors, a plan for the voluntary dissolution of this corporation, does hereby authorize that this corporation be dissolved in accordance with the following plan.

PROCEDURE FOR DISSOLUTION

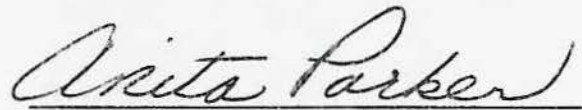
1. The corporation has no assets to distribute and no liabilities at the time of dissolution.
2. Upon resolution of the Board of Directors adopting this Plan of Dissolution, the Board shall submit it to a vote of the corporation's Member for approval.
3. The approval of the dissolution of this corporation shall be obtained from the Public Health and Health Planning Council of the New York State Department of Health and the Attorney General of the State of New York.
4. A Certificate of Dissolution shall be signed by an authorized director or officer and all required approvals shall be attached thereto.

Dated: April 27, 2015

  
Anita Parker, Secretary  
Board of Directors

## CERTIFICATION

The undersigned, being the Secretary of Baptist Health Family Medical Care, Inc., does hereby certify that the following is a true copy of the Resolution of the Board of Directors of Baptist Health Family Medical Care, Inc. duly adopted by the unanimous vote of the Board of Directors at a meeting of the Board of Directors held on the 27th day of April, 2015 at which a quorum was present and acting throughout, and that same is in full force and effect.

A handwritten signature in cursive script that reads "Anita Parker". The signature is written in black ink and is positioned above a horizontal line.

Anita Parker, Secretary  
Board of Directors

## RESOLUTION

Upon motion duly made, seconded and carried, the following resolution was unanimously adopted.

**WHEREAS**, Baptist Health Family Medical Care, Inc. ("Family Med") was established on April 21, 1998, under Article 28 of the New York Public Health Law, to operate a diagnostic and treatment center in the County of Schenectady, State of New York; and

**WHEREAS**, Family Med ceased business operations on April 30, 2013 and surrendered its operating certificate to the New York State Department on or after April 30, 2013; and

**WHEREAS**, Family Med has no assets or liabilities and does not engage in any business activities or operations; and

**WHEREAS**, since Family Med has no assets or liabilities and engages in no business activities or operations, it is in the best interest of this corporation to dissolve.

**NOW, THEREFORE**, it is:

**RESOLVED**, that the Board of Directors of Family Med authorizes the dissolution of the Baptist Health Family Medical Care, Inc. corporation; and it is further

**RESOLVED**, that the Plan of Dissolution annexed hereto as Exhibit "A" is hereby adopted as the Plan of Dissolution of the corporation; and it is further

**RESOLVED**, that the Plan of Dissolution is hereby submitted to Family Med's Member for approval; and it is further

**RESOLVED**, that the Certificate of Dissolution annexed hereto as Exhibit "B" is hereby authorized to be filed with the New York State Department of State upon the approval of the Public Health and Health Planning Council of the New York State Department of Health and of the Attorney General of the State of New York; and it is further

**RESOLVED**, that the President and Chief Executive Officer and the Secretary of this Corporation are hereby authorized to take any and all actions necessary to effectuate the dissolution of Family Med, including, but not limited to, executing and delivering the approved and authorized (a) Plan of Dissolution and (b) Certificate of Dissolution.

\*\*\*

Exhibit A



PLAN OF DISSOLUTION  
OF  
BAPTIST HEALTH FAMILY MEDICAL CARE, INC.

The Board of Directors of Baptist Health Family Medical Care, Inc., at a meeting duly convened on the 27th day of April, 2015, to consider the advisability of voluntarily dissolving the corporation and it being the unanimous opinion of the Board that it is advisable and in the best interest of the corporation to effect such a resolution and the Board having adopted, by the unanimous vote of the directors, a plan for the voluntary dissolution of this corporation, does hereby authorize that this corporation be dissolved in accordance with the following plan.

PROCEDURE FOR DISSOLUTION

1. The corporation has no assets to distribute and no liabilities at the time of dissolution.
2. Upon resolution of the Board of Directors adopting this Plan of Dissolution, the Board shall submit it to a vote of the corporation's Member for approval.
3. The approval of the dissolution of this corporation shall be obtained from the Public Health and Health Planning Council of the New York State Department of Health and the Attorney General of the State of New York.
4. A Certificate of Dissolution shall be signed by an authorized director or officer and all required approvals shall be attached thereto.

Dated: April 27, 2015

\_\_\_\_\_  
Anita Parker, Secretary  
Board of Directors

Exhibit B

CERTIFICATE OF DISSOLUTION  
OF  
BAPTIST HEALTH FAMILY MEDICAL CARE, INC.  
UNDER SECTION 1003  
OF  
THE NOT-FOR-PROFIT CORPORATION LAW

The undersigned, the Secretary of Baptist Health Family Medical Care, Inc., hereby certifies:

1. The name of the corporation is Baptist Health Family Medical Care, Inc.

2. The Certificate of Incorporation of Baptist Health Family Medical Care, Inc. was filed by the Department of State on the 21<sup>st</sup> day of April, 1998.

3. The names, titles and addresses of the Directors and Officers of the Corporation are as follows:

<u>Name and Title</u>	<u>Address</u>
Harry Wood, Chairperson/Director	44 Vosburg Road, Mechanicville, NY 12118
Anita Parker, Secretary/Director	2 Overlook Court, Saratoga Springs, NY 12866
Alan Freestone, Treasurer/Director	7 Wilshire Blvd, Saratoga Springs, NY 12866
Timothy W. Bartos, President and Chief Executive Officer	17 Timberwick Drive, Clifton Park, NY 12065

4. At the time of dissolution, Baptist Health Family Medical Care, Inc. is a Charitable Corporation.

5. When the Board of Directors authorized and the Member approved the Plan of Dissolution, Baptist Health Family Medical Care, Inc. had no assets or liabilities and did not hold any corporation assets for distribution which are legally required to be used for a particular purpose.

6. Baptist Health Family Medical Care, Inc. elects to dissolve.

7. The dissolution of Baptist Health Family Medical Care, Inc. was authorized by the unanimous vote of its Board of Directors. The dissolution of Baptist Health Family Medical

Care, Inc. was then approved by its sole Member, Baptist Health System, Inc., by the unanimous vote of the Member's Board of Directors at a meeting of the Member at which a quorum and at least two-thirds of the Member's Board of Directors was present and acting throughout.

8. Baptist Health Family Medical Care, Inc. will file with the Attorney General a petition for approval of the Certificate of Dissolution with the original certified Plan of Dissolution.

9. Prior to the filing of this Certificate of Dissolution with the Department of State, the endorsement of the Attorney General will be attached and the approval of the Public Health and Health Planning Council of the New York State Department of Health will be annexed hereto.

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Dissolution on this 27th day of April, 2015.

---


Anita Parker, Secretary  
Board of Directors

CERTIFICATE OF DISSOLUTION  
OF  
BAPTIST HEALTH FAMILY MEDICAL CARE, INC.  
UNDER SECTION 1003  
OF  
THE NOT-FOR-PROFIT CORPORATION LAW

**Bond Schoeneck & King**  
22 Corporate Woods  
Albany, New York 12211  
(518) 533-3000 – phone  
(518) 533-3299 - fax

## CERTIFICATION

The undersigned, being the Secretary of Baptist Health Family Medical Care, Inc., does hereby certify that the following is a true copy of a Resolution of the corporation's Member, duly adopted and accepted on the 27th day of April, 2015, by the unanimous vote of the Member at a meeting of the Member at which a quorum and at least two-thirds of the Member's Board of Directors was present and acting throughout, and that same is in full force and effect.

  
Anita Parker, Secretary  
Board of Directors

RESOLUTION  
OF  
THE MEMBER  
OF  
BAPTIST HEALTH FAMILY MEDICAL CARE, INC.

Upon motion duly made, seconded and carried, the following resolution was unanimously adopted.

**WHEREAS**, the Board of Directors of Baptist Health Family Medical Care, Inc. has authorized the dissolution of Baptist Health Family Medical Care, Inc. and has further authorized a Plan of Dissolution and Certificate of Dissolution which are annexed hereto, respectively, as Exhibits "A" and "B"; and

**WHEREAS**, the Member of Baptist Health Family Medical Care, Inc. is required under the New York Not-for-Profit Corporation Law to approve the Plan of Dissolution authorized by the Board of Directors of Baptist Health Family Medical Care, Inc.

**NOW, THEREFORE**, it is

**RESOLVED**, that Baptist Health System, Inc., as the Member of Baptist Health Family Medical Care, Inc., does hereby unanimously approve the annexed Plan of Dissolution and annexed Certificate of Dissolution duly authorized by the Board of Directors of Baptist Health Family Medical Care, Inc.

\* \* \*

Exhibit A



PLAN OF DISSOLUTION  
OF  
BAPTIST HEALTH FAMILY MEDICAL CARE, INC.

The Board of Directors of Baptist Health Family Medical Care, Inc., at a meeting duly convened on the 27th day of April, 2015, to consider the advisability of voluntarily dissolving the corporation and it being the unanimous opinion of the Board that it is advisable and in the best interest of the corporation to effect such a resolution and the Board having adopted, by the unanimous vote of the directors, a plan for the voluntary dissolution of this corporation, does hereby authorize that this corporation be dissolved in accordance with the following plan.

PROCEDURE FOR DISSOLUTION

1. The corporation has no assets to distribute and no liabilities at the time of dissolution.
2. Upon resolution of the Board of Directors adopting this Plan of Dissolution, the Board shall submit it to a vote of the corporation's Member for approval.
3. The approval of the dissolution of this corporation shall be obtained from the Public Health and Health Planning Council of the New York State Department of Health and the Attorney General of the State of New York.
4. A Certificate of Dissolution shall be signed by an authorized director or officer and all required approvals shall be attached thereto.

Dated: April 27, 2015

\_\_\_\_\_  
Anita Parker, Secretary  
Board of Directors

Exhibit B

CERTIFICATE OF DISSOLUTION  
OF  
BAPTIST HEALTH FAMILY MEDICAL CARE, INC.  
UNDER SECTION 1003  
OF  
THE NOT-FOR-PROFIT CORPORATION LAW

The undersigned, the Secretary of Baptist Health Family Medical Care, Inc., hereby certifies:

1. The name of the corporation is Baptist Health Family Medical Care, Inc.
2. The Certificate of Incorporation of Baptist Health Family Medical Care, Inc. was filed by the Department of State on the 21<sup>st</sup> day of April, 1998.

3. The names, titles and addresses of the Directors and Officers of the Corporation are as follows:

<u>Name and Title</u>	<u>Address</u>
Harry Wood, Chairperson/Director	44 Vosburg Road, Mechanicville, NY 12118
Anita Parker, Secretary/Director	2 Overlook Court, Saratoga Springs, NY 12866
Alan Freestone, Treasurer/Director	7 Wilshire Blvd, Saratoga Springs, NY 12866
Timothy W. Bartos, President and Chief Executive Officer	17 Timberwick Drive, Clifton Park, NY 12065

4. At the time of dissolution, Baptist Health Family Medical Care, Inc. is a Charitable Corporation.

5. When the Board of Directors authorized and the Member approved the Plan of Dissolution, Baptist Health Family Medical Care, Inc. had no assets or liabilities and did not hold any corporation assets for distribution which are legally required to be used for a particular purpose.

6. Baptist Health Family Medical Care, Inc. elects to dissolve.
7. The dissolution of Baptist Health Family Medical Care, Inc. was authorized by the unanimous vote of its Board of Directors. The dissolution of Baptist Health Family Medical

Care, Inc. was then approved by its sole Member, Baptist Health System, Inc., by the unanimous vote of the Member's Board of Directors at a meeting of the Member at which a quorum and at least two-thirds of the Member's Board of Directors was present and acting throughout.

8. Baptist Health Family Medical Care, Inc. will file with the Attorney General a petition for approval of the Certificate of Dissolution with the original certified Plan of Dissolution.

9. Prior to the filing of this Certificate of Dissolution with the Department of State, the endorsement of the Attorney General will be attached and the approval of the Public Health and Health Planning Council of the New York State Department of Health will be annexed hereto.

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Dissolution on this 27th day of April, 2015.

---

Anita Parker, Secretary  
Board of Directors

CERTIFICATE OF DISSOLUTION  
OF  
BAPTIST HEALTH FAMILY MEDICAL CARE, INC.  
UNDER SECTION 1003  
OF  
THE NOT-FOR-PROFIT CORPORATION LAW

**Bond Schoeneck & King**  
22 Corporate Woods  
Albany, New York 12211  
(518) 533-3000 – phone  
(518) 533-3299 - fax

CERTIFICATE OF DISSOLUTION  
OF  
BAPTIST HEALTH FAMILY MEDICAL CARE, INC.  
UNDER SECTION 1003  
OF  
THE NOT-FOR-PROFIT CORPORATION LAW

The undersigned, the Secretary of Baptist Health Family Medical Care, Inc., hereby certifies:

1. The name of the corporation is Baptist Health Family Medical Care, Inc.
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3. The names, titles and addresses of the Directors and Officers of the Corporation are as follows:

<u>Name and Title</u>	<u>Address</u>
Harry Wood, Chairperson/Director	44 Vosburg Road, Mechanicville, NY 12118
Anita Parker, Secretary/Director	2 Overlook Court, Saratoga Springs, NY 12866
Alan Freestone, Treasurer/Director	7 Wilshire Blvd, Saratoga Springs, NY 12866
Timothy W. Bartos, President and Chief Executive Officer	17 Timberwick Drive, Clifton Park, NY 12065

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7. The dissolution of Baptist Health Family Medical Care, Inc. was authorized by the unanimous vote of its Board of Directors. The dissolution of Baptist Health Family Medical

Care, Inc. was then approved by its sole Member, Baptist Health System, Inc., by the unanimous vote of the Member's Board of Directors at a meeting of the Member at which a quorum and at least two-thirds of the Member's Board of Directors was present and acting throughout.

8. Baptist Health Family Medical Care, Inc. will file with the Attorney General a petition for approval of the Certificate of Dissolution with the original certified Plan of Dissolution.

9. Prior to the filing of this Certificate of Dissolution with the Department of State, the endorsement of the Attorney General will be attached and the approval of the Public Health and Health Planning Council of the New York State Department of Health will be annexed hereto.

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Dissolution on this 27th day of April, 2015.

  
Anita Parker, Secretary  
Board of Directors

CERTIFICATE OF DISSOLUTION  
OF  
BAPTIST HEALTH FAMILY MEDICAL CARE, INC.  
UNDER SECTION 1003  
OF  
THE NOT-FOR-PROFIT CORPORATION LAW

**Bond Schoeneck & King**  
22 Corporate Woods  
Albany, New York 12211  
(518) 533-3000 – phone  
(518) 533-3299 - fax



## RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 10th day of December, 2015, approves the filing of the Certificate of Dissolution of Baptist Health Family Medical Care, Inc., dated April 27, 2015.



**Project # 152116-E  
Winifred Masterson Burke Rehabilitation Hospital**

**Program: Hospital  
Purpose: Establishment**

**County: Westchester  
Acknowledged: August 27, 2015**

**Executive Summary**

**Description**

Montefiore Health System, Inc. (MHS), an existing not-for-profit corporation, requests approval to become the active parent and co-operator of the Winifred Masterson Burke Rehabilitation Hospital (Burke Hospital), a 150-bed, voluntary not-for-profit, Article 28 hospital located at 785 Mamaroneck Avenue, White Plains (Westchester County). There will be no change in authorized services or the number or type of beds or staffing as a result of approval of this project. Also, there are no projected changes in the utilization, revenues or expenses of the hospital as a result of this project. Burke Hospital will remain a separate not-for-profit corporation licensed under Article 28 of the Public Health Law, maintaining its separate operating certificate following completion of this project.

As active parent and co-operator, MHS will have the following rights, powers and authority with respect to Burke Hospital:

- Approval of the appointment of the Hospital's management level employees (Chief Executive Officer, President, Chief Medical Officer and Chief Financial Officer);
- Approval of the Hospital's operating and capital budgets;
- Approval of certain operating policies and procedures of the Hospital;
- Approval of certificate of need applications;
- Approval of debt necessary to finance the cost of compliance with operational or physical plant standards required by law;
- Approval of contracts for management of two clinical services, other than in the ordinary course of business;

- Approval of settlements of administrative proceedings or litigation to which the Winifred Burke Rehabilitation Hospital is a party that may have a material impact on The Winifred Burke Rehabilitation Hospital or MHS.

According to the applicant, the purpose of this transaction is to establish an integrated care network with the objective of improving quality, increasing access and lowering the costs of health care in the communities served by Burke Hospital. MHS seeks to build a regional network of hospitals, ambulatory practices, and community physicians closely aligned in an integrated system of care that includes enhanced rehabilitation and post-acute services. Burke Hospital will serve as a hub for rehabilitative and post-acute services within MHS's growing network across eight counties, solidifying Burke Hospital's leadership role in acute rehabilitation care throughout the region. Burke will retain agreed-upon operational autonomy consistent with the MHS relationship and applicable law relating to joint planning, joint managed care contracting and economic integration.

An organizational chart of Montefiore Health System, Inc. post-closing is included in this exhibit as BFA Attachment A.

OPCHSM Recommendation  
Contingent Approval

#### Need Summary

This change in ownership is not expected to have an impact on bed, services or utilization. The applicant hopes that directly incorporating Burke Hospital into the MHS PPS will strengthen the Hospital's position of leadership in acute rehabilitative care in the PPS's service area, and will allow the entire PPS to incorporate post-acute care into its continuum of services.

#### Program Summary

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

#### Financial Summary

There are no project costs 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 the restated Bylaws of Montefiore Health System, Inc., acceptable to the Department.  
[CSL]

**Approval conditional upon:**

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

Council Action Date

**December 10, 2015**

## Need Analysis

### Analysis

A bed chart and list of services for Burke Hospital are provided below. This project is not expected to have an impact on utilization; the Hospital had 68% utilization in 2014 and 71.5% in 2013.

<b>Table 1: The Winifred Masterson Burke Rehabilitation Hospital Bed Chart</b>	
Source: HFIS 2015	
<b>Bed Category</b>	<b>Beds</b>
Medical / Surgical	30
Physical Medicine and Rehabilitation	110
Traumatic Brain Injury	10
<b>Total</b>	<b>150</b>

The Hospital is certified to provide the following services:

- Audiology O/P
- Certified Mental Health Services O/P
- Clinical Laboratory Service
- Dental O/P
- Medical Services - Other Medical Specialties
- Medical Services - Primary Care
- Medical Social Services
- Medical/Surgical
- Physical Medical Rehabilitation
- Radiology - Diagnostic
- Therapy - Occupational O/P
- Therapy - Physical O/P
- Therapy - Speech Language Pathology
- Therapy - Vocational Rehabilitation O/P
- Traumatic Brain Injury Program

No changes to beds or services are being proposed.

### Conclusion

The establishment of a co-operator/active parent is not expected to have an impact on services provided by the Hospital or on the utilization of those services. However, it will further Montefiore's vision of establishing a comprehensive and integrated health delivery system, and it will solidify Winifred Masterson Burke Rehabilitation Hospital's important role within that system.

### Recommendation

**From a need perspective, approval is recommended.**

# Program Analysis

## Project Proposal

Montefiore Health System, Inc. (MHS), an existing not-for-profit corporation, seeks approval to become the active parent and co-operator of Winifred Masterson Burke Rehabilitation Hospital (Burke) located at 785 Mamaroneck Avenue in White Plains (Westchester County). MHS currently operates over 80 licensed healthcare sites in New York State (six of which are hospitals).

The Burke Rehabilitation Hospital is an existing 150-bed acute rehabilitation hospital, comprising 110 acute rehabilitation beds, 10 traumatic brain injury beds, and 30 medical/surgical beds. Additionally, Burke has five (5) outpatient extension clinics located in the Bronx, Somers, Ridge Hill in Yonkers, Mamaroneck and Purchase. Outpatient services include physical and occupational therapy, speech, language and swallowing therapy, cardiac rehabilitation, an arthritis center and an osteoporosis screening service. Burke also supports community programs such as community education and fitness center classes.

To strengthen MHS' integrated care network and to enhance coordinated rehabilitation and post-acute care services for the population of Westchester County and the surrounding communities, including the Bronx, MHS plans to enter into an agreement with Burke and certain Burke affiliates. Montefiore Health System's integrated system of care will include enhanced rehabilitation and post-acute services and Burke will serve as a hub within MHS' growing network. This change in ownership is not expected to have an impact on services provided by the Hospital or on the utilization of those services.

Burke will remain a separate Article 28, not-for-profit corporation and will maintain its separate operating certificate. There will be no change in the number or type of beds or authorized services as a result of this change in governance structure.

## Character and Competence

While Burke's current board members will remain on the Burke Board, MHS may appoint three additional directors. All 47 Trustees of the MHS Board were subject to a character and competence review.

The officers of the Montefiore Health System, Inc. Board are:

<u>Name</u>	<u>Title/Position</u>
Steven M. Safyer, MD	President/CEO
David A. Tanner	Chairman
Oded Aboodi	Vice Chairman, Treasurer
Lewis Henkind	Secretary

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

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

*In a Stipulation and Order dated March 6, 2007, Montefiore Medical Center was fined \$14,000 based on a the findings of a complaint investigation into the care rendered to a child who presented with signs and symptoms of child abuse but was discharged home to an unsafe environment.*

Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

### Capability and Feasibility

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

BFA Attachment B is the 2013 and 2014 certified financial statements of Montefiore Health System, Inc. As shown, the system had an average positive working capital position and an average positive net asset position. Also, the system achieved an average operating income of \$63,564,000 from 2013 through 2014.

BFA Attachment C is the internal financial summaries of Montefiore Health System, Inc. as of July 31, 2015. As shown, the system had a positive working capital position and a positive net asset position for the period. Also, the entity achieved operating income of \$2,679,000 through July 31, 2015.

BFA Attachment D is the 2013 and 2014 certified financial statements of Winifred Masterson Burke Rehabilitation Hospital and Subsidiaries. As shown, the hospital had an average positive working capital position and an average positive net asset position from 2013 through 2014. Also, the entity incurred average operating losses of \$8,535,000 from 2013 through 2014. The losses in 2014 were the result of a decline in occupancy to 40% for the 30 acute medical/surgical beds, resulting from insurance carrier pressure to have patients in lower cost post-acute settings, particularly in SNFs.

BFA Attachment E presents the internal financial statements of Winifred Masterson Burke Rehabilitation Hospital as of July 31, 2015. As shown, the entity had a positive working capital position and a positive net asset position. Also, the entity incurred operating losses of \$3,609,750 through July 31, 2015. The losses were due to ongoing low occupancy for the 30 medical/surgical beds. The applicant indicated that the immediate plan for 2015 is to close this medical/surgical unit for admissions after September 30, 2015 and convert these beds to acute inpatient rehabilitation beds (being processed under CON #152158). By joining the Montefiore Health System, they anticipate additional volume of appropriate patients will mitigate operating losses going forward.

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

Recommendation

**From a financial perspective, approval is recommended.**

## Attachments

BFA Attachment A	Organizational Chart
BFA Attachment B	Financial Summary - 2013 and 2014 certified financial statements of Montefiore Health System, Inc.
BFA Attachment C	Financial Summary - July 31, 2015 internal financial statements of Montefiore Health System, Inc.
BFA Attachment D	Financial Summary - 2013 and 2014 certified financial statements of The Winifred Burke Rehabilitation Hospital
BFA Attachment E	Financial Summary - July 31, 2015 internal financial statements of The Winifred Burke Rehabilitation Hospital

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 10<sup>th</sup> day of December, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Montefiore Health System, Inc. as the active parent/co-operator of Winifred Masterson Burke Rehabilitation Hospital, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

152116 E

FACILITY/APPLICANT:

Winifred Masterson Burke Rehabilitation  
Hospital



APPROVAL CONTINGENT UPON:

1. Submission of the restated Bylaws of Montefiore Health System, Inc., acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



## MEMORANDUM

**TO:** Public Health and Health Planning Council  
**FROM:** Richard Zahnleuten, Acting General Counsel  
**DATE:** October 23, 2015  
**SUBJECT:** Certificate of Incorporation of Jones Memorial Hospital Foundation

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The attached proposed Certificate of Incorporation of the Jones Memorial Hospital Foundation ("the Foundation"), dated August 13, 2015, is being submitted for Public Health and Health Planning Council approval. The Foundation's certificate includes among its purposes the solicitation of public funds for the benefit of The Memorial Hospital of William F. and Gertrude F. Jones, Inc. The Foundation's ability to file the certificate and solicit funds for such purpose depends on the approval of the Public Health and Health Planning Council pursuant to Public Health Law § 2801-a (1) and (6) and Not for Profit Corporation Law § 404 (o) and (t).

In addition to the proposed Certificate of Incorporation, the following documents and information are attached in support of the Foundation's request for approval.

- 1) A letter, dated August 13, 2015 from the Foundation's attorney providing additional information about the Foundation, including a description of the Foundation's fund-raising activities.
- 2) The Foundation's bylaws.
- 3) A letter from the intended beneficiary acknowledging and confirming the Foundation's proposed fund raising activities on its behalf.
- 4) Disclosure information regarding the Foundation's board of trustees.

The proposed Certificate of Incorporation is in legally acceptable form.

Attachments

**HARRIS BEACH** PLLC  
ATTORNEYS AT LAW

99 GARNSEY ROAD  
PITTSFORD, NY 14534  
(585) 419-8800

**ROBERT C. SCUTT**

DIRECT: (585) 419-8634  
FAX: (585) 419-8812  
RSCUTT@HARRISBEACH.COM

August 13, 2015

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Director, Bureau of House Counsel  
Division of Legal Affairs  
NYS Department of Health  
Corning Tower - Room 2484  
Empire State Plaza  
Albany, New York 12237

Re: Jones Memorial Hospital Foundation

Dear Sir or Madam:

Enclosed for review and approval by the New York State Public Health and Health Planning Council ("PHHPC") is a copy of the proposed Certificate of Incorporation of Jones Memorial Hospital Foundation (the "Foundation"). PHHPC's approval is required pursuant to Sections 404(o) and 404(t) of the New York Not-for-Profit Corporation Law (the "NFPCL") because, as set forth in paragraph 3 of the proposed Certificate of Incorporation, the Foundation intends to solicit contributions to support The Memorial Hospital of William F. and Gertrude F. Jones, Inc. (the "Hospital"). The Foundation's fundraising activities will include the development of an annual campaign aimed at a particular program or purpose of the Hospital that will be publicized in various ways, including through regular mail, e-mail, social media, and telephone and personal contacts. The Foundation will also engage in fundraising events such as golf tournaments, galas and wellness promotions, and it may apply for grants from private foundations.

As set forth in Article II, Section 1 of the proposed Bylaws of the Foundation which are also enclosed, the Hospital will be the sole member of the Foundation. In that capacity, the Hospital will control the Foundation by virtue of electing its Board of Directors pursuant to Article II, Section 3 of its Bylaws and having the power to remove and replace those directors in accordance with Article III, Sections 4(b) and 5. The Hospital will also have and exercise all other rights and powers of membership under the NFPCL.

Also enclosed is a letter from a duly-authorized representative of the Hospital acknowledging that it will accept funds raised for it by the Foundation and a list of the initial directors of the Foundation named in paragraph 13 of the proposed Certificate of Incorporation which shows their names and addresses, occupations, employers, and past and present affiliations with other charitable or nonprofit organizations.



Director, Bureau of House Counsel  
August 13, 2015  
Page 2

HARRIS BEACH <sup>PLC</sup>  
ATTORNEYS AT LAW

If you have any questions about the Foundation or need any other information in support of this application for approval, please contact me at the Pittsford, New York address or telephone number set forth above.

Very truly yours,



Robert C. Scutt

RCS:jap

CERTIFICATE OF INCORPORATION

OF

JONES MEMORIAL HOSPITAL FOUNDATION

Under Section 402 of the Not-for-Profit Corporation Law

The undersigned, for the purpose of forming a not-for-profit corporation pursuant to the Not-for-Profit Corporation Law of the State of New York, hereby certifies:

1. The name of the corporation is: Jones Memorial Hospital Foundation.
2. The corporation is a corporation as defined in subparagraph (5) of paragraph (a) of Section 102 of the Not-for-Profit Corporation Law.
3. The corporation is organized and shall be operated exclusively to benefit The Memorial Hospital of William F. and Gertrude F. Jones, Inc. and its not-for-profit, tax exempt affiliates. To this end, the corporation shall:
  - (a) Solicit, collect, accept, hold, invest, reinvest and administer gifts, bequests, devises, grants, contributions, donations and property of any sort, without limitation as to amount or value, for the foregoing purposes;
  - (b) Expend, contribute, disburse, donate or otherwise use its assets and/or income for the foregoing purposes; and
  - (c) Do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its members, trustees, directors, officers or any private person.
4. In furtherance of its corporate purposes, the corporation shall have the power to solicit and receive gifts, grants and contributions from public and private sources, together with all general powers enumerated in Section 202 of the Not-for-Profit Corporation Law.

5. Nothing in this Certificate of Incorporation shall authorize this corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in Section 404(a)-(n), (p)-(s), or (u)-(v) of the Not-for-Profit Corporation Law.

6. Nothing in this Certificate of Incorporation shall authorize the corporation, within the State of New York, to (a) provide hospital services or health related services, as such terms are defined in the New York State Public Health Law (PHL); (b) establish, operate or maintain a hospital, a home care services agency, a hospice, a managed care organization, or a health maintenance organization, as provided for by Articles 28, 36, 40 and 44, respectively, of the PHL and implementing regulations; (c) establish and operate an independent practice association; (d) establish, operate, construct, lease, or maintain an adult home, an enriched housing program, a residence for adults, or an assisted living program, as provided for by Article 7 of the New York State Social Services Law; or (e) establish, operate, construct, lease or maintain an assisted living residence, as provided for by Article 46-B of the PHL. Additionally, nothing in this Certificate of Incorporation shall authorize the corporation, within the State of New York, to (i) hold itself out as providing or (ii) provide any health care professional services that require licensure or registration pursuant to either Title 8 of the New York State Education Law or the PHL, including, but not limited to, medicine, nursing, psychology, social work, occupational therapy, speech therapy, physical therapy, or radiation technology.

7. The corporation is a charitable corporation under Section 201 of the Not-for-Profit Corporation Law.

8. Notwithstanding any other provision herein, the corporation is organized and operated exclusively for charitable purposes as specified in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and shall not carry on any activities not permitted to be carried on by an organization exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or by an organization contributions to which are deductible under Section 170(c)(2) of said Code.

9. No part of the assets, income, profits or earnings of the corporation shall inure to the benefit of any member, trustee, director or officer of the corporation or any private individual (except that reasonable compensation may be paid for services rendered to or for the corporation affecting one or more of its purposes), and no member, trustee, director or officer of the corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the corporation.

10. No substantial part of the activities of the corporation shall be carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided by Section 501(h) of the Internal Revenue Code of 1986, as amended), and the corporation shall not participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office.

11. In the event of dissolution, all of the remaining assets and property of the corporation shall, after necessary expenses thereof, be distributed to one or more not-for-profit affiliates of the corporation, provided that such distributee(s) shall then qualify under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, subject to an order of a Justice of the Supreme Court of the State of New York. If none of the not-for-profit affiliates of the corporation shall so qualify at the time of dissolution, then distribution shall be made to such other organization or organizations that are organized and operated exclusively for charitable, educational or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, subject to an order of a Justice of the Supreme Court of the State of New York. For purposes of this paragraph, an "affiliate" shall mean any not-for-profit organization which controls, is controlled by, or is under common control with the corporation.

12. In any taxable year in which the corporation is a private foundation as defined by Section 509 of the Internal Revenue Code of 1986, as amended, the corporation shall:

(a) not engage in any act of self-dealing that is subject to tax under Section 4941 of said Code;

(b) distribute its income for each taxable year at such time and in such manner as not to subject the corporation to tax on undistributed income under Section 4942 of said Code;

(c) not retain any excess business holdings in such manner as to subject the corporation to tax under Section 4943 of said Code;

(d) not make any investments in such a manner as to subject the corporation to tax under Section 4944 of said Code; and

(e) not make any expenditures that are subject to tax under Section 4945 of said Code.

13. The number of directors constituting the entire board of directors of the corporation shall not be less than three. Subject to such limitation, the number shall be fixed by or in accordance with the bylaws of the corporation pursuant to Section 702 of the Not-for-Profit Corporation Law. The names and addresses of the initial directors are:

<u>Name</u>	<u>Address</u>
Samantha Gilkey	25 Fairview Avenue Wellsville NY 14895
Jennifer Joyce	475 N. Highland Wellsville, NY 14895
Gary Balcom	60 Park Lane Wellsville, NY 14895

14. The office of the corporation is to be located in the County of Allegany, State of New York.



15. The Secretary of State is hereby designated as the agent of the corporation upon whom process against it may be served, and the post office address to which the Secretary of State shall mail a copy of any process against the corporation that may be served upon him is: Jones Memorial Hospital Foundation, 191 North Main Street, Wellsville, New York 14895.

16. The subscriber is of the age of eighteen years or over.

IN WITNESS WHEREOF, the subscriber has signed this Certificate of Incorporation this 15 day of June, 2015.

Samantha Gilkey  
Samantha Gilkey  
25 Fairview Ave.  
Wellsville, NY 14895

CERTIFICATE OF INCORPORATION  
OF  
JONES MEMORIAL HOSPITAL FOUNDATION

Under Section 402 of the Not-for-Profit Corporation Law

**JONES MEMORIAL HOSPITAL FOUNDATION**

**BYLAWS**

Adopted: \_\_\_\_\_, 2015

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BYLAWS  
OF  
JONES MEMORIAL HOSPITAL FOUNDATION

ARTICLE I – GENERAL

Section 1. Name. The name of the Corporation is Jones Memorial Hospital Foundation (the “Corporation”).

Section 2. Offices. The principal office of the Corporation shall be in the Village of Wellsville, County of Allegany, State of New York. The Corporation may also have offices at such other places within the State of New York as the Board of Directors may from time to time determine or the business of the Corporation may require.

Section 3. Purposes. The purposes of the Corporation shall be as set forth in its Certificate of Incorporation, as amended from time to time.

ARTICLE II – MEMBERSHIP

Section 1. Composition. The sole member of the Corporation shall be The Memorial Hospital of William F. and Gertrude F. Jones, Inc. (hereinafter sometimes referred to as the “Member”).

Section 2. Rights and Powers of Member. The Member shall have and exercise all the rights and powers of corporate membership created by the laws of the State of New York or the Certificate of Incorporation or Bylaws of the Corporation.

Section 3. Annual Meeting of the Membership. In its capacity as the member of the Corporation, the Member shall hold an annual meeting of the membership each year not more than six (6) months after the close of the Corporation’s fiscal year at a convenient time and place designated by the Member. At the annual meeting of the membership, the Member shall elect the Corporation’s directors, receive the Corporation’s annual report, and transact such other business as may properly come before the meeting.

Section 4. Annual Report to the Membership. At the annual meeting of the membership, the Chair or President/CEO and the Treasurer of the Corporation shall present an annual report showing in appropriate detail the following information:

(a) A complete verified or audited financial statement of the Corporation for the fiscal year immediately preceding the date of the report showing the assets and liabilities, principal changes in assets and liabilities, revenue, receipts, expenses and disbursements of the Corporation;

(b) A summary of the activities of the Corporation during the preceding year; and

(c) The number of members of the Corporation, any increase or decrease during the preceding year, and the location of the current list of members' names and addresses.

The annual report shall be filed with the minutes of the annual meeting.

Section 5. Action by Member. Any action required or permitted to be taken by the Member in its capacity as the member of the Corporation under applicable law or the Certificate of Incorporation or these Bylaws shall be taken by the Member through written consent to such action. The written consent of the Member shall be given and evidenced by a resolution of the Board of Directors of the Member, signed by an officer thereof, following action by the Member's Board of Directors in accordance with the Member's Certificate of Incorporation, Bylaws, policies and procedures. A copy of each such resolution shall be delivered to the Secretary of the Corporation for its records.

### ARTICLE III – BOARD OF DIRECTORS

Section 1. Authority and Responsibility of Directors. Subject to the rights and powers of the Member described in Article II, Section 2 above, the affairs, property, business and policies of the Corporation shall be under the charge, direction and control of the Board of Directors ("Board").

Section 2. Number of Directors, Election, and Term of Office.

(a) The Board of Directors shall consist of not less than three (3) nor more than fifteen (15) directors, each of whom shall be at least eighteen (18) years of age. The number of directors shall be determined by action of the Member, provided that no decrease in the number of directors shall shorten the term of any incumbent director. As used herein, "the entire Board of Directors" shall mean the total number of directors entitled to vote which the Corporation would have if there were no vacancies. No more than one-third (1/3) of the directors of the Corporation may be a director, officer or employee of the Member or any corporation affiliated with the Member.

(b) The President and Chief Executive Officer of the Corporation (if any) and the President and Chief Executive Officer the Member shall be, ex-officio, voting members of the Board of Directors. Such ex officio directors of the Corporation shall serve only during the period they hold the respective offices from which they derive their ex officio status on the Corporation's Board.

(c) Directors who do not serve ex officio shall be elected by the Member of the Corporation at the annual meeting of the membership following nomination by the Corporation's Board of Directors. The Member shall not be obligated to approve the Board's nominees. The directors elected by the Member of the Corporation shall be divided into three (3) classes of approximately equal size, which shall be elected at the annual meeting of the membership on a rotating basis. All directors elected at an annual meeting shall succeed the incumbent directors

whose terms of office expire that year and shall be elected to serve a term of three (3) years and until their successors are elected and take office; provided, however, that directors may be elected to a term of less than three (3) years if necessary to maintain approximately equal class size.

(d) No elected director shall serve more than three (3) consecutive three (3) year terms. Any director who has served three (3) consecutive three (3) year terms shall not be eligible for re-election until one (1) year after the end of the third consecutive term. Election to a term of less than three (3) years, or to fill a vacancy for less than three (3) years, shall not be counted as service of a three-year term for this purpose.

Section 3. Organization. At each meeting of the Board of Directors, the Chair, or, in his or her absence, the Vice Chair, shall preside, or in the absence of either of such officers, a chair chosen by a majority of the directors present shall preside. The Secretary or, in his or her absence, a person chosen by a majority of the directors present, shall act as secretary of the meeting.

Section 4. Resignations and Removal of Directors.

(a) Any director of the Corporation may resign at any time by giving written notice to the Chair or the Secretary. Written notice of the resignation shall promptly be given by such officer to the Member. Such resignation shall take effect at the time specified therein or, if no time is specified, then on delivery. Acceptance of the resignation shall not be necessary to make it effective. An ex officio director may resign his or her directorship in this Corporation only by resigning or otherwise withdrawing from the office from which the directorship in this Corporation is derived.

(b) Any elected director may be removed at any time, with or without cause, by the Member and with cause by a two-thirds (2/3) vote of the entire Board of Directors. Ex officio directors shall automatically be removed from the Board when they cease to hold the offices from which their directorships in this Corporation are derived.

Section 5. Vacancies. Vacancies occurring among the directors elected by the Member shall be filled as soon as possible by the Member. The Board of Directors of the Corporation may nominate successor(s) to fill such vacancies, but the Member shall not be obligated to approve any such nominee(s). A director elected to fill a vacancy shall hold office until the next annual meeting of the Corporation and until his or her successor is elected and qualified. Such a partial term shall not count as a three (3) year term for the purpose of determining eligibility for election to successive terms. A vacancy in an ex officio directorship shall be filled by the successor to the office from which such directorship is derived.

Section 6. Notice of Meeting: Waiver of Notice

(a) Each director shall be given notice of each regular, annual and special meeting of the Board of Directors not less than three (3) days prior to the date scheduled for such meeting. The notice shall state the place, date and time of the meeting. Notices shall be delivered



personally or by mail, overnight delivery by a commercial carrier (e.g., Federal Express or UPS), telefax or e-mail. If mailed or sent by overnight delivery by a commercial carrier, notice is given when deposited in the United States mail or delivered to the carrier, with postage or other charges thereon prepaid, directed to the director at his or her address as it appears in the record of directors or to such other address as the director shall have specified to the Secretary of the Corporation in writing. If telefaxed, notice is given when the sender receives confirmation that the transmission has been received by the recipient's telefax machine at a number provided by the recipient, at his or her option, for such purpose. If e-mailed, notice is given when the sender effects electronic transmission to an e-mail address provided by the recipient, at his or her option, for such purpose.

(b) Notice of any meeting of the Board of Directors need not be given to any director who submits a waiver of notice either before or after the meeting, or who attends the meeting without protesting prior thereto or at its commencement the lack of notice to him or her. A waiver of notice may be written or electronic. If written, the waiver must be executed by the director signing such waiver or causing his or her signature to be affixed thereto by any reasonable means, including but not limited to facsimile signature. If electronic, the transmission of the consent must be sent by e-mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the director.

#### Section 7. Quorum.

(a) A majority of the entire Board of Directors shall constitute a quorum for the transaction of business.

(b) A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place, and the Secretary shall give each director notice at least three (3) days before the subsequent meeting.

Section 8. Action by the Board of Directors at Meetings. Except as otherwise provided by law, the Corporation's Certificate of Incorporation, or these Bylaws, the vote of a majority of the directors present at the time of the vote at a duly convened meeting of the Board, if a quorum is present at that time, shall be the act of the Board of Directors. Each director shall have one vote on any motion submitted to the Board for action by the Board. Any one or more members of the Board or any Committee thereof may participate in a meeting by means of a conference telephone or similar communications equipment or by electronic video screen communication. Participation by such means shall constitute presence in person at the meeting as long as all persons participating in the meeting can hear each other at the same time and each director can participate in all matters before the Board or Committee, including, without limitation, the ability to propose, object to, and vote upon a specific action to be taken by the Board or Committee.

Section 9. Action by the Board Without a Meeting. Any action required or permitted to be taken by the Board of Directors or any Committee thereof may be taken without a meeting if all directors or Committee members consent to the adoption of a resolution setting forth and authorizing the action. Such consent may be written or electronic. If written, the consent must be executed by the director by signing such consent or by causing his or her signature to be

affixed to such consent by any reasonable means including, but not limited to, facsimile signature. If electronic, transmission of the consent must be sent by e-mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the director. The resolution and consents thereto by the Board or Committee shall be filed with the minutes of the proceedings of the Board or Committee.

Section 10. Related Party Transactions.

(a) The Corporation shall not enter into any related party transaction unless the transaction is determined by the Board to be fair, reasonable and in the Corporation's best interest at the time of such determination. Any director, officer or key employee who has an interest in a related party transaction shall disclose in good faith to the Board, or an authorized Committee thereof, the material facts concerning such interest.

(b) With respect to any related party transaction in which a related party has a substantial financial interest, the Board of the Corporation, or an authorized Committee thereof, shall:

(i) Prior to entering into the transaction, consider alternative transactions to the extent available;

(ii) Approve the transaction by not less than a majority vote of the directors or Committee members present at the meeting; and

(iii) Contemporaneously document in writing the basis for the Board or authorized Committee's approval, including its consideration of any alternative transactions.

(c) No related party may participate in deliberations or voting relating to matters set forth in this Section; provided that nothing in this Section shall prohibit the Board or authorized Committee from requesting that a related party present information concerning a related party transaction at a Board or Committee meeting prior to the commencement of deliberations or voting relating thereto.

(d) The following definitions shall apply for purposes of these Bylaws:

(i) "Related party transaction" means any transaction, agreement or any other arrangement in which a related party has a financial interest and in which the Corporation or any affiliate of the Corporation is a participant.

(ii) "Related party" means (i) any director, officer or key employee of the Corporation or any affiliate of the Corporation; (ii) any relative of any director, officer or key employee of the Corporation or any affiliate of the Corporation; or (iii) any entity in which any individual described in clauses (i) and (ii) of this subparagraph has a thirty-five percent (35%) or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of five percent (5%).

(iii) An "affiliate" of the Corporation means any entity controlled by, in control of, or under common control with the Corporation.

(iv) "Key employee" means any person who is in a position to exercise substantial influence over the affairs of the Corporation, as referenced in Internal Revenue Code Section 4958(f)(1)(A) and further specified in Internal Revenue Service Regulation Section 53.4958-3(c), (d) and (e), or succeeding provisions.

(v) "Relative" of an individual means his or her (i) spouse, ancestors, brothers and sisters (whether whole or half blood), children (whether natural or adopted), grandchildren, great-grandchildren, and spouses of brothers, sisters, children, grandchildren, and great-grandchildren; or (ii) domestic partner as defined in Section 2994-a of the New York Public Health Law.

Section 11. Place of Meeting. The Board of Directors may hold its meetings at the principal office of the Corporation, or at such place or places within or without the State of New York as the Board of Directors may from time to time by resolution determine.

Section 12. Annual Meetings. As soon as practical after each annual election of directors by the Member, the Board of Directors shall hold an Annual Meeting for the purposes of electing officers, appointing Committees, and transacting other business. Such meeting may be held at such time and place as may be determined by the Board. Notice shall be given in accordance with Section 6 of this Article.

Section 13. Regular Meetings. Regular meetings of the Board of Directors shall be held at least quarterly. Notice shall be given in accordance with Section 6 of this Article.

Section 14. Special Meetings. Special meetings of the Board of Directors may be called by the Chair of the Board and shall be called within fourteen (14) days after receipt by the Chair or the Secretary of a written request for such a meeting from the Member or at least twenty percent (20%) of the directors of the Corporation. Notice shall be given in accordance with Section 6 of this Article. Business conducted at the meeting shall be limited to the purpose(s) stated in the notice.

Section 15. Annual Report. At the annual meeting of the Board, the Chair or President/CEO and the Treasurer shall present an annual report containing the information described in Article II, Section 4 above.

Section 16. Records. The Secretary, or his or her designee, shall maintain complete and accurate minutes of, including findings, conclusions, recommendations, actions and director attendance at, each Board meeting and shall retain each notice sent to and each resolution and unanimous consent executed by the Board. Such notices, minutes, resolutions and unanimous consents shall be maintained in the permanent records of the Corporation, and a copy shall be forwarded to the Secretary of the Member of the Corporation.

Section 17. Attendance at Meetings.

Attendance at each meeting of the Board and any Committee thereof shall be recorded by the Secretary or his or her designee in the minutes of such meeting. Absence from a meeting of the Board or a Committee to which a director is appointed may be excused for good cause

shown. Unexcused absence from more than one-half of the total number of regular and special meetings of the Board during a twelve (12) month period for any reason shall constitute cause for removal from the Board.

Section 18. Compensation. Directors shall receive no compensation for their services but shall be reimbursed for any expenses reasonably incurred by them in the performance of their duties. No director shall have any rights to or interests in the property and assets of the Corporation.

#### ARTICLE IV – COMMITTEES

Section 1. Committees of the Board.

The Board may create such Committees of the Board that the Board deems necessary or advisable for the performance or oversight of continuous or regularly recurring functions of the Corporation or the Board. Each such Committee shall consist of at least three (3) members, and all members must be directors of the Corporation. Except as otherwise provided in these Bylaws, the chairs and all members of the Committees of the Board shall be appointed by the Chair of the Board at the annual meeting of the Board, subject to approval by the Board, and shall serve until the next annual meeting and until their successors are duly appointed and qualified. Committee members may be removed by the Board with or without cause at any time, and they may resign upon written notice to the Chair of the Board. Vacancies may be filled by the Chair, subject to approval by the Board, at any regular or special meeting of the Board. Committee members appointed to fill vacancies shall serve until the next annual meeting of the Board and until their successors are appointed and qualified. The Board may create one (1) or more subcommittees of any Committee of the Board at any meeting of the Board. The chair and all members of any such subcommittee shall be appointed by the Chair, subject to approval by the Board.

Section 2. Committees of the Corporation

(a) The Board may create such Committees of the Corporation as it deems necessary or advisable to assist the Board with particular functions of the Corporation or the Board. Each such Committee shall consist of at least three (3) members and may include individuals who are not directors of the Corporation, but shall include at least one (1) member who is a director of the Corporation. Except as otherwise provided in these Bylaws, the chairs and all members of the Committees of the Corporation shall be appointed by the Chair of the Board at the annual meeting of the Board, subject to approval by the Board, and shall serve until the next annual meeting and until their successors are duly appointed and qualified. Committee members may be removed by the Board with or without cause at any time, and they may resign upon written notice to the Chair of the Board. Vacancies may be filled by the Chair, subject to approval by the Board, at any regular or special meeting of the Board. Committee members appointed to fill vacancies shall serve until the next annual meeting of the Board and until their successors are appointed and qualified. The Board may create one (1) or more subcommittees of any Committee of the Corporation at any meeting of the Board. The chair and all members of any such subcommittee shall be appointed by the Chair, subject to approval by the Board.

(b) No Committee of the Corporation shall have authority to bind the Board. Each Committee of the Corporation shall report its findings and recommendations to the next regular meeting of the Board, or at a special meeting called for that purpose, at which meeting the Board may, in its discretion, act upon such findings and recommendations.

Section 3. Committee Meetings

(a) At all Committee meetings, a quorum shall be equal to a majority of the members of the Committee. A vote by a majority of the members present at a duly organized Committee meeting shall constitute the action of the Committee. Each Committee shall submit minutes of its meetings to the Secretary of the Corporation.

(b) Except as otherwise prescribed in these Bylaws or as required by the Board, Committees shall meet with such frequency as is necessary, in their discretion, to accomplish their purposes.

Section 4. Executive Committee.

(a) The Executive Committee shall constitute a Committee of the Board comprised of the President/CEO, ex officio with vote (if one is appointed), the Chair, the Vice Chair, the Treasurer, the Secretary, and such other members as may be appointed by the Chair of the Board with the approval of the Board, in accordance with Section 1 of this Article.

(b) Between meetings of the Board of Directors, and to the extent permitted by law, the Executive Committee shall possess the powers of the Board with respect to managing and conducting the affairs of the Corporation, subject to such instructions as may be imposed from time to time by the Board.

(c) The Chair of the Corporation shall serve as Chair of the Executive Committee. The Executive Committee shall meet as deemed necessary or advisable by the Chair, the Committee or the Board. The Executive Committee, or one (1) or more subcommittees thereof, shall take the lead with respect to strategic planning for the Corporation and its affiliates and shall consider compensation issues with respect to the directors, officers, management, and other staff of the Corporation and its affiliates. The Executive Committee shall report its actions to the next regular meeting of the Board, or at a special meeting called for that purpose. The activities of the Executive Committee shall be deemed to have been ratified by the Board following such report unless affirmatively overruled or modified by resolution of the Board.

Section 5. Governance Committee.

(a) The Governance Committee shall constitute a Committee of the Board comprised of the Chair of the Board and such other voting members as may be appointed by the Chair with the approval of the Board, in accordance with Section 1 of this Article. If one is appointed, the President/CEO shall serve as an ex officio nonvoting member of the Governance Committee. The Chair of the Board shall not serve as the Chair of the Governance Committee.

(b) The Governance Committee shall identify and recommend to the Board of Directors candidates for nomination to the Board of Directors; recommend to the Board of Directors candidates to serve as officers; evaluate the performance of the Board of Directors as a whole and individual directors pursuant to criteria developed by the Committee; evaluate the performance of the Chair of the Board; evaluate the performance of the President/CEO (if one is appointed); perform management succession planning; manage Board education programs; and perform such other functions as described in these Bylaws or as otherwise specified by the Board of Directors.

Section 6. Audit Committee.

(a) The Audit Committee shall constitute a Committee of the Board comprised solely of such independent voting directors of the Corporation as may be appointed by the Chair of the Board with the approval of the Board, in accordance with Section 1 of this Article. Only independent directors may participate in any Committee deliberations or voting relating to matters set forth in this Section. For purposes of these Bylaws, an "independent director" means a director who: (i) is not, and has not been within the last three years, an employee of the Corporation or an affiliate of the Corporation, and does not have a relative who is, or has been within the last three years, a key employee of the Corporation or an affiliate of the Corporation; (ii) has not received, and does not have a relative who has received, in any of the last three fiscal years, more than \$10,000 in direct compensation from the Corporation or an affiliate of the Corporation (other than reimbursement for expenses reasonably incurred as a director or reasonable compensation for service as a director as permitted by Section 202(a) of the New York Not-for-Profit Corporation Law); and (iii) is not a current employee of and does not have a substantial financial interest in, and does not have a relative who is a current officer of or has a substantial financial interest in, any entity that has made payments to, or received payment from, the Corporation or an affiliate of the Corporation for property or services in an amount which, in any of the last three fiscal years, exceeds the lesser of \$25,000 or two percent (2%) of such entity's consolidated gross revenues. For these purposes, "payment" does not include charitable contributions.

(b) The Audit Committee shall oversee the accounting and financial reporting process of the Corporation and shall be directly responsible for the appointment, compensation and oversight of the work of any public accountant or public accounting firm retained by the Corporation for the purpose of preparing and issuing an audit report or related work for the Corporation, and each such public accountant or firm shall be required to report directly to the Audit Committee. More particularly, the Audit Committee shall: (i) annually retain or renew the retention of the independent auditor(s) of the Corporation; (ii) prior to the audit, review with the auditor the proposed scope and planning of the annual audit of the Corporation and identify areas of particular concern to the Board; (iii) review the independent auditors' reports on the financial statements at the conclusion of the audit of the Corporation; (iv) review the independent auditors' management letters to the Corporation and management's responses thereto; (v) review and discuss with the independent auditor: (A) any material risks and weaknesses in internal controls identified by the auditor; (B) any restrictions on the scope of the auditor's activities or access to requested information; (C) any significant disagreements between the auditor and management; and (D) the adequacy of the accounting and financial reporting process and internal control structures of the Corporation; (vi) review the plans for and results of internal audit activities;

(vii) review the relationships between management and the independent auditor; (viii) annually consider the performance and independence of the auditor; (ix) oversee the design of and monitor findings, conclusions, and corrective actions resulting from the corporate compliance program of the Corporation; (x) set up internal procedures for receiving and handling complaints concerning accounting, internal control and auditing matters and for confidential, anonymous submissions by employees of the Corporation concerning questionable accounting, auditing or other financial matters; and (xi) report on the Committee's activities to the Board. To the extent that it determines necessary to carry out its duties, the Audit Committee may retain independent counsel and other advisors at the Corporation's expense.

(c) The Audit Committee shall oversee the adoption, implementation of, and compliance with any conflict of interest policy and/or whistleblower policy adopted by the Corporation.

(d) In lieu of a separate Audit Committee, the Finance and Audit Committee of the Member may be designated by the Board of Directors of the Corporation to perform the duties required by this Section 6.

#### Section 7. Investment Committee.

(a) The Investment Committee shall constitute a Committee of the Board comprised of such voting members as may be appointed by the Chair with the approval of the Board, in accordance with Section 1 of this Article.

(b) The Investment Committee shall have the following responsibilities with respect to the funds of the Corporation: (1) selecting investment advisor(s); (2) defining investment expectations; (3) selecting investment managers; and (4) monitoring investment performance. The Committee shall meet at least quarterly on the call of its chairperson. It shall have authority to act for the Corporation in the implementation of the responsibilities enumerated in this paragraph, provided that such implementation is consistent with the policies of the Board, and it shall promptly report its findings and actions to the Board. The actions of the Committee shall be deemed to have been ratified by the Board following such reports unless the Board adopts a resolution overruling the Committee.

### ARTICLE V – OFFICERS

Section 1. Number and Compensation. The elected officers of the Board shall be a Chair of the Board, a Vice Chair of the Board, a Treasurer, a Secretary, and such other officers as the Board of Directors may in its discretion elect. The Corporation may also employ a President/CEO. Any two or more offices may be held by the same person, except the offices of Chair or President and Secretary. Except for the President/CEO, the foregoing officers shall serve without compensation.

Section 2. Terms of Officers and Qualifications. The elected officers shall be elected by the Board of Directors at the Annual Meeting of the Board. Unless a shorter term is provided in the resolution of the Board electing such officer, the term of office of each elected officer shall

extend for one (1) year after his or her election and until his or her successor is elected or appointed and qualified. The President/CEO may be appointed by the Board for an indefinite term.

Section 3. Additional Officers. Additional officers may be elected for such period, have such authority and perform such duties, either in an administrative or subordinate capacity, as the Board of Directors may from time to time determine.

Section 4. Removal of Officers. Any officer elected by the Board may be removed by vote of a majority of the entire Board of Directors at any meeting at which such number of directors is present, with or without cause, provided that any such removal shall not abrogate any other terms and conditions in any applicable employment contract between the Corporation and the President/CEO.

Section 5. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, or to the Chair or to the Secretary. Any such resignation shall take effect at the time specified therein, or, if no time be specified, then upon delivery.

Section 6. Vacancies. A vacancy in any office elected or appointed by the Board shall be filled by the Board of Directors.

Section 7. Chair of the Board. The Chair of the Board shall preside at all meetings of the Board of Directors and the Executive Committee, and shall undertake such other duties as may be prescribed in these Bylaws or assigned from time to time by the Board. The Chair shall be, ex officio, a voting member of all Committees.

Section 8. Vice Chair of the Board. In the absence or inability to act of the Chair, or if the office of the Chair be vacant, the Vice Chair shall preside at all meetings of the Board of Directors, and shall perform the duties and exercise the powers of the Chair, subject to the right of the Board from time to time to extend or confine such powers and duties or to assign them to others. The Vice Chair shall also have such other powers and shall perform such other duties as may be assigned to him by the Board of Directors or the Chair.

Section 9. Treasurer. The Treasurer is responsible for maintaining the books of account and shall have charge and custody of, and be responsible for, all funds and securities of the Corporation, and deposit all such funds in the name of and to the credit of the Corporation in such banks, trust companies, or other depositories as shall be selected by the Board of Directors. He or she shall, when duly authorized by the Board of Directors, sign and execute all contracts in the name of the Corporation; he or she shall also have the power to sign checks, drafts, notes, and orders for the payment of money on behalf of the Corporation when duly authorized by the Board of Directors; and he or she shall at all reasonable times exhibit the books and accounts to any director or to directors and/or other representatives of the Member of the Corporation upon application at the office of the Corporation during ordinary business hours. He or she shall also perform all other duties customarily incident to the office of Treasurer and such other duties as from time to time may be assigned to him or her by the Board of Directors or the Chair.



Section 10. Secretary. It shall be the duty of the Secretary to act as Secretary of all meetings of the Board of Directors, and to keep the minutes of all such meetings at which he shall so act in a proper book or books to be provided for that purpose; he or she shall see that all notices required to be given by the Corporation are duly given and served; he or she shall keep a current list of the Corporation's directors and officers and their residence addresses; he or she shall be custodian of the seal of the Corporation and shall affix the seal, or cause it to be affixed, to all agreements, documents and other papers requiring the same. The Secretary shall have custody of the minute book containing the minutes of all meetings and all executed consents of the Member, Board and Committees, and of all other contracts and documents which are not in the custody of the Treasurer of the Corporation or in the custody of some other person authorized by the Board of Directors to have such custody. He or she shall attend to such correspondence as may be assigned to him or her and shall perform all the duties incidental to his office and such other duties as may be assigned to him or her by the Board of Directors or the Chair.

Section 11. President/CEO. The President/CEO shall be the chief executive officer of the Corporation. He or she shall be an experienced and competent manager who shall report directly to the Board, be its representative in the management of the Corporation in all matters which the Board has not formally designated some other person to act, and undertake such other duties as may be assigned from time to time by the Board or by another officer of the Corporation.

Section 12. Appointed Officers. The Board of Directors may delegate to the President/CEO the power to appoint and to remove any subordinate officer, agent or employee.

Section 13. Securities and Bonds. In case the Board of Directors shall so require, any officer or agent of the Corporation shall execute to the Corporation a bond in such sum and with such surety or sureties as the Board may direct, conditioned upon the faithful performance of his or her duties to the Corporation and including responsibility for negligence and for the accounting for all property, funds or securities of the Corporation which may come into his or her hands.

Section 14. Assignment and Transfer of Stocks, Bonds and Other Securities. The Chair of the Board, Vice Chair of the Board, Treasurer, Secretary, President/CEO and each of them, as well as others designated by the Board of Directors, shall have power to assign, or to endorse for transfer under the corporate seal, and to deliver, any stock, bonds, subscription rights or other securities, or any beneficial interest therein, held or owned by the Corporation.

#### ARTICLE VI – CONTRACTS, CHECKS, DRAFTS AND BANK ACCOUNTS

Section 1. Execution of Contracts. The Board of Directors, except as these Bylaws otherwise provide, may authorize any officer or officers, agent or agents, in the name of and on behalf of the Corporation to enter into any contract or execute and deliver any instrument, and such authority may be general or confined to specific instances; but unless so authorized by the Board of Directors or expressly authorized by these Bylaws, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable pecuniarily in any amount for any purpose.

Section 2. Loans. No loans shall be contracted on behalf of the Corporation unless specifically authorized by the Board of Directors.

Section 3. Checks, Drafts, etc. All checks, drafts and other orders for the payment of money out of the funds of the Corporation, and all notes or other evidences of indebtedness of the Corporation, shall be signed on behalf of the Corporation in such manner as shall from time to time be determined by resolution of the Board of Directors or as expressly authorized by these Bylaws.

Section 4. Deposits. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may by resolution select.

#### ARTICLE VII – BOOKS AND RECORDS

Section 1. Books and Records. There shall be kept at the office of the Corporation (a) correct and complete books and records of account, (b) minutes of the proceedings of the Member, the Board of Directors and the Committees, (c) a current list of the directors and officers of the Corporation and their residence addresses, (d) a copy of the Certificate of Incorporation, and (e) a copy of these Bylaws.

#### ARTICLE VIII – INDEMNIFICATION, INSURANCE AND CONFLICTS POLICY

Section 1. Indemnification Provision. The Corporation shall, to the full extent permitted by law, indemnify its directors, officers, employees and other personnel.

Section 2. Insurance. The Corporation shall purchase directors' and officers' liability insurance as and to the extent authorized and approved by the Board of Directors.

Section 3. Conflicts of Interest. The Board of Directors shall adopt a conflicts of interest policy for the purpose of protecting the Corporation's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer, director, or key employee of the Corporation.

#### ARTICLE IX – GIFTS

Section 1. Acceptance of Gifts. The Board of Directors may accept or reject on behalf of the Corporation any gift, grant, bequest or devise for the general purposes or for any special purpose of the Corporation. Unless the terms expressly provide otherwise, all gifts, grants, bequests and devises shall be deemed irrevocable.

Section 2. Conditions and Limitations. Any person who shall give, bequeath or devise any property to the Corporation may make such gift subject to such conditions and limitations as to the use of the principal or income as he or she may see fit and for the principal or income as he or she may desire, provided such conditions, limitations, specifications and provisions are consistent with the general purposes of the Corporation and are acceptable to the Board of Directors.

Section 3. Funds and Accounts. All such property received and accepted by the Corporation shall become a part of the Corporation's property and, subject to any limitation, conditions or requirements, may be commingled with other assets of the Corporation. However, such property shall or may be placed in any number of separate and distinct funds or accounts whenever the conditions, limitations or instructions, or the gift, grant, bequest, or devise require a separate fund or account or whenever the Board of Directors, in its judgment, determines that such property should be placed in a separate and distinct fund or account.

#### ARTICLE X – FISCAL YEAR

The fiscal year of the Corporation shall commence on January 1 of each calendar year and end on the last day of December.

#### ARTICLE XI – AMENDMENTS

The Bylaws of the Corporation may be amended, repealed or adopted only by action of the Member of the Corporation. The Board of the Corporation may propose amendments for approval by the Member, or the Member may amend, repeal or adopt Bylaws on its own initiative.

#### ARTICLE XII – CONSTRUCTION

If there be any conflict between the provisions of the Certificate of Incorporation and these Bylaws, the provisions of the Certificate of Incorporation shall govern.



# JONES MEMORIAL HOSPITAL

191 North Main Street / PO Box 72 / Wellsville, New York / 585-593-1100 / [www.jmhny.org](http://www.jmhny.org)

June 11, 2015

To Whom It May Concern:

This letter will confirm that The Memorial Hospital of William F. and Gertrude F. Jones will accept funds raised for it by the Jones Memorial Hospital Foundation.

Sincerely,

Eva Benedict,  
President/CEO

Initial Directors of Jones Memorial Hospital Foundation

<u>Name and Address</u>	<u>Occupation</u>	<u>Employer Name and Address</u>	<u>Other Charitable and Nonprofit Affiliations</u>
Samantha Gilkey 25 Fairview Avenue Wellsville, NY 14895	Court Worker	Village Court 46 S. Main Street Wellsville, NY 14895	None
Jennifer Joyce 3573 County Road 12 Andover, NY 14806	Loan Officer	Steuben Trust Company 475 North Highland Wellsville, NY 14895	United Way Rotary Club
Gary Balcom 60 Park Lane Wellsville, NY 14895	Retired	None	Moogan Foundation Lions Club


RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 10th day of December, 2015, approves the filing of the Certificate of Incorporation of Jones Memorial Foundation, dated June 15, 2015.



## MEMORANDUM

**TO:** Public Health and Health Planning Council

**FROM:** Richard J. Zahnleuten  
Acting General Counsel 

**DATE:** November 2, 2015

**SUBJECT:** Proposed Certificate of Amendment of the Certificate of Incorporation of North-Shore – LIJ Stern Family Center for Rehabilitation

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Attached is the proposed Certificate of Amendment of the Certificate of Incorporation of North Shore-LIJ Stern Family Center for Rehabilitation, This not-for-profit corporation seeks approval to change its name to "Northwell Health Stern Family Center for Rehabilitation." Public Health and Health Planning Council approval is required for this change of corporate name – as is required by Not-for-Profit Corporation Law § 804 (a) and 10 NYCRR § 600.1 (a) (1).

Also attached is a letter dated September 11, 2015 from Lauren E. Campisi, attorney for the corporation which explains the intent and meaning of the proposed name change.

The Department has no objection to the proposed name change and the proposed Certificate of Amendment is in legally acceptable form.

Attachments



145 Community Drive  
Great Neck, New York 11021  
Tel (516) 465 8389  
Fax (516) 465 8105

Office of Legal Affairs

Lauren E. Campisi, Esq.

September 11, 2015

Public Health and Health Planning Council ("Council")  
New York State Department of Health  
Corning Tower  
Empire State Plaza  
Albany, New York 12237

**Re: Proposed Certificates of Amendment of the Certificate of Incorporation to change the names of:**

- 1. North Shore-Long Island Jewish Health System, Inc. to Northwell Health, Inc.**
- 2. North Shore-Long Island Jewish Health Care, Inc. to Northwell Healthcare, Inc.**
- 3. North Shore-Long Island Jewish Health System Foundation to Northwell Health Foundation**
- 4. North Shore-LIJ Stern Family Center for Rehabilitation to Northwell Health Stern Family for Rehabilitation**

Dear Council:

We respectfully submit this letter in support of our application to change the name of North Shore-Long Island Jewish Health Care, Inc., North Shore-Long Island Jewish Health System Foundation and North Shore-LIJ Stern Family Center for Rehabilitation in accordance with the planned name change of North Shore-Long Island Jewish Health System, Inc., and wish to explain the reasoning for the proposed changes.

The reason for this change is that we are a different organization today than we were in 1997, when North Shore Health System merged with Long Island Jewish Medical Center to form North Shore-LIJ Health System. At that time, we took the names of the two institutions and joined them together. Our organization has grown in many ways since that time. We now have 21 hospitals, a vast network of long-term care, rehabilitation, home care, hospice and a range of other services, about 450 outpatient physician practices, medical and nursing schools, and an internationally recognized research institute. As we approach our third decade, the depth and breadth of services that we provide is far different today, especially as we place a greater focus on promoting health and wellness. Our geographic service area has also grown significantly beyond Long Island over the past 18 years, as we have established a presence in Manhattan, Brooklyn, Westchester County, and even Boca Raton, FL.

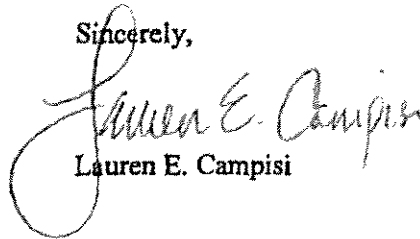


The name Northwell Health has been chosen because it recognizes our heritage with “north” and also represents our desire to guide consumers on their health care journey. The word “well” in Northwell signifies our commitment to promoting wellness and healthier lifestyles among the communities we serve. “Health” reflects the quality healthcare for which we are known and which we want to continue to promote.

In summary, we submit this name change application to ensure continued alignment of these entities with the organization’s name, and to have a name that more accurately reflects the mission and services of the organization as it exists today.

Please do not hesitate to contact me should you have any questions or concerns regarding the above or our request in general.

Sincerely,

A handwritten signature in black ink that reads "Lauren E. Campisi". The signature is fluid and cursive, with a large loop at the end of the last name.

Lauren E. Campisi

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
NORTH SHORE-LIJ STERN FAMILY CENTER FOR REHABILITATION**

Under Section 803 of the New York Not-for-Profit Corporation Law

I, THE UNDERSIGNED, Michael J. Dowling, being the President of North Shore-LIJ Stern Family Center for Rehabilitation, do hereby certify:

1. The name of the corporation is North Shore-LIJ Stern Family Center for Rehabilitation (the "Corporation"). The Corporation was formed under the name North Shore Hospital Nursing Home, Inc.
2. The Certificate of Incorporation of the Corporation was filed by the Department of State on November 24, 1967 under the New York State Membership Corporations Law. A Restated Certificate of Incorporation was filed by the Department of State on November 6, 1987 under the Not-for-Profit Corporation Law.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law.
4. The Certificate of Incorporation of the Corporation is hereby amended, as authorized by Section 801 of the Not-for-Profit Corporation Law, to change the name of the Corporation to Northwell Health Stern Family Center for Rehabilitation.
5. To effectuate the amendment described in Paragraph 4 of this Certificate of Amendment, Article I of the Certificate of Incorporation is hereby amended to read in its entirety as follows:
  - I. The name of the corporation is Northwell Health Stern Family Center for Rehabilitation (the "Corporation").
6. This amendment to the Certificate of Incorporation was authorized by vote of the sole member of the Corporation in accordance with Section 802 of the Not-for-Profit Corporation Law.

7. The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him as agent of the Corporation is: Northwell Health Stern Family Center for Rehabilitation, c/o Northwell Health, Inc., 145 Community Drive, Great Neck, New York 11021, Attention: Office of Legal Affairs.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment on this 11th day of September, 2015, and hereby affirm, under penalties of perjury, that the statements herein are true.

  
\_\_\_\_\_  
Michael J. Dowling  
President


RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 10th day of December, 2015, approves the filing of the Certificate of Amendment of the Certificate of Incorporation of North Shore-LIJ Stern Family Center for Rehabilitation, dated September 11, 2015.



## MEMORANDUM

**TO:** Public Health and Health Planning Council

**FROM:** Richard J. Zahnleuter   
Acting General Counsel

**DATE:** November 2, 2015

**SUBJECT:** Proposed Certificate of Amendment of the Certificate of Incorporation of North-Shore – Long Island Jewish Health System Foundation

---

Attached is the proposed Certificate of Amendment of the Certificate of Incorporation of North-Shore – Long Island Jewish Health System Foundation. ("Foundation") This not-for-profit corporation seeks approval to change its name to "Northwell Health Foundation." Public Health and Health Planning Council approval is required for this change of corporate name – as required by the Nor-For-Profit Corporation Law §804 (a) and 10 NYCRR §600.11 (a) (1).

Also attached is a letter dated September 11, 2015 from Lauren E. Campisi, attorney for the Foundation which explains the intent and meaning of the proposed name change.

The Department has no objection to the proposed name change and the proposed Certificate of Amendment is in legally acceptable form.

Attachments



145 Community Drive  
Great Neck, New York 11021  
Tel (516) 465 8389  
Fax (516) 465 8105

Office of Legal Affairs

Lauren E. Campisi, Esq.

September 11, 2015

Public Health and Health Planning Council ("Council")  
New York State Department of Health  
Corning Tower  
Empire State Plaza  
Albany, New York 12237

**Re: Proposed Certificates of Amendment of the Certificate of Incorporation to change the names of:**

- 1. North Shore-Long Island Jewish Health System, Inc. to Northwell Health, Inc.**
- 2. North Shore-Long Island Jewish Health Care, Inc. to Northwell Healthcare, Inc.**
- 3. North Shore-Long Island Jewish Health System Foundation to Northwell Health Foundation**
- 4. North Shore-LIJ Stern Family Center for Rehabilitation to Northwell Health Stern Family for Rehabilitation**

Dear Council:

We respectfully submit this letter in support of our application to change the name of North Shore-Long Island Jewish Health Care, Inc., North Shore-Long Island Jewish Health System Foundation and North Shore-LIJ Stern Family Center for Rehabilitation in accordance with the planned name change of North Shore-Long Island Jewish Health System, Inc., and wish to explain the reasoning for the proposed changes.

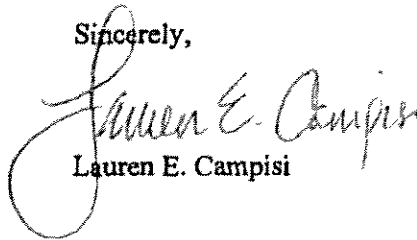
The reason for this change is that we are a different organization today than we were in 1997, when North Shore Health System merged with Long Island Jewish Medical Center to form North Shore-LIJ Health System. At that time, we took the names of the two institutions and joined them together. Our organization has grown in many ways since that time. We now have 21 hospitals, a vast network of long-term care, rehabilitation, home care, hospice and a range of other services, about 450 outpatient physician practices, medical and nursing schools, and an internationally recognized research institute. As we approach our third decade, the depth and breadth of services that we provide is far different today, especially as we place a greater focus on promoting health and wellness. Our geographic service area has also grown significantly beyond Long Island over the past 18 years, as we have established a presence in Manhattan, Brooklyn, Westchester County, and even Boca Raton, FL.

The name Northwell Health has been chosen because it recognizes our heritage with “north” and also represents our desire to guide consumers on their health care journey. The word “well” in Northwell signifies our commitment to promoting wellness and healthier lifestyles among the communities we serve. “Health” reflects the quality healthcare for which we are known and which we want to continue to promote.

In summary, we submit this name change application to ensure continued alignment of these entities with the organization’s name, and to have a name that more accurately reflects the mission and services of the organization as it exists today.

Please do not hesitate to contact me should you have any questions or concerns regarding the above or our request in general.

Sincerely,

A handwritten signature in black ink that reads "Lauren E. Campisi". The signature is written in a cursive style with a large, looping initial "L".

Lauren E. Campisi

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
NORTH SHORE-LONG ISLAND JEWISH HEALTH SYSTEM FOUNDATION**

Under Section 803 of the New York Not-for-Profit Corporation Law

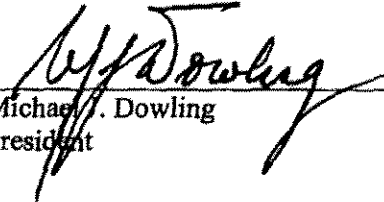
I, THE UNDERSIGNED, Michael J. Dowling, being the President of North Shore-Long Island Jewish Health System Foundation, do hereby certify:

1. The name of the corporation is North Shore-Long Island Jewish Health System Foundation (the "Corporation"). The Corporation was formed under the name North Shore Medical Center Development Fund.
2. The Certificate of Incorporation of the Corporation was filed by the Department of State on May 16, 1988 under the Not-for-Profit Corporation Law. A Restated Certificate of Incorporation of the Corporation was filed by the Department of State on October 23, 1995 under the Not-for-Profit Corporation Law.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law.
4. The Certificate of Incorporation of the Corporation is hereby amended, as authorized by Section 801 of the Not-for-Profit Corporation Law, to change the name of the Corporation to Northwell Health Foundation.
5. To effectuate the amendment described in Paragraph 4 of this Certificate of Amendment, Paragraph 1 of the Certificate of Incorporation is hereby amended to read in its entirety as follows:
  1. The name of the corporation is Northwell Health Foundation (the "Corporation").
6. This amendment to the Certificate of Incorporation was authorized by vote of the sole member of the Corporation in accordance with Section 802 of the Not-for-Profit Corporation Law.
7. The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against it may be served. The post office



address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him as agent of the Corporation is: Northwell Health Foundation, c/o Northwell Health, Inc., 145 Community Drive, Great Neck, New York 11021, Attention: Office of Legal Affairs.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment on this 11th day of September, 2015, and hereby affirm, under penalties of perjury, that the statements herein are true.

  
\_\_\_\_\_  
Michael J. Dowling  
President

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 10th day of December, 2015, approves the filing of the Certificate of Amendment of the Certificate of Incorporation of North Shore-Long Island Jewish Health System Foundation, dated September 11, 2015.



## MEMORANDUM

**TO:** Public Health and Health Planning Council

**FROM:** Richard Zahnleuter  
Acting General Counsel

**DATE:** November 2, 2015

**SUBJECT:** Proposed Certificate of Amendment of the Certificate of Incorporation of North-Shore – Long Island Jewish Health System, Inc.

---

Attached is the proposed Certificate of Amendment of the Certificate of Incorporation of North Shore – Long Island Jewish Health System, Inc. This not-for-profit corporation seeks approval to change its name to "Northwell Health Inc." Public Health and Health Planning Council approval is required for this change of corporate name – as is required by Not-for-Profit Corporation Law § 804 (a) and 10 NYCRR § 600.1 (a) (1).

Also attached is a letter dated September 11, 2015 from Lauren E. Campisi, attorney for the corporation which explains the intent and meaning of the proposed name change.

The Department has no objection to the proposed name change and the proposed Certificate of Amendment is in legally acceptable form.

Attachments



145 Community Drive  
Great Neck, New York 11021  
Tel (516) 465 8389  
Fax (516) 465 8105

Office of Legal Affairs

Lauren E. Campisi, Esq.

September 11, 2015

Public Health and Health Planning Council ("Council")  
New York State Department of Health  
Corning Tower  
Empire State Plaza  
Albany, New York 12237

**Re: Proposed Certificates of Amendment of the Certificate of Incorporation to change the names of:**

- 1. North Shore-Long Island Jewish Health System, Inc. to Northwell Health, Inc.**
- 2. North Shore-Long Island Jewish Health Care, Inc. to Northwell Healthcare, Inc.**
- 3. North Shore-Long Island Jewish Health System Foundation to Northwell Health Foundation**
- 4. North Shore-LIJ Stern Family Center for Rehabilitation to Northwell Health Stern Family for Rehabilitation**

Dear Council:

We respectfully submit this letter in support of our application to change the name of North Shore-Long Island Jewish Health Care, Inc., North Shore-Long Island Jewish Health System Foundation and North Shore-LIJ Stern Family Center for Rehabilitation in accordance with the planned name change of North Shore-Long Island Jewish Health System, Inc., and wish to explain the reasoning for the proposed changes.

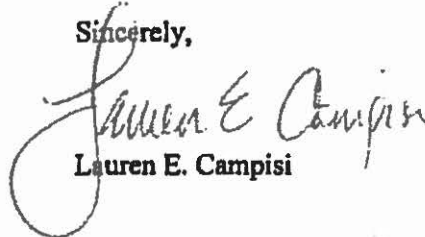
The reason for this change is that we are a different organization today than we were in 1997, when North Shore Health System merged with Long Island Jewish Medical Center to form North Shore-LIJ Health System. At that time, we took the names of the two institutions and joined them together. Our organization has grown in many ways since that time. We now have 21 hospitals, a vast network of long-term care, rehabilitation, home care, hospice and a range of other services, about 450 outpatient physician practices, medical and nursing schools, and an internationally recognized research institute. As we approach our third decade, the depth and breadth of services that we provide is far different today, especially as we place a greater focus on promoting health and wellness. Our geographic service area has also grown significantly beyond Long Island over the past 18 years, as we have established a presence in Manhattan, Brooklyn, Westchester County, and even Boca Raton, FL.

The name Northwell Health has been chosen because it recognizes our heritage with "north" and also represents our desire to guide consumers on their health care journey. The word "well" in Northwell signifies our commitment to promoting wellness and healthier lifestyles among the communities we serve. "Health" reflects the quality healthcare for which we are known and which we want to continue to promote.

In summary, we submit this name change application to ensure continued alignment of these entities with the organization's name, and to have a name that more accurately reflects the mission and services of the organization as it exists today.

Please do not hesitate to contact me should you have any questions or concerns regarding the above or our request in general.

Sincerely,

A handwritten signature in cursive script that reads "Lauren E. Campisi". The signature is written in black ink and is positioned above the printed name.

Lauren E. Campisi

---

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
NORTH SHORE - LONG ISLAND JEWISH HEALTH SYSTEM, INC.  
UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW**

---

**FILED BY:**

**NORTH SHORE-LONG ISLAND JEWISH HEALTH SYSTEM, INC.  
145 COMMUNITY DRIVE  
GREAT NECK, NEW YORK 11021**

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
NORTH SHORE - LONG ISLAND JEWISH HEALTH SYSTEM, INC.**

Under Section 803 of the New York Not-for-Profit Corporation Law

I, THE UNDERSIGNED, Michael J. Dowling, being the President of North Shore - Long Island Jewish Health System, Inc., do hereby certify:

1. The name of the corporation is North Shore - Long Island Jewish Health System, Inc. (the "Corporation").
2. The Certificate of Incorporation of the Corporation was filed by the Department of State on October 27, 1997 under the Not-for-Profit Corporation Law.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law.
4. The Certificate of Incorporation of the Corporation is hereby amended, as authorized by Section 801 of the Not-for-Profit Corporation Law, to change the name of the Corporation to Northwell Health, Inc.
5. To effectuate the amendment described in Paragraph 4 of this Certificate of Amendment, Paragraph FIRST of the Certificate of Incorporation is hereby amended to read in its entirety as follows:  

**FIRST.** The name of the corporation is Northwell Health, Inc. (the "Corporation").
6. This amendment to the Certificate of Incorporation was authorized in accordance with Section 802(a)(1) of the Not-for-Profit Corporation Law, by a majority vote of the members of the Corporation at a meeting as provided in paragraph (c) of Section 613 of the Not-for-Profit Corporation Law.
7. The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him as agent of the Corporation is: Northwell

Health, Inc., 145 Community Drive, Great Neck, New York 11021, Attention:  
Office of Legal Affairs.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of  
Amendment on this 11th day of September, 2015, and hereby affirm, under penalties of  
perjury, that the statements herein are true.

  
\_\_\_\_\_  
Michael J. Dowling  
President




RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 10th day of December, 2015, approves the filing of the Certificate of Amendment of the Certificate of Incorporation of North Shore - Long Island Jewish Health System, Inc., dated September 11, 2015.



**MEMORANDUM**

**TO:** Public Health and Health Planning Council

**FROM:** Richard J. Zahnleuter,   
Acting General Counsel

**DATE:** November 4, 2015

**SUBJECT:** Proposed Certificate of Amendment of the Certificate of Incorporation of North Shore- Long Island Jewish Health Care, Inc.

---

Attached is the proposed Certificate of Amendment of the Certificate of Incorporation of North-Shore - Long Island Jewish Health Care, Inc. ("Corporation") This not-for-profit corporation seeks approval to change its name to "Northwell Healthcare, Inc." Public Health and Health Planning Council approval for a change in corporate name is therefore required by Not-for-Profit Corporation Law §804 (a) and 10 NYCRR §600.11 (a) (1).

Also attached is a letter dated September 11, 2015 from Lauren E. Campisi, attorney for the Corporation which explains the intent and purpose of the name change.

The Department has no objection to the proposed name change, and the proposed Certificate of Amendment is in legally acceptable form.

Attachments



145 Community Drive  
Great Neck, New York 11021  
Tel (516) 465 8389  
Fax (516) 465 8105

Office of Legal Affairs

Lauren E. Campen, Esq.

September 11, 2015

Public Health and Health Planning Council ("Council")  
New York State Department of Health  
Corning Tower  
Empire State Plaza  
Albany, New York 12237

**Re: Proposed Certificates of Amendment of the Certificate of Incorporation to change the names of:**

1. North Shore-Long Island Jewish Health System, Inc. to Northwell Health, Inc.
2. North Shore-Long Island Jewish Health Care, Inc. to Northwell Healthcare, Inc.
3. North Shore-Long Island Jewish Health System Foundation to Northwell Health Foundation
4. North Shore-LIJ Stern Family Center for Rehabilitation to Northwell Health Stern Family for Rehabilitation

Dear Council:

We respectfully submit this letter in support of our application to change the name of North Shore-Long Island Jewish Health Care, Inc., North Shore-Long Island Jewish Health System Foundation and North Shore-LIJ Stern Family Center for Rehabilitation in accordance with the planned name change of North Shore-Long Island Jewish Health System, Inc., and wish to explain the reasoning for the proposed changes.

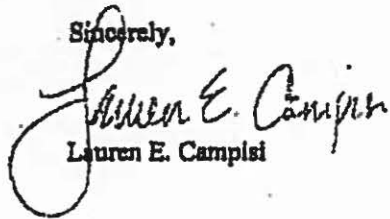
The reason for this change is that we are a different organization today than we were in 1997, when North Shore Health System merged with Long Island Jewish Medical Center to form North Shore-LIJ Health System. At that time, we took the names of the two institutions and joined them together. Our organization has grown in many ways since that time. We now have 21 hospitals, a vast network of long-term care, rehabilitation, home care, hospice and a range of other services, about 450 outpatient physician practices, medical and nursing schools, and an internationally recognized research institute. As we approach our third decade, the depth and breadth of services that we provide is far different today, especially as we place a greater focus on promoting health and wellness. Our geographic service area has also grown significantly beyond Long Island over the past 18 years, as we have established a presence in Manhattan, Brooklyn, Westchester County, and even Boca Raton, FL.

The name Northwell Health has been chosen because it recognizes our heritage with "north" and also represents our desire to guide consumers on their health care journey. The word "well" in Northwell signifies our commitment to promoting wellness and healthier lifestyles among the communities we serve. "Health" reflects the quality healthcare for which we are known and which we want to continue to promote.

In summary, we submit this name change application to ensure continued alignment of these entities with the organization's name, and to have a name that more accurately reflects the mission and services of the organization as it exists today.

Please do not hesitate to contact me should you have any questions or concerns regarding the above or our request in general.

Sincerely,

  
Lauren E. Campisi

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
NORTH SHORE-LONG ISLAND JEWISH HEALTH CARE, INC.**

Under Section 803 of the New York Not-for-Profit Corporation Law

I, THE UNDERSIGNED, Michael J. Dowling, being the President of North Shore-Long Island Jewish Health Care, Inc., do hereby certify:

1. The name of the corporation is North Shore-Long Island Jewish Health Care, Inc. (the "Corporation"). The Corporation was formed under the name North Shore Regional Health Services Corp.
2. The Certificate of Incorporation of the Corporation was filed by the Department of State on March 1, 1988 under the Not-for-Profit Corporation Law. A Restated Certificate of Incorporation was filed by the Department of State on June 1, 1995 under the Not-for-Profit Corporation Law.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law.
4. The Certificate of Incorporation of the Corporation is hereby amended, as authorized by Section 801 of the Not-for-Profit Corporation Law, to change the name of the Corporation to Northwell Healthcare, Inc.
5. To effectuate the amendment described in Paragraph 4 of this Certificate of Amendment, Paragraph 1 of the Certificate of Incorporation is hereby amended to read in its entirety as follows:
  1. The name of the corporation is Northwell Healthcare, Inc. (the "Corporation").
6. This amendment to the Certificate of Incorporation was authorized by vote of the sole member of the Corporation in accordance with Section 802 of the Not-for-Profit Corporation Law.
7. The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against it may be served. The post office

address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him as agent of the Corporation is: Northwell Healthcare, Inc., c/o Northwell Health, Inc., 145 Community Drive, Great Neck, New York 11021, Attention: Office of Legal Affairs.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment on this 11th day of September, 2015, and hereby affirm, under penalties of perjury, that the statements herein are true.

  
\_\_\_\_\_  
Michael J. Dowling  
President

---

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
NORTH SHORE-LONG ISLAND JEWISH HEALTH CARE, INC.  
UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW**

---

**FILED BY:**

**NORTH SHORE-LONG ISLAND JEWISH HEALTH SYSTEM, INC.  
145 COMMUNITY DRIVE  
GREAT NECK, NEW YORK 11021**

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 10th day of December, 2015, approves the filing of the Certificate of Amendment of the Certificate of Incorporation of North Shore-Long Island Jewish Health Care, Inc., dated September 11, 2015.





**Project # 151309-E  
The Rye ASC**

**Program:** Diagnostic and Treatment Center    **County:** Westchester  
**Purpose:** Establishment    **Acknowledged:** June 23, 2015

**Executive Summary**

**Description**

The Rye Ambulatory Surgery Center, LLC d/b/a The Rye ASC (the Center), an existing proprietary Article 28 Diagnostic and Treatment Center (D&TC) located at 1 Theall Road, Rye (Westchester County), is requesting a two-year extension of its limited life. The D&TC is certified as a multi-specialty freestanding ambulatory surgical center (FASC) and provides services in the following areas: general surgery, breast surgery, ENT, plastic surgery, urology, ophthalmology, orthopedics, OB/GYN, podiatry and vascular surgery. The facility was approved by the Public Health Council with a five-year limited life under CON 082025 and began operations effective June 23, 2010. The Center requested an extension of their operating certification prior to the expiration.

The Center is not proposing to add or change any services, expand or renovate the facility in this application.

**OPCHSM Recommendation**  
Contingent Approval of a two-year extension of the operating certificate from the date of the Public Health and Health Planning Council recommendation letter.

**Need Summary**  
Required submission of data by the applicant, as a contingency of CON 082025, has been completed.

Based on CON 082025, The Rye ASC projected 4,195 procedures in Year 1 (2010) and 4,625 in Year 3 (2012). Medicaid procedures were projected at 5% and charity care was projected at 5%. Based on annual reports submitted by the applicant, the total number of procedures was 714 in Year 1 (2010) and 5,537 in Year 3 (2012). Charity care in Year 3 (2012) was 0.032%.

Upon approval of this project, The Rye ASC projects 4,805 visits in Year 1 with 3.30% for Medicaid and 2% charity care. There will be no change 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).

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

Year One Budget:	Revenues:	\$11,345,990
	Expenses:	<u>\$10,611,917</u>
	Net Income:	\$734,073

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval of a two-year extension of the operating certificate from the date of the Public Health and Health Planning Council recommendation letter, contingent upon:**

1. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide quarterly reports to the DOH. 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 needed 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]

**Approval conditional upon:**

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

Council Action Date

**December 10, 2015**

## Need Analysis

### Analysis

The primary service area is Westchester County. The table below provides information on projected and actual procedures in Year 3 of the original CON 082025.

Procedures	Projection Year 3 (2012)	Actual Year 3 (2012)
Total	4,625	5,537

The table below provides information on projected and actual utilization, by payor for Year 3 of the original CON 082025, as well as Actual 2014 and Year One, after approval.

Utilization	Projections Year 3 (2012)	Actual AHCF Cost Reports (2012)	Actual 2014	Projections Year 1
Medicaid MC	5.00%	3.28%	3.29%	3.31%
Medicare FFS	24.00%	20.44%	16.86%	16.92%
Commercial FFS	66.00%	66.63%	70.26%	70.49%
Charity Care	5.00%	-----	0.34%	2.00%
Private Pay	-----	-----	2.85%	2.87%
Self-Pay	-----	2.99%	-----	-----
All Other	-----	6.66%	6.40%	4.41%
Total	100%	100%	100%	100%

Since the passage of the Affordable Care Act (ACA), access to healthcare coverage has improved in New York State, which means fewer people needing traditional charity care. Through February 2015, the number of uninsured individuals in Westchester County has dropped from 120,000 before passage of the Affordable Care Act to approximately 34,750 after passage (a 71% decrease). Approximately 64% of these newly insured people enrolled in Medicaid.

The Rye ASC has made an effort to provide charity care and reduced fee care to the residents of Westchester County. The Center has partnered with Open Door Family Medical centers (an FQHC) to provide charity care for their patients. In 2014, the Center approached multiple community agencies to explore expanding services to the underinsured. Physicians associated with the Center's closely affiliated Westchester Medical Group, P.C. currently provide charity care at the Cancer Services Program of the Hudson Valley. The Center also reached out to Westchester County's Department of Senior Programs and Services for potential referrals.

In recognition of the need to improve its charity care, the Center has developed a detailed action plan. The Center has adopted an updated, more robust, generous and highly-detailed Charity Care and Medical Financial Hardship Adjustment Policy, including a sliding fee scale and a medical financial hardship adjustment scale. The Center has entered into a Specialty Care Facility Agreement with Hudson Health Plan, Inc. The Center will provide services to Hudson Health Plan's enrolled members under the Medicaid program, the Child Health Plus program and the Family Health Plus program.

The implementation of the ACA and New York State's Health Insurance Exchange is sharply impacting the number of uninsured individuals in New York State and Westchester County. With The Rye's detailed action plan, the applicant should be able to achieve its newly proposed level of 2% charity care within the two-year limited life extension period.

The Rye ASC is committed to serving individuals needing care regardless of the source of payment or the ability to pay.

## Conclusion

Approval of the proposed project will provide for the continued access to ambulatory surgery services to the communities of Westchester County.

## Recommendation

**From a need perspective, contingent approval with a two-year extension of the operating certificate is recommended.**

# Program Analysis

## Program Proposal

The Rye Ambulatory Surgery Center, LLC, (the Center), an existing Article 28 diagnostic and treatment center (D&TC) certified as a multi-specialty ambulatory surgery center located at 1 Theall Road in Rye (Westchester County), is requesting permission for a two year extension of their limited life. Previously, under Project No. 082025-B, the Center's initial CON Application was approved by the Public Health and Health Planning Council for a conditional, limited life of five years.

The Center, which opened on June 23, 2010 and is accredited by The Accreditation Association for Ambulatory Health Care (AAAHC), has grown to 127 members and performed over 7,500 procedures in the last two years (2013 and 2014).

There are no anticipated changes in services and staffing is expected to remain at 26.80 FTEs.

## Compliance with Applicable Codes, Rules and Regulations

The medical staff will continue to ensure that procedures performed at the facility conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The facility's admissions policy will include anti-discrimination regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures will be performed in accordance with all applicable federal and state codes, rules and regulations, including standards for credentialing, anesthesiology services, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements.

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

## Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

### Operating Budget

The applicant has submitted operating budgets, in 2015 dollars, for the current year of operations and for year one and year three subsequent to approval of this application, as shown below:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
<b>Revenues:</b>			
Commercial Fee for Service	\$8,869,786	\$9,135,880	\$9,594,427
Medicare - FFS	1,202,504	1,238,579	1,299,517
Medicaid - MC	195,917	201,795	210,679
Private Pay	357,415	368,137	384,142
Other	<u>389,908</u>	<u>401,599</u>	<u>424,331</u>
<b>Total Revenues</b>	<b>\$11,015,530</b>	<b>\$11,345,990</b>	<b>\$11,913,096</b>
<b>Expenses:</b>			
Operating	\$9,192,171	\$9,755,601	\$10,068,527
Capital	<u>864,028</u>	<u>856,316</u>	<u>842,257</u>
<b>Total Expenses</b>	<b>\$10,056,199</b>	<b>\$10,611,917</b>	<b>\$10,910,784</b>
<b>Net Income</b>	<b>\$959,331</b>	<b>\$734,073</b>	<b>\$1,002,312</b>
<b>Utilization (Visits)</b>	<b>4,592</b>	<b>4,805</b>	<b>5,045</b>
<b>Cost Per Visit</b>	<b>\$2,190</b>	<b>\$2,209</b>	<b>\$2,163</b>

Utilization broken down by payor source for the respective years is as follows:

<u>Payor Source</u>	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Commercial Fee For Service	3,226	70.25%	3,387	70.49%	3,557	70.5%
Medicare Fee For Service	774	16.86%	813	16.92%	853	16.9%
Medicaid Managed Care	151	3.29%	159	3.31%	166	3.3%
Private Pay	131	2.85%	138	2.87%	144	2.9%
Charity	16	0.35%	96	2.00%	101	2.0%
All Other	<u>294</u>	<u>6.40%</u>	<u>212</u>	<u>4.41%</u>	<u>224</u>	<u>4.4%</u>
<b>Total Visits</b>	<b>4,592</b>	<b>100.00%</b>	<b>4,805</b>	<b>100.00%</b>	<b>5,045</b>	<b>100.0%</b>

### Capability and Feasibility

There are no project costs associated with this application. The submitted budgets indicate a net income of \$734,073 and \$1,002,312 during the first and third years, respectively. Revenues are based on current reimbursement methodologies. The budgets are reasonable.

BFA Attachment B is the 2012-2014 certified financial statements of The Rye ASC and their internal financial statements as of August 31, 2015. As shown, the facility had an average positive working capital position, an average positive net asset position, and achieved an average net income from operations of \$2,710,314 for the three year audit period. Per the 2015 internal financials, net income from operations is \$1,117,683 for the eight months ending August 31, 2015.

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

### Recommendation

**From a financial perspective, approval is recommended.**

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## Attachments

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- BFA Attachment A Members of The Rye Ambulatory Surgery Center, LLC
- BFA Attachment B The Rye Ambulatory Surgery Center Summary and Financial Statements

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 10<sup>th</sup> day of December, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application for a two-year extension of their limited life for CON 082025 , and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

151309 E

The Rye ASC

APPROVAL CONTINGENT UPON:

**Approval of a two-year extension of the operating certificate from the date of the Public Health and Health Planning Council recommendation letter, contingent upon:**

1. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide quarterly reports to the DOH. 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 needed 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]

APPROVAL CONDITIONAL UPON:

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

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Communicare Group, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 2093-L

Description of Project:

Communicare Group, 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:

Yan Zverev – 160 Shares

Natallia Pranko, RN (NJ and NY) – 40 Shares

The Board of Directors of Communicare Group, Inc. comprises the following individuals:

Yan Zverev – Chairman  
Founder/CEO, Deviceful IT Services  
Application Support Analyst, Touro College

Natallia Pranko, RN (NJ and NY) – Vice Chariman  
Registered Nurse, Horizon Blue Cross Blue Shield  
of NJ

Sabina Zvereva – President  
Speech-Language Pathologist, First Step, LLC  
Speech-Language Pathologist, Mama Program, LLC

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

The Office of the Professions of the State Education Department indicates no issues with the licensure of the health professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 1360 Ocean Parkway, Suite 3L, Brooklyn, New York 11230.

Kings                      Queens                      Bronx                      New York                      Westchester

The applicant proposes to provide the following health care services:

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

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

Contingency

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

Recommendation: Contingent Approval  
Date: November 5, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: CarePro of NY, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 2337-L

Description of Project:

CarePro 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 solely by Irina Belushin.

The Board of Directors of CarePro of NY, Inc. is comprised of the following individual:

Irina Belushin - President  
Owner/President, Clinton Institute

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 1712 Kings Highway, Brooklyn, New York 11229:

Kings                  Queens                  Bronx                  New York                  Richmond                  Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Respiratory Therapy	Occupational Therapy
Nutrition	Audiology	Medical Social Services
Medical Equipment, Supplies & Appliances		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: November 6, 2015



Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Buffalo Home Health Care Services Inc.  
Address: Buffalo  
County: Erie  
Structure: For-Profit Corporation  
Application Number: 2404-L

Description of Project:

Buffalo Home Health 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 of stock which are owned as follows: Tariq Butt owns 180 shares and Ismahan Mohamed owns 20 shares.

The Board of Directors of Buffalo Home Health Care Services Inc, is comprised of the following individuals:

Ismahan Mohamed, PCA – President/Treasurer Personal Care Aide, Willcare	Tariq Butt – Vice-President/Secretary Administrator, Buffalo Home Health Care Services, Inc.
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A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

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

The applicant proposes to serve the residents of the following counties from an office located at 92 Guilford Street, Buffalo, New York 14212:

Erie	Niagara	Chautauqua	Cattaraugus	Allegany
Wyoming	Genesee	Orleans	Livingston	

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Speech-Language Pathology	Homemaker	Medical Social Services
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, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Change A Life Time Companies, Inc.  
Address: Bronx  
County: Bronx  
Structure: For-Profit Corporation  
Application Number: 2413-L

Description of Project:

Change A Life Time Companies, Inc., a Connecticut 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: Veronica Wilson owns 25 shares, Tara Rudder owns 25 shares, Pacita Rudder owns 25 shares and Ashleigh Rudder owns 25 shares. The remaining 100 shares are unissued.

The Board of Directors of Change A Life Time Companies, Inc. comprises the following individuals:

Veronica Wilson, Operations Director  
Operations Director, Change A Life Time Companies, Inc. (Connecticut Home Care Agency, 2007 – Present)

Ashleigh Rudder, Assistant Operations Director  
Director, Change A Life Time Companies, Inc. (Connecticut Home Care Agency, 2010 – Present)

Pacita Rudder, Finance Director  
Director, Change A Life Time Companies, Inc. (Connecticut Home Care Agency, 2011 – Present)

Tara Rudder, Board Secretary  
Director/Secretary/Quality Assurance Officer, Change A Life Time Companies, Inc. (Connecticut Home Care Agency, 2007 – Present)

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

The applicant proposes to serve the residents of the following counties from an office located at 2416 Tiebout Avenue, Bronx, New York 10458:

Bronx	Kings	Queens	New York
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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		

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

Change A Life Time Companies, Inc. July 2013 – Present (Connecticut)

The State of Connecticut, Connecticut Home Care Program for Elders indicated that they have contracted with Allied Community Resources to credential and perform quality assurance audits of agencies providing care under the Connecticut Home Care Program for Elders. Allied Community Resources reported that Change A Life Time Companies, Inc. has not been selected for a random audit in the timeframe reported. However, they indicated that the agency has been re-credentialed to continue to provide services under the Connecticut Home Care Program for Elders program.

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

Contingency

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

Recommendation: Contingent Approval

Date: October 16, 2015

**Licensed Home Care Services Agency  
Character and Competence Staff Review**

Name of Agency: Home Sweet Home Care Services, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 2419-L

**Description of Project:**

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

The applicant has authorized 200 shares of stock which are owned as follows: Carlos Smith owns 90 shares and Tilda Miller owns 10 shares. The remaining 100 shares are unissued.

The Board of Directors of Home Sweet Home Care Services, Inc. comprises the following individuals:

Carlos Smith, President  
Field Technician, Verizon

Tilda Miller, RN, Secretary  
Retired

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 602 Hemlock Street, Brooklyn, New York 11208:

Kings	Queens	Bronx
New York	Richmond	

The applicant proposes to provide the following health care services:

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

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

**Contingency**

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

Recommendation: Contingent Approval  
Date: October 26, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Advance Elite Solution LLC  
Address: Flushing  
County: Queens  
Structure: Limited Liability Company  
Application Number: 2427-L

Description of Project:

Advance Elite Solution 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 Advance Elite Solution LLC comprise the following individuals:

German Fayzibayev – 80%	Iosif Uvaydov, DDS – 20%
IRS Enrolled Agent, Tax Accountant, Network Solution & Tax Counseling, Inc.	Dentist, Iosif Uvaydov DDS PC Dentist, Gamma Sheepshead Bay Dental PC

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

The Office of the Professions of the State Education Department indicates no issues with the licensure of the health professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 77-30 160th Street, Flushing, New York 11366:

Queens	Kings	New York
Bronx	Richmond	Westchester

The applicant proposes to provide the following health care services:

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

Contingency

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

Recommendation: Contingent Approval  
Date: October 26, 2015





Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Best Companion Homecare Services, Inc.  
Address: Bay Shore  
County: Suffolk  
Structure: For-Profit Corporation  
Application Number: 2460-L

Description of Project:

Best Companion Homecare Services, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned as follows: Patricia Pecaud Brezault owns 100 shares and the remaining 100 shares are unissued.

The Board of Directors of Best Companion Homecare Services, Inc. comprises the following individual:

Patricia Pecaud Brezault, President/CEO  
Owner/CEO/President, Southshore Medical Practice Management, Inc. (Medical Billing)  
President/CEO, Best Companion Homecare Services, Inc. (companion care)

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

The applicant proposes to serve the residents of the following counties from an office located at 28 West Main Street, 2<sup>nd</sup> Floor, Bay Shore, New York 11706:

Suffolk	Nassau	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	Respiratory Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

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

Contingency

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

Recommendation: Contingent Approval  
Date: October 19, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: NYJ Gentle Touch, LLC  
Address: Staten Island  
County: Richmond  
Structure: Limited Liability Company  
Application Number: 2466-L

Description of Project:

NYJ Gentle Touch, 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 NYJ Gentle Touch, LLC comprise the following individuals:

Yelena Cales, RN – 33.33%  
RN, ElderServe Licensed Home Care Services Agency, Inc.  
RN, Excellent Home Care

Nataliya Striapko, RN, BSN – 33.33%  
RN, Excellent Home Care

Affiliation:

Good Care Agency, Inc. (2012 – Present)

Igor Striapko – 33.33%  
Owner/Administrator/CFO, Good Care Agency, Inc.

Affiliation:

Good Care Agency, Inc. (2012 – Present)

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 professionals associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 265 Moreland Street, Staten Island, New York 10306:

Richmond	New York	Kings
Queens	Bronx	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		

A 7 year review of the following agency was performed as part of this review (unless otherwise indicated):

Good Care Agency, Inc. (LHCSA, 2012 – Present)

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

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

Contingency

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

Recommendation: Contingent Approval  
Date: October 26, 2015

**Licensed Home Care Services Agency  
Character and Competence Staff Review**

Name of Agency: Crocus Home Care LLC  
Address: Staten Island  
County: Richmond  
Structure: Limited Liability Company  
Application Number: 2479-L

**Description of Project:**

Crocus 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 membership of Crocus Home Care LLC comprises the following individuals:

Emin Ruvinov – 50%	Zaur Gasanov – 50%
Administrator, Volga Home Care, LLC	Alternate Administrator, Volga Home Care, LLC
Director of Business Development, NYS Home Health, LLC	Administrator, NYS Home Health, LLC

**Affiliations**

NYS Home Health, LLC (2006 – present)  
Volga Home Care, LLC (2011 – present)

**Affiliations**

NYS Home Health, LLC (2006 – present)  
Volga Home Care, LLC (2011 – 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 63 Gateway Drive, Staten Island, New York 10304:

Richmond	Bronx	New York
Kings	Queens	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

A seven (7) year review of the operations of the following agencies was performed as part of this review (unless otherwise noted):

NYS Home Health, LLC (Texas)  
Volga Home Care, LLC, 2011-present (Texas)

The information received from the State of Texas indicates that NYS Home Health, LLC is currently in compliance and that no enforcement actions have been taken against the agency. The state was only able to supply information for the period of December 30, 2010 through the present.

The information received from the State of Texas indicates that Volga Home Care, LLC is currently in compliance and that no enforcement actions have been taken against the agency. The state was only able to supply information for the period of March 5, 2012 through the present.

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, 2015

**Licensed Home Care Services Agency  
Character and Competence Staff Review**

**Name of Agency:** Mathews Homecare, Inc. d/b/a Right at Home Northern Westchester  
**Address:** Mount Kisco  
**County:** Westchester  
**Structure:** For-Profit Corporation  
**Application Number:** 2497-L

**Description of Project:**

Mathews Homecare, Inc. d/b/a Right at Home Northern Westchester, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Mathews Homecare, Inc. has proposed to operate as a Franchisee of Right at Home, Inc.

The applicant has authorized 200 shares of stock which are owned as follows: Geetha Mathews owns 102 shares and Regi Mathews owns 98 shares.

The Board of Directors of Mathews Homecare, Inc. d/b/a Right at Home Northern Westchester comprises the following individuals:

Geetha Mathews, President/Secretary/Director  
President, Mathews Homecare, Inc. d/b/a Right at Home Northern Westchester (companion care)

Regi Mathews, MBA, CEO/Director  
CEO, Mathews Homecare, Inc. d/b/a Right at Home Northern Westchester (companion care)

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

The applicant proposes to serve the residents of the following counties from an office located at 120 Kisco Avenue, Mount Kisco, New York 10549:

Westchester	Dutchess	Putnam
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The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

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

**Contingency**

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

**Recommendation:** Contingent Approval  
**Date:** October 23, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: LJNY Home Health Agency, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 2510-L

Description of Project:

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

LJNY Home Health Agency, Inc. has authorized 200 shares of stock which are owned as follows: Bing Jiang owns 100 shares and Siping Luo owns 100 shares.

The Board of Directors of LJNY Home Health Agency, Inc. is comprised of the following individuals:

Bing Jiang, RN – Chairperson/President  
Nurse Assessor, Metropolitan Jewish Home Care  
Nurse, Nursing Personnel Home Care

Siping Luo, LPN – Vice-President  
Nursing Coordinator/LPN, Nursing Personnel Home Care

Xiao Huang – Treasurer  
Assistant, Law Offices of David Smoren  
Sales, Win Zone Realty

Yijie (Julia) Du – Secretary  
Unemployed

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 healthcare professionals associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 237 Bay 34<sup>th</sup> Street, #3D, Brooklyn, New York, 11214:

Kings	Queens	Bronx
New York	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Housekeeper	Homemaker	

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

Contingency

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

Recommendation: Contingent Approval  
Date: October 23, 2015



**Licensed Home Care Services Agency  
Character and Competence Staff Review**

Name of Agency: Lower Manhattan In-Home Care, Inc.  
d/b/a Right at Home of Lower Manhattan  
Address: New York  
County: New York  
Structure: For-Profit Corporation  
Application Number: 2514-L

**Description of Project:**

Lower Manhattan In-Home Care, Inc. d/b/a Right at Home of Lower Manhattan, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Lower Manhattan In-Home Care, Inc. has entered into a franchise agreement with Right at Home, Inc.

Lower Manhattan In-Home Care, Inc. d/b/a Right at Home of Lower Manhattan has authorized 200 shares of stock which are owned as follows: Albert Eshoo owes 150 shares and Joyce Barocas owns 50 shares.

The Board of Directors of Lower Manhattan In-Home Care, Inc. d/b/a Right at Home of Lower Manhattan is comprised of the following individuals:

Albert Eshoo – President  
Owner/Operator, Right at Home of Lower Manhattan (companion care)

Joyce Barocas – Vice-President  
Vice-President, Right at Home of Lower Manhattan (companion care)

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

The applicant proposes to serve the residents of New York County from an office located at 30 Broad Street, Suite 1446, New York, New York 10004.

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Housekeeper	Homemaker	

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

**Contingency**

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

Recommendation: Contingent Approval  
Date: November 5, 2015

**Licensed Home Care Services Agency  
Character and Competence Staff Review**

Name of Agency: Devoted Home Care LLC  
Address: Brooklyn  
County: Kings  
Structure: Limited Liability Company  
Application Number: 2527-L

**Description of Project:**

Devoted 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 membership of Devoted Home Care LLC comprise the following individuals:

Mark Lerner – 50% Supervisor, CET	Lyudmila Modnaya, HHA – 50% Administrative Assistant, Global Computer Consulting
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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.

A search of the New York State Home Care Registry revealed that the Home Health Aide (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 2942 W. 5<sup>th</sup> Street #6C, Brooklyn, New York 11224:

Kings	Queens	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	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: November 3, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Empire Care Agency, LLC  
Address: New York  
County: New York  
Structure: Limited Liability Company  
Application Number: 2531-L

Description of Project:

Empire Care Agency, 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 Empire Care Agency, LLC is the following individual:

David Feygin, CALA  
Administrator, Garden State Home Care Services, LLC

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 17 West 17<sup>th</sup> Street, New York, New York 10011:

New York	Bronx	Kings
Queens	Richmond	Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Speech-Language Pathology	Homemaker	

The information provided by the State of New Jersey Department of Health and Senior Services indicated that the applicant has a current Assisted Living Administrator certification and that there are no substantial findings against him.

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

Contingency

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

Recommendation: Contingent Approval  
Date: October 30, 2015

**Licensed Home Care Services Agency  
Character and Competence Staff Review**

Name of Agency: LifeWorx, Inc.  
Address: New York  
County: New York  
Structure: For-Profit Corporation  
Application Number: 2545-L

**Description of Project:**

LifeWorx, Inc., a Delaware 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 20,000,000 shares of stock which are owned as follows: Balkishan Agrawal owns 11,000,000 shares and the remaining 9,000,000 are unissued.

The Board of Directors of LifeWorx, Inc. comprises the following individual:

Balkishan (Bal) Agrawal, PhD  
CEO, LifeWorx, 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 39 West 14<sup>th</sup> Street, Suite 302, New York, New York 10011:

New York	Kings	Queens
Richmond	Bronx	Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

A review of the operations of the LifeWorx, Inc. was performed as part of this review.

The State of New Jersey, Department of Law and Public Safety reported that they have not taken any enforcement actions against the agency during the time period of June 2014 through June 2015.

The State of Connecticut, Department of Consumer Protection indicated that the agency is registered as a Homemaker-Company Agency and they have not taken any enforcement actions against the agency for the time period of August 1, 2014 through June 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: October 30, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: ADC Holdings, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 2572-L

Description of Project:

ADC Holdings, 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 common stock which are owned as follows:

Benjamin Epps – 200 Shares

The Board of Directors of ADC Holdings, Inc. comprises the following individual:

Benjamin Epps – Chief Executive Officer  
Chief Financial Officer/Patient Representative, AZA Home Health 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 328 Senator Street, Brooklyn, New York 11220:

Kings	Bronx	Queens
New York	Richmond	Nassau

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 16, 2015



Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Reliable Care Home Infusion Services Inc.  
Address: New City  
County: Rockland  
Structure: For-Profit Corporation  
Application Number: 2583-L

Description of Project:

Reliable Care Home Infusion 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 common stock which are owned as follows:

Joanna A. Clarke, RN – 100 Shares

Christopher A. Clarke, RN – 100 Shares

The Board of Directors of Reliable Care Home Infusion Services Inc. comprises the following individuals:

Joanna A. Clarke, RN -  
Chairperson/President/Secretary  
Unemployed

Christopher A. Clarke, RN -  
Vice President/Treasurer  
Staff RN, Nyack Hospital  
Home Infusion Nurse, Promptcare Home Infusion

The Office of the Professions of the State Education Department indicates 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 proposes to serve the residents of the following counties from an office located at 31 Brookline Way, New City, New York 10956:

Rockland

Orange

Putnam

Westchester

The applicant proposes to provide the following health care services:

Nursing  
Homemaker

Home Health Aide  
Housekeeper

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: October 16, 2015

**Licensed Home Care Services Agency  
Character and Competence Staff Review**

Name of Agency: Eagle Eye FV, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 2586-L

**Description of Project:**

Eagle Eye FV, 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 common stock which are owned as follows:

Frida Popilevsky, MD – 100 Shares

Roman Pustilnik – 50 Shares

Renata Khavin, SLP – 50 Shares

The Board of Directors of Eagle Eye FV, Inc. comprises the following individuals:

Frida Popilevsky, MD – President  
Surgical Care Unit Director, Coney Island Hospital  
Attending Physician, New York Pulmonary Care, P.C.  
Assistant Clinical Professor of Medicine, Course Director,  
SUNY Downstate College of Medicine

Roman Pustilnik – Vice President  
Operating Manager Recruitment Center, Sincere  
Care Agency

Renata Khavin, SLP – Secretary/Treasurer  
Office Manager, Friendly Home Care  
Administrator, Sincere Care Agency

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 individual 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 following counties from an office located at 333 Avenue X Suite 2, Brooklyn, New York 11223:

Bronx	Kings	Nassau	New York
Queens	Richmond		

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Speech-Language Pathology
Occupational Therapy	Physical Therapy	Homemaker	Housekeeper

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

**Contingency**

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

Recommendation: Contingent Approval  
Date: October 30, 2015



Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Stacey Ball d/b/a Changing Seasons Home Care  
Address: Fayetteville  
County: Onondaga  
Structure: Sole-Proprietorship  
Application Number: 2587-L

Description of Project:

Stacey Ball d/b/a Changing Seasons Home Care, a sole-proprietorship, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The sole proprietor of Changing Seasons Home Care is the following individual:

Stacey Ball, MSN RN  
Owner, Changing Seasons Home Care (companion care)

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

The 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 214 Highbridge Street, Fayetteville, New York 11223:

Onondaga	Cayuga	Madison	Oswego
Oneida	Cortland	Tomkins	Seneca

The applicant proposes to provide the following health care services:

Nursing                      Home Health Aide                      Personal Care

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

Contingency

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

Recommendation: Contingent Approval  
Date: October 19, 2015

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 10th day of December, 2015, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

<u>NUMBER:</u>	<u>FACILITY:</u>
2093 L	Communicare Group, Inc. (Kings, Queens, Bronx, New York and Westchester Counties)
2291 L	Trusted Care at Home, LLC (Monroe, Ontario, Wayne and Orleans County)
2337 L	CarePro of NY, Inc. (Kings, Queens, Bronx, New York, Richmond and Westchester Counties)
2403 L	Rockland Independent Seniors, Inc. d/b/a Home Instead Senior Care (Rockland County)

- 2404 L Buffalo Home Health Care Services, Inc.  
(Erie, Nassau, Chautauqua, Cattaraugus, Allegany,  
Wyoming, Genesee, Orleans and Livingston Counties)
- 2413 L Change A Life Time Companies, Inc.  
(Bronx, Kings, Queens and New York Counties)
- 2419 L Home Sweet Home Care Services, Inc.  
(Kings, Queens, Bronx, New York and Richmond  
Counties)
- 2427 L Advance Elite Solution LLC  
(Queens, Kings, New York, Bronx, Richmond and  
Westchester Counties)
- 2429 L Bena Home Care Agency Inc.  
(Queens, Bronx, Kings, New York, Richmond and  
Nassau Counties)
- 2460 L Best Companion Homecare Services, Inc.  
(Suffolk, Nassau and Queens Counties)
- 2466 L NYJ Gentle Touch, LLC  
(Richmond, New York, Kings, Queens, Bronx and  
Nassau Counties)
- 2479 L Crocus Home Care LLC  
(Richmond, Bronx, New York, Kings, Queens and  
Nassau Counties)
- 2497 L Matthews Homecare, Inc. d/b/a Right at Home  
Northern Westchester  
(Westchester, Dutchess and Putnam Counties)
- 2510 L LJNY Home Health Agency, Inc.  
(Kings, Queens, Bronx, New York, Richmond and  
Nassau Counties)
- 2514 L Lower Manhattan In-Home Care, Inc. d/b/a Right at  
Home Lower Manhattan  
(New York County)
- 2527 L Devoted Home Care LLC  
(Kings, Queens, Richmond, New York, Bronx and  
Nassau Counties)

2531 L Empire Care Agency, LLC  
(New York, Bronx, Kings, Queens, Richmond and Westchester Counties)

2545 L LifeWorx, Inc.  
(New York, Kings, Queens, Richmond, Bronx and Westchester Counties)

2572 L ADC Holdings, Inc.  
(Kings, Bronx, Queens, New York, Richmond and Nassau Counties)

2582 L Allborough Personal Care Inc.  
(Kings, Queens, New York, Bronx and Richmond Counties)

2583 L Reliable Care Home Infusion Services, Inc.  
(Rockland, Orange, Putnam and Westchester Counties)

2586 L Eagle Eye FV, Inc.  
(Bronx, Kings, Nassau, New York, Queens and Richmond Counties)

2587 L Stacey Ball d/b/a Changing Seasons Home Care  
(Onondaga, Cayuga, Madison, Oswego, Oneida, Cortland, Tomkins and Seneca Counties)

2638 L Brooklyn Boulevard ALP LHCSA, LLC  
(Kings, Bronx, New York, Queens, Richmond and Nassau Counties)

152001 E Brooklyn Terrace LLC d/b/a Surf Manor Home Care  
(Kings, Bronx, New York, Queens, Richmond and Nassau Counties)

2235 L Human Care, LLC  
(Bronx, Kings, New York, Queens, Richmond and Nassau Counties)

2468 L Your Choice Homecare Agency of NY, Inc.  
(Kings, Queens, Bronx, New York, Richmond and Nassau Counties)

- 2558 L            Infinicare, Inc.  
(New York, Bronx, Kings, Queens, Richmond and  
Nassau Counties)
- 2621 L            Steps In Home Care, Inc.  
(Westchester and Nassau Counties)
- 2644 L            EOM Management, LLC  
(Bronx, Kings, Queens, New York, Richmond and  
Nassau Counties)
- 151282 E        South Shore Home Health Services, Inc.  
(Nassau, Queens, Suffolk, and Westchester Counties)



**Project # 151227-E  
SurgiCare of Manhattan**

**Program:** Diagnostic and Treatment Center    **County:** New York  
**Purpose:** Establishment    **Acknowledged:** May 19, 2015

**Executive Summary**

**Description**

SurgiCare of Manhattan, LLC d/b/a SurgiCare of Manhattan, an existing proprietary Article 28 Diagnostic and Treatment Center (D&TC) located at 800 Second Avenue, 7th Floor, New York, requests approval for a two-year extension of their limited life status. The D&TC is certified as a multi-specialty freestanding ambulatory surgery center (FASC) and provides orthopedic and pain management services utilizing six operating rooms and twelve recovery bays. The facility was approved by the Public Health Council with a five-year limited life beginning operation effective May 18, 2010. The FASC's limited life expired on May 18, 2015. SurgiCare of Manhattan requested an extension of their operating certification prior to their limited life expiration date.

**OPCHSM Recommendation**

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

**Need Summary**

Required submission of data by the applicant, as a contingency of CON 071052, has been completed.

Based on CON 071052, Surgicare of Manhattan projected 10,123 procedures with Medicaid at 1% and charity care at 3% for Year 3. According to their annual reports, they performed 8,650 procedures in Year 3 (2013) with actual charity care at 0.40% and Medicaid at 0%.

Surgicare of Manhattan projects 3,808 patient visits in the next year (equating to roughly 8,700 procedures), with 2% Medicaid and 2% charity care. There will be no changes 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**

There are no project costs associated with this application.

**Budget:**

Revenues	\$21,264,968
Expenses	<u>12,187,776</u>
Net Income	\$9,077,192

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

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

1. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide quarterly reports to the DOH. 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 needed 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]
2. Submission of a certification from the applicant indicating that none of the company's legal and corporate documents have changed since the company's last CON project approval (project no. 071052-E), acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date

**December 10, 2015**

## Need Analysis

### Project Description

Surgicare of Manhattan, LLC, an Article 28 Diagnostic and Treatment Center certified as a multi-specialty ambulatory surgery center, is requesting a two-year extension of its five-year limited life. It is located at 800 Second Avenue, New York, 10017, in New York County. The center provides orthopedic and pain management surgery services, and has six operating rooms.

### Analysis

The primary service area is New York County. The table below provides projections and utilization for Year 3 (2013) of the original CON 071052.

<b>Procedures</b>	<b>Projected Year 3 (2013)</b>	<b>Actual Year 3 (2013)</b>
Total	10,123	8,650

The table below provides projections under CON 071052 and actual utilization for 2013, as well as actual 2014 and Year 1, after approval, projections.

	<b>Projected Year 3 (2013) 071052</b>	<b>Actual Year 3 (2013)</b>	<b>Actual 2014</b>	<b>Projections Years 1 151227</b>
Medicare FFS/MC	12.0%	14.1%	14.1%	14.1%
Medicaid FFS/MC	1.0%	0.0%	0.0%	2.0%
Commercial	83.0%	83.5%	83.5%	79.8%
Private Pay/Other	1.0%	2.0%	.9%	2.1%
Charity Care	3.0%	0.4%	1.5%	2.0%
Total	100%	100%	100%	100%

Source: Applicant's annual report

Since the passage of the Affordable Care Act (ACA), access to healthcare coverage has improved in New York State, with fewer people needing traditional charity care. Through February 2015, the number of uninsured individuals in New York County has dropped from 222,000 before passage of the ACA to approximately 52,700 after passage (a 76% drop). Approximately 70% of these newly insured people are enrolled in Medicaid.

Per the original CON 071052, the combined Medicaid and charity care projected utilization was to be 4%. The Center has been experiencing difficulty in meeting this projection. The applicant indicated that this was due to improved healthcare coverage options in New York County, resulting in fewer uninsured individuals. The center realized a high percentage of bad debt attributable to patients covered by insurance with high co-pays and deductibles. The center re-evaluated the number of self-pay individuals for 2014 and determined that 45 cases could be labeled charity care, increasing the amount of charity care provided in 2014 to 1.5%.

In recognition of the need for the center to improve its charity care, it has developed a detailed action plan. The Center has appointed a full-time staff member to facilitate the provision of charity care by engaging in meaningful outreach. The center plans to leverage North Shore-LIJ's robust charity program and will work closely with Lenox Hill Hospital to refer underinsured patients to the center.



The applicant has submitted documentation confirming that contracts have been negotiated with two Medicaid Managed Care plans: Healthfirst and Wellcare. The applicant has also submitted documentation confirming submission of the outstanding 2011-2013 AHFC cost reports to DOH.

It is reasonable to expect that under its proposed action plan for reaching uninsured individuals, and with its connection to the NorthShore-LIJ organization, Surgicare of Manhattan will be able to achieve its proposed level of Medicaid and charity care within the two-year extension of limited life.

Surgicare of Manhattan is committed to serving individuals needing care regardless of the source of payment or the ability to pay.

#### Conclusion

The proposed project will continue providing ambulatory surgery services to the communities of New York County.

#### Recommendation

**From a need perspective, contingent approval of a two-year extension of the operating certificate is recommended.**

## Program Analysis

#### Program Proposal

SurgiCare of Manhattan, LLC d/b/a SurgiCare of Manhattan, an existing Article 28 multi-specialty Diagnostic and Treatment Center located at 800 Second Avenue, 7<sup>th</sup> Floor, New York (New York County), is requesting permission for a two year extension of their five-year conditional, limited life approval (initially granted via CON #071052-E).

The Center, accredited by The Joint Commission Ambulatory Health Care Accreditation Program, provides surgical services in orthopedics and pain management utilizing six (6) operating rooms. At the present time, there are no proposals to add any services, expand or renovate the facility or change anything about the Center. Staffing is expected to remain at 26.0 FTEs and Christopher Riegler, M.D. will continue to serve as the Center's Medical Director.

#### Compliance with Applicable Codes, Rules and Regulations

The medical staff will continue to ensure that procedures performed at the facility conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The facility's admissions policy will include anti-discrimination regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures will be performed in accordance with all applicable federal and state codes, rules and regulations, including standards for credentialing, anesthesiology services, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements.

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

#### Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

### Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, for the current year of operation and for Year One and Year Three subsequent to approval, as shown below:

	<u>Current Year (Actual 2014)</u>	<u>Year One &amp; Year Three</u>
<b>Revenues:</b>		
Operating	\$21,569,570	\$21,264,968
Non-Operating	<u>0</u>	<u>0</u>
<b>Total Revenues</b>	<b>\$21,569,570</b>	<b>\$21,264,968</b>
<b>Expenses:</b>		
Operating	\$10,279,246	\$10,279,246
Capital	<u>1,908,530</u>	<u>1,908,530</u>
<b>Total Expenses</b>	<b>\$12,187,776</b>	<b>\$12,187,776</b>
<b>Net Income</b>	<b>\$9,381,794</b>	<b>\$9,077,192</b>
<b>Utilization (Procedures)</b>	<b>3,808</b>	<b>3,808</b>
<b>Cost Per Procedure</b>	<b>\$3,200.57</b>	<b>\$3,200.57</b>

Utilization by payor source related to the submitted operating budget is as follows:

<b>Payor Source:</b>	<u>Current Year (Actual 2014)</u>		<u>Projected Year One &amp; Year Three</u>	
	<u>Procedures</u>	<u>%</u>	<u>Procedures</u>	<u>%</u>
Medicaid Fee For Service	1	.03%	77	2.02%
Commercial Fee For Service	3,179	83.47%	3,039	79.80%
Medicare Fee For Service	535	14.05%	535	14.05%
Private Pay	36	.95%	81	2.13%
Charity Care	<u>57</u>	<u>1.50%</u>	<u>76</u>	<u>2.00%</u>
<b>Total</b>	<b>3,808</b>	<b>100.00%</b>	<b>3,808</b>	<b>100.00%</b>

### Capability and Feasibility

There are no project costs associated with this application.

The submitted budgets indicate a net income of \$9,077,192 and \$9,077,192 during the first and third years, respectively. Revenues are based on current reimbursement methodologies. The budgets are reasonable.

BFA Attachment A is the 2013 and 2014 certified financial statements of SurgiCare of Manhattan, LLC. As shown, the entity had an average positive working capital position and an average positive net asset position from 2013 through 2014. Also, the entity achieved an average net income of \$8,646,291 from 2013 through 2014.

BFA Attachment B is the internal financial statements of Surgicare of Manhattan, LLC for April 30, 2015 and May 31, 2015. As shown, the entity had a positive working capital position and a positive net asset position for the period. Also, the entity achieved a net income of \$2,307,099 through May 31, 2015.

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

Recommendation

**From a financial perspective, approval is recommended.**

## Attachments

- BFA Attachment A Financial Summary - 2013 and 2014 certified financial statements of Surgicare of Manhattan, LLC
- BFA Attachment B Financial Summary - April 30, 2015 through May 31, 2015 internal financial statements of Surgicare of Manhattan, LLC

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 10<sup>th</sup> day of December, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application for a one-year extension of their limited life for CON 071052, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

151227 E

SurgiCare of Manhattan

APPROVAL CONTINGENT UPON:

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

1. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide quarterly reports to the DOH. 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 needed 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]
2. Submission of a certification from the applicant indicating that none of the company's legal and corporate documents have changed since the company's last CON project approval (Project 071052-E), acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.

**Licensed Home Care Services Agency  
Character and Competence Staff Review**

Name of Agency: Trusted Care at Home, LLC  
Address: Rochester  
County: Monroe  
Structure: Limited Liability Company  
Application Number: 2291L

**Description of Project:**

Trusted Care at Home, 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 Trusted Care at Home, LLC is the following individual:

Maria Mejias, RN  
Community Health Nurse, HCR Home Care

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 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 919 Titus Avenue, Rochester, New York 14617:

Monroe                      Ontario                      Wayne                      Orleans

The applicant proposes to provide the following health care services:

Nursing                      Home Health Aide                      Homemaker                      Housekeeper

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

**Contingency**

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

Recommendation: Contingent Approval  
Date: October 22, 2015

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 10th day of December, 2015, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

<u>NUMBER:</u>	<u>FACILITY:</u>
2093 L	Communicare Group, Inc. (Kings, Queens, Bronx, New York and Westchester Counties)
2291 L	Trusted Care at Home, LLC (Monroe, Ontario, Wayne and Orleans County)
2337 L	CarePro of NY, Inc. (Kings, Queens, Bronx, New York, Richmond and Westchester Counties)
2403 L	Rockland Independent Seniors, Inc. d/b/a Home Instead Senior Care (Rockland County)

- 2404 L Buffalo Home Health Care Services, Inc.  
(Erie, Nassau, Chautauqua, Cattaraugus, Allegany,  
Wyoming, Genesee, Orleans and Livingston Counties)
- 2413 L Change A Life Time Companies, Inc.  
(Bronx, Kings, Queens and New York Counties)
- 2419 L Home Sweet Home Care Services, Inc.  
(Kings, Queens, Bronx, New York and Richmond  
Counties)
- 2427 L Advance Elite Solution LLC  
(Queens, Kings, New York, Bronx, Richmond and  
Westchester Counties)
- 2429 L Bena Home Care Agency Inc.  
(Queens, Bronx, Kings, New York, Richmond and  
Nassau Counties)
- 2460 L Best Companion Homecare Services, Inc.  
(Suffolk, Nassau and Queens Counties)
- 2466 L NYJ Gentle Touch, LLC  
(Richmond, New York, Kings, Queens, Bronx and  
Nassau Counties)
- 2479 L Crocus Home Care LLC  
(Richmond, Bronx, New York, Kings, Queens and  
Nassau Counties)
- 2497 L Matthews Homecare, Inc. d/b/a Right at Home  
Northern Westchester  
(Westchester, Dutchess and Putnam Counties)
- 2510 L LJNY Home Health Agency, Inc.  
(Kings, Queens, Bronx, New York, Richmond and  
Nassau Counties)
- 2514 L Lower Manhattan In-Home Care, Inc. d/b/a Right at  
Home Lower Manhattan  
(New York County)
- 2527 L Devoted Home Care LLC  
(Kings, Queens, Richmond, New York, Bronx and  
Nassau Counties)



2531 L Empire Care Agency, LLC  
(New York, Bronx, Kings, Queens, Richmond and Westchester Counties)

2545 L LifeWorx, Inc.  
(New York, Kings, Queens, Richmond, Bronx and Westchester Counties)

2572 L ADC Holdings, Inc.  
(Kings, Bronx, Queens, New York, Richmond and Nassau Counties)

2582 L Allborough Personal Care Inc.  
(Kings, Queens, New York, Bronx and Richmond Counties)

2583 L Reliable Care Home Infusion Services, Inc.  
(Rockland, Orange, Putnam and Westchester Counties)

2586 L Eagle Eye FV, Inc.  
(Bronx, Kings, Nassau, New York, Queens and Richmond Counties)

2587 L Stacey Ball d/b/a Changing Seasons Home Care  
(Onondaga, Cayuga, Madison, Oswego, Oneida, Cortland, Tomkins and Seneca Counties)

2638 L Brooklyn Boulevard ALP LHCSA, LLC  
(Kings, Bronx, New York, Queens, Richmond and Nassau Counties)

152001 E Brooklyn Terrace LLC d/b/a Surf Manor Home Care  
(Kings, Bronx, New York, Queens, Richmond and Nassau Counties)

2235 L Human Care, LLC  
(Bronx, Kings, New York, Queens, Richmond and Nassau Counties)

2468 L Your Choice Homecare Agency of NY, Inc.  
(Kings, Queens, Bronx, New York, Richmond and Nassau Counties)

- 2558 L            Infinicare, Inc.  
(New York, Bronx, Kings, Queens, Richmond and  
Nassau Counties)
- 2621 L            Steps In Home Care, Inc.  
(Westchester and Nassau Counties)
- 2644 L            EOM Management, LLC  
(Bronx, Kings, Queens, New York, Richmond and  
Nassau Counties)
- 151282 E        South Shore Home Health Services, Inc.  
(Nassau, Queens, Suffolk, and Westchester Counties)



**Project # 142216-B  
NHPE, LLC d/b/a New Hyde Park Endoscopy**

**Program:** Diagnostic and Treatment Center    **County:** Nassau  
**Purpose:** Establishment and Construction    **Acknowledged:** November 24, 2014

**Executive Summary**

**Description**

NHPE, LLC d/b/a New Hyde Park Endoscopy (NHPE), an existing New York State limited liability company, requests approval for the establishment and construction of an Article 28 freestanding ambulatory surgery center (FASC) to be certified as a single-specialty FASC specializing in gastroenterology. The applicant will lease 8,000 square feet on Mezzanine Level 2 (basement) of an existing building located at 1991 Marcus Avenue, Lake Success (Nassau County). The FASC will include three procedure rooms, a pre-operating area and eleven recovery bays, along with the requisite support areas.

The proposed member of NHPE is Shri Bherav & Co., LLC (SBC) with 100% membership interest. SBC has two physician members, Nilesh Mehta, M.D. and Preeti Mehta, M.D., each with 50% membership. The two physician members are board-certified gastroenterologists who will be practicing physicians at the FASC. Drs. Nilesh and Preeti Mehata have indicated that they will transfer procedures currently being performed in their private office-based practices to the proposed FASC, which will account for the first year's utilization of 2,500 procedures.

**OPCHSM Recommendation**

Contingent Approval with an expiration of the operating certificate five years from the date of its issuance.

**Need Summary**

Year 1 projections are 2,500 procedures, with Medicaid at 13% and charity care at 2%. All of the projected procedures are currently being performed in the participating physicians' private practices.

**Program Summary**

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

**Financial Summary**

Total project costs of \$3,459,543 will be met through members' equity of \$691,909 and the remaining \$2,767,634 balance will be financed over five years through JP Morgan Chase Bank at 5% interest. The operating budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$2,572,956	\$2,608,212
Expenses	<u>\$2,241,225</u>	<u>\$2,290,980</u>
Gain/(Loss)	\$331,731	\$317,232

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

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

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the DOH beginning in the second year of operation. Said reports should include:
  - 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 executed loan commitment, acceptable to the Department of Health. [BFA]
6. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
7. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
8. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
9. Submission of the Articles of Organization for Shri Bherav & Co., LLC, acceptable to the Department. [CSL]
10. Submission of the Operating Agreement of Shri Bherav & Co., LLC, acceptable to the Department. [CSL]
11. Submission of the Certificate of Amendment to the Articles of Organization of NHPE, LLC, acceptable to the Department. [CSL]
12. Submission of the amended Operating Agreement for NHPE, LLC, amending Article 4, Section 5.8 to provide that the Shareholders proxy may vote only as specifically instructed by the Shareholders with regard to each vote, unless the Shareholders proxy is another shareholder approved by the Public Health and Health Planning Council to vote the stock that is covered by proxy, acceptable to the Department. [CSL]

13. Submission of a photocopy of the executed Agreement of Lease between, Lalezarian Properties, LLC and the applicant, 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]
6. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction. [AER]
7. Construction must start on or before February 1, 2015 and construction must be completed by August 1, 2016, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Council Action Date  
December 10, 2015

# Need Analysis

## Project Description

NHPE, LLC d/b/a New Hyde Park Endoscopy requests approval to establish and construct a single specialty freestanding ambulatory surgery center specializing in gastroenterology services. The proposed location is 1991 Marcus Avenue, Lake Success, 11042, Nassau County.

## Analysis

The service area is Nassau County. 2,500 procedures are projected in Year 1 and 2,653 in Year 3. These projections are based on the current practices of participating physicians. The projected payor mix is as follows:

<b>Payor</b>	<b>Years 1 and 3</b>
Commercial FFS	78.0%
Medicare FFS	6.0%
Medicare MC	1.0%
Medicaid FFS	1.0%
Medicaid MC	12.0%
Charity Care	2.0%
<b>Total</b>	<b>100.0%</b>

Nassau County currently has four single specialty and five multi-specialty ambulatory surgery centers. The table below shows the number of patient visits at ambulatory surgery centers in Nassau County for 2013 and 2014.

<b>Type</b>	<b>Name of Facility</b>	<b>2013</b>	<b>2014</b>
Multi	Day Op of North Nassau Inc.	654	149
Multi	Day-Op Center of Long Island	3,952	3,259
Single	Endoscopy Center of LI	7,141	7,981
Single	Island Eye Surgicenter LLC	10,396	10,269
Single	Long Island Digestive Health LLC	5,772	6,020
Single	Meadowbrook Endoscopy Center	6,617	7,702
Multi	Nassau Center for AmSurg.	5,870	6,035
Multi	Prohealth Amb Surg Ctr Inc.	6,595	12,149
Multi	South Shore Amb Surg Ctr LLC	5,537	4,646
	<b>Total</b>	<b>52,534</b>	<b>58,210</b>

Source: SPARCS

For Nassau County, the total number of patient visits was 52,534 in 2013 and 58,210 in 2014. This represents a 10.8% year-to-year increase in the number of patients served by ambulatory surgery centers in Nassau County. For gastroenterology services, the total number of visits was 19,530 in 2013 and 21,703 in 2014. This represents an 11.1% year-to-year increase in the number of patients served by Gastroenterology ambulatory services in Nassau County.

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

## Conclusion

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

## Recommendation

**From a need perspective, contingent approval is recommended for a limited life of five years.**

## Program Analysis

### Project Proposal

NHPE, LLC d/b/a New Hyde Park Endoscopy requests approval to establish and construct a single specialty diagnostic and treatment center specializing in gastroenterology that will also be federally certified as an ambulatory surgery center.

<b>Proposed Operator</b>	NHPE, LLC
<b>Doing Business As</b>	New Hyde Park Endoscopy
<b>Site Address</b>	1991 Marcus Avenue, Lake Success (Nassau County)
<b>Surgical Specialties</b>	Single Specialty: Gastroenterology
<b>Operating Rooms</b>	0
<b>Procedure Rooms</b>	3
<b>Hours of Operation</b>	Monday through Friday from 7:30 am to 3:30 pm
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	8.0 FTEs / 8.0 FTEs
<b>Medical Director(s)</b>	Nilesh Mehta, MD
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Will be provided by New York Hospital Queens 9.2 miles/18 minute drive time
<b>On-call service</b>	24/7 on-call service to connect patients to the facility's on-call physician during hours when the facility is closed.

### Character and Competence

The members of the LLC are:

<b>Shri Bherav &amp; Co., LLC</b>	<b>100%</b>
Nilesh Mehta, MD (50%)	
Preeti Mehta, MD (50%)	

Drs. Mehta will act as managers of New Hyde Park Endoscopy. They are practicing surgeons and board-certified gastroenterologists.

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

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

### Integration with Community Resources

The Center plans to work closely with its patients to educate and provide them with information regarding the availability of primary care services offered by local providers, to include the broad array of outpatient primary care services offered by The New York Hospital Medical Center of Queens (the Center's designated provider of backup and emergency services). Patients will be treated on the basis of need for gastroenterology procedures, without discrimination due to any personal characteristics or ability to pay. To this end, the Center will utilize a sliding fee scale and provide charity care.

The Center plans on utilizing an Electronic Medical Record (EMR) system, as well as integrating and exchanging information with an established Regional Health Information Organization (RHIO).

Recommendation

**From a programmatic perspective, approval is recommended.**

<b>Financial Analysis</b>
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Lease Rental Agreement

The applicant has submitted a draft lease for the proposed site, the terms of which are summarized:

Premises:	Approximately 8,000 gross square feet located on Mezzanine Level 2 of an existing building located at 1991 Marcus Avenue, Lake Success, NY 11042
Landlord:	Lalezarian Properties, LLC
Lessee:	NHPE, LLC d/b/a New Hyde Park Endoscopy
Term:	15 years and 11 months with one (1) option to renew for a five (5) year term.
Rental:	Year 1 base rent at \$236,000 (\$29.50 per sq. ft.); annual base rent shall increase each subsequent year of the lease term at a rate of 2.5% per year.
Provisions:	Electric Service (by a sub-meter) and pro rata share of Real Estate Taxes

The applicant has provided an affidavit stating that the lease is an arm's length arrangement. The applicant has submitted letters from two NYS licensed realtors attesting to the rent being of fair market value.

Total Project Cost and Financing

Total project costs, estimated at \$3,459,543, are broken down as follows:

Renovation & Demolition	\$1,152,320
Design Contingency	148,512
Construction Contingency	148,512
Architect/Engineering Fees	223,600
Construction Manager Fees	148,508
Other Fees	352,257
Movable Equipment	1,177,005
Financing Costs	30,000
Interim Interest Expense	57,917
CON Application Fee	2,000
CON Processing Fee	<u>18,912</u>
Total Project Cost	<b>\$3,459,543</b>

Project costs are based on a six-month construction period.

The applicant's financing plan appears as follows:

Cash Equity (Applicant)	\$691,909
Bank Loan (5% for a 5-year term)	<u>2,767,634</u>
Total	<b>\$3,459,543</b>

A letter of interest has been provided from JP Morgan Chase Bank.



## Operating Budget

The applicant has submitted their first and third year operating budgets, in 2015/16 dollars, as summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Medicaid Fee-For-Service	\$16,944	\$17,176
Medicaid Managed Care	\$172,829	\$175,198
Medicare Fee-For-Service	\$116,914	\$118,516
Medicare Managed Care	\$19,486	\$19,753
Commercial Fee-For-Service	<u>\$2,246,783</u>	<u>\$2,277,569</u>
Total Revenues	\$2,572,956	\$2,608,212
Expenses:		
Operating	\$1,482,985	\$1,578,444
Capital	<u>758,240</u>	<u>712,536</u>
Total Expenses	\$2,241,225	\$2,290,980
Net Income or (Loss)	\$331,731	\$317,232
Utilization (procedures)	2,500	2,652
Cost Per Procedure	\$896.49	\$863.87

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

Medicaid Fee-For-Service	1.0%
Medicaid Managed Care	12.0%
Medicare Fee-For-Service	6.0%
Medicare Managed Care	1.0%
Commercial Fee-For-Service	78.0%
Charity	<u>2.0%</u>
Total	100.0%

The following is noted with respect to the submitted budget:

- Revenue assumptions are based on current and projected Federal and State government reimbursement rates, with commercial payor rates reflecting adjustments based on experience in the region.
- Utilization projections are based on the current caseload of Drs. Nilesh and Preeti Mehta, both board-certified gastroenterologists. The applicant indicated that none of the projected procedures will come from any hospital. The procedures are currently being performed in the physicians' office-based practices, which are located in the same community that the FASC will serve. Each physician has submitted letters in support of their utilization projections.
- Expense assumptions are based upon staffing, operating and capital costs as determined based on the experience of the participating physicians, as well as the experience of other FASCs in New York State in providing similar service patient care.
- The breakeven point is approximately 87% of the projected utilization or 2,178 procedures in year one, and 88% or 2329 procedures in year three.

## Capability and Feasibility

The total project cost of \$3,459,543 will be satisfied by the proposed members' equity contribution of \$691,909 with the balance of \$2,767,634 to be financed by JP Morgan Chase Bank at the above stated terms.

Working capital requirements are estimated at \$380,830, which appears reasonable based on two months of third year expenses. The applicant has submitted a letter of interest from JP Morgan Chase Bank to finance \$190,415 of the working capital with a one-year payback period at an estimated 4% interest rate. The remaining \$190,415 in working capital will be provided from the members' own financial resources. BFA Attachment A is the net worth statements of the applicant members, which indicates sufficient liquid resources to meet the equity and working capital requirements. BFA Attachment B is NHPE's pro-forma balance sheet that shows operations will start with \$882,324 in equity.

NHPE projects an operating excess of \$331,731 and \$317,232 in the first and third years, respectively. Revenues for Medicare and Medicaid are based on current and projected reimbursement rates for the respective payors. The payment rates for commercial payors were determined by the applicant based on contacts made with various similar service providers to obtain their current rate schedules. The budgets are reasonable.

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

Recommendation

**From a financial perspective, contingent approval is recommended.**

## Supplemental Information

### Supplemental Information from Surrounding Hospitals

Below are summaries of responses by hospitals to letters from the Department requesting information on the impact of the proposed ambulatory surgery center (ASC) in their service areas. Also included is a summary of the applicant's response to DOH's request for information on the proposed ASC's volume of surgical cases, sources of those cases, staff recruitment and retention.

North Shore University Hospital                      -- **No Response**  
300 Community Drive  
Manhasset, NY 11030

Long Island Jewish Medical Center                      -- **No Response**  
270-05 76<sup>th</sup> Avenue  
New Hyde Park, NY 11040

New York Hospital Queens                                      -- **No Response**  
56-45 Main Street  
Flushing, NY 11355

Winthrop-University Hospital                                      -- **No Response**  
259 First Street  
Mineola, NY 11501

### Supplemental Information from Applicant

**Need and Sources of Cases:** The applicant states that all of the projected caseload will come from office-based procedures currently performed in the private practice of the applicant physicians. The applicant also cites data showing a continued growth in Nassau County in the number of persons 45 years and older, which is the primary service group for colorectal cancer screening. The applicant also states that there are only three ASCs specializing in gastroenterology in Nassau County, a jurisdiction of over 1.3 million people. This current lack of local capacity to provide gastroenterology services will ensure attainment of the projected volume of cases.

**Staff Recruitment and Retention:** The applicant states that, initially, recruitment will be of selected staff currently employed by the member physicians in their office-based practice, particularly the nursing and technical staff. Staff will also be recruited through accredited schools, newspaper advertisements, training programs, local recruiters and, if needed, job fairs. Competitive salaries and benefits are expected to aid in the recruitment and retention of skilled employees, as are a positive work environment and flexible working hours. The applicant also expects that nurses and technicians currently employed by hospitals who choose to augment their income will be able to find supplemental employment at the proposed ASC because of the flexible work schedule, without cutting back on or abandoning their hospital employment.

**Office-Based Cases:** The applicant states that all of the projected gastrointestinal surgical procedures for the proposed ASC are currently performed in the private, office-based practice of the member physicians. None of the projected procedures are performed in any hospital.

DOH Comment

The absence of any comments in opposition to this application from hospitals in the proposed service area provides no basis for reversal or modification of the recommendation for five-year, limited life approval of the proposed ASC based on public need, financial feasibility and operator character and competence.

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## Attachments

BPNR Attachment A	Map
BFA Attachment A	Personal Net Worth Statement of Proposed Members of NHPE, LLC
BFA Attachment B	Pro Forma Balance Sheet of NHPE, LLC

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 10<sup>th</sup> day of December, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct an Article 28 freestanding ambulatory surgery center (FASC) to be certified as a single-specialty FASC specializing in gastroenterology, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

142216 B

NHPE, LLC d/b/a Hew Hyde Park Endoscopy

APPROVAL CONTINGENT UPON:

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

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the DOH beginning in the second year of operation. Said reports should include:
  - 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 executed loan commitment, acceptable to the Department of Health. [BFA]
6. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
7. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
8. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
9. Submission of the Articles of Organization for Shri Bherav & Co., LLC, acceptable to the Department. [CSL]
10. Submission of the Operating Agreement of Shri Bherav & Co., LLC, acceptable to the Department. [CSL]
11. Submission of the Certificate of Amendment to the Articles of Organization of NHPE, LLC, acceptable to the Department. [CSL]

12. Submission of the amended Operating Agreement for NHPE, LLC, amending Article 4, Section 5.8 to provide that the Shareholders proxy may vote only as specifically instructed by the Shareholders with regard to each vote, unless the Shareholders proxy is another shareholder approved by the Public Health and Health Planning Council to vote the stock that is covered by proxy, acceptable to the Department. [CSL]
13. Submission of a photocopy of the executed Agreement of Lease between, Lalezarian Properties, LLC and the applicant, 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]
6. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction. [AER]
7. Construction must start on or before February 1, 2015 and construction must be completed by August 1, 2016, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



**Project # 151277-B**  
**Hospital for Special Surgery Ambulatory Surgery Center of Manhattan, LLC d/b/a HSS ASC of Manhattan**

**Program:** Diagnostic and Treatment Center    **County:** New York  
**Purpose:** Establishment and Construction    **Acknowledged:** June 12, 2015

**Executive Summary**

**Description**

HSS ASC of Manhattan, LLC, a New York limited liability company, requests approval to establish and construct an Article 28 diagnostic and treatment center to be certified as a single-specialty freestanding ambulatory surgery center specializing in orthopedic surgery. Upon approval the LLC will be renamed Hospital for Special Surgery Ambulatory Surgery Center of Manhattan, LLC d/b/a HSS ASC of Manhattan (the Center). The Center will lease 22,425 square feet of space on the second floor of an existing building at 1233 Second Avenue, New York (New York County), New York and have four operating rooms.

The proposed ownership of the Center consists of 20 individual Hospital for Special Surgery orthopedic surgeons who will collectively own 49% Class A membership interest, and New York Society for the Relief of the Ruptured and Crippled, Maintaining the Hospital for Special Surgery with 51% Class B membership interest. New York Society for the Relief of the Ruptured and Crippled operates the Hospital for Special Surgery (HSS), a 215-bed, not-for-profit, Article 28 hospital located at 535 E 70<sup>th</sup> Street, New York. Individual physician memberships will range from 0.96% to 2.88%.

The proposed members of the Center and their ownership percentages are as follows:

<u>Proposed Operator</u>	
<u>Class A Members:</u> 20 individual Physicians	49%
<u>Class B Member:</u> New York Society for the Relief of the Ruptured and Crippled (HSS)	51%

The surgeons will continue to conduct their research and teaching activities at HSS, as well as perform surgeries at HSS that are more appropriately performed in an acute care hospital setting.

The applicant indicated that efforts by government, insurers, and consumers to reduce the growth in healthcare spending have created cost efficiency imperatives to shift delivery of certain healthcare services away from hospitals to lower cost settings. The FASC will provide a more cost efficient setting in which to perform those ambulatory surgeries that can be shifted from HSS. Efficiencies at the Center will be driven by economic alignment with HSS, and include efficient staffing and standardization of implants, supplies, equipment and instrumentation.

OPCHSM Recommendation

Contingent Approval with an expiration of the operating certificate five years from the date of its issuance.

Need Summary

3,000 procedures are projected in Year 1 with Medicaid at 1.7% and charity care at 1.2%.

Program Summary

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

Financial Summary

Total project cost of \$16,210,340 will be met as follows: \$1,710,340 in members' equity and a bank loan for \$14,500,000 at 4.43% interest with a ten-year term (first two years interest only) with a ten-year amortization. TD Bank has provided a letter of interest. The operating budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$14,101,000	\$19,554,000
Expenses	<u>12,848,000</u>	<u>14,445,000</u>
Net Income	\$1,253,000	5,109,000



## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

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

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. A copy of the check must be uploaded into NYSECON when mailed. [PMU]
2. 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]
3. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to DOH beginning in the second year of operation. These reports should include:
  - a. Data showing actual utilization including procedures;
  - b. Data showing breakdown of visits by payer source;
  - c. Data showing number of patients who needed 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]
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 of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
6. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
7. Submission of an executed sub-lease agreement, acceptable to the Department of Health. [BFA]
8. Submission of an executed loan commitment, acceptable to the Department of Health. [BFA]
9. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
10. Submission of an executed administrative service agreement, acceptable to the Department of Health. [BFA]
11. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-03. The drawings must include the satisfactory response and resolution of DASNY schematic design review comments. [DAS]
12. Submission of documentation from CMS that the entire building does not require sprinklers. [DAS]
13. Submission of a photocopy of the proposed and executed certificate of amendment of the articles of organization of HSS ASC of Manhattan, LLC, which is acceptable to the Department. [CSL]
14. Submission of a photocopy of the executed proposed operating agreement of Hospital for Special Surgery Ambulatory Surgery Center of Manhattan, LLC, which is acceptable to the Department. [CSL]

15. Submission of a photocopy of a completed administrative agreement between Hospital for Special Surgery Ambulatory Surgery Center of Manhattan, LLC and New York Society for the Relief of the Ruptured and Crippled, maintaining the Hospital for Special Surgery, which is acceptable to the Department. [CSL]
16. Submission of a photocopy of a fully executed copy of the agreement between Second Avenue Realty and HSS Properties Corporation, which is acceptable to the Department. [CSL]
17. Submission of a photocopy of a fully executed copy of the easement agreement between J Second Avenue, LLC and Second Avenue Realty Co., which is acceptable to the Department. [CSL]
18. Submission of a photocopy of a fully executed copy of the escrow agreement between J Second Avenue, LLC and Royal Abstract of New York LLC, which is acceptable to the Department. [CSL]
19. Submission of a photocopy of an executed copy of the sublease of 250 East 65<sup>th</sup> Street, New York, NY, which is acceptable to the Department. [CSL]
20. Submission of a photocopy of an executed copy of the condo agreement between the Board of Managers of 250 East 65<sup>th</sup> Street Condominium, J Second Avenue, LLC and HSS Properties Corporation, which is acceptable to the Department. [CSL]
21. Submission of a photocopy of a fully executed memorandum of lease between J Second Avenue, LLC and HSS Properties Corporation, which is acceptable to the Department. [CSL]
22. Submission of a photocopy of a fully executed copy of the SNDA form, which is acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [DASNY]
3. Construction must start on or before 04/01/2016 and construction must be completed by 03/30/2017, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Part 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Council Action Date

**December 10, 2015**

## Need Analysis

### Project Description

Hospital for Special Surgery Ambulatory Surgery Center of Manhattan, LLC, an existing New York limited liability company, is seeking approval to establish and construct a freestanding ambulatory surgery center to provide single specialty orthopedic surgery services at 1233 Second Avenue, New York, 10065, in New York County.

### Analysis

The service area consists of New York County. New York County has a total of seven freestanding multi-specialty ASCs and eight freestanding single-specialty ASCs. The table below shows the number of patient visits at ambulatory surgery centers in New York County for 2013 and 2014.

ASC Type	Name	Visits 2013	Visits 2014
Single	Carnegie Hill Endo, LLC	10,695	11,426
Multi	Center for Specialty Care	4,174	3,885
Single	East Side Endoscopy	9,183	9,284
Multi	Fifth Avenue Surgery Center	1,665	1,544
Multi	Gramercy Park Digestive Disease	8,666	9,343
Multi	Gramercy Surgery Center, Inc.	2,550	2,667
Single	Kips Bay Endoscopy Center LLC	9,241	9,084
Single	Manhattan Endoscopy Ctr., LLC	12,014	12,656
Multi	Manhattan Surgery Center (Opened April 1, 2013)	900	2,502
Single	Mid- Manhattan Surgi-Center	4,312	2,984
Multi	Midtown Surgery Center, LLC	3,114	3,161
Single	Retinal Ambulatory Surgery Ctr.	1,862	1,984
Multi	Surgicare of Manhattan, LLC	3,648	3,666
Single	West Side GI	12,516	12,549
Single	Yorkville Endoscopy Center (Opened Feb 22, 2013)	9,140	10,685
<b>Total</b>		<b>93,680</b>	<b>97,420</b>

(Source: SPARCS-2015).

The number of patient visits in 2013 and in 2014 represents a 4% year-to-year increase in the number of patients served by ambulatory surgery centers in the county. The multi-specialty ASCs provided the following types of procedures: ear, nose and throat (ENT), gastroenterology, podiatry, plastic, ophthalmology and orthopedic. For these multi-specialty ASCs, the number of patient visits was 24,717 in 2013 and 26,768 in 2014. This represents an 8.3% year-to-year increase in the number of patients served by the multi-specialty ASCs in New York County. The proposed center will be the first single specialty ASC to focus on orthopedic surgery services in New York County.

The population of New York County in 2010 was 1,585,873, with 615,731 individuals (38.8%) who are 45 and over - the primary population group utilizing ambulatory surgery services. Per the Cornell Program on Applied Demographics (PAD) projection data, the 45 and over population group is estimated to grow to 660,206 by 2025 and represent 40.9% of the projected population of 1,615,772.

The table below shows the projected payor source utilization for Year 1 and Year 3. Projections for charity care and Medicaid utilization are based upon the experience of Hospital for Special Surgery.

<b>Utilization by Payor</b>	<b>Year 1</b>		<b>Year 3</b>	
Commercial Ins	2,289	76.3%	3,174	76.3%
Medicare	444	14.8%	616	14.8%
Medicaid	51	1.7%	71	1.7%
Private Pay	21	0.7%	29	0.7%
Charity Care	36	1.2%	50	1.2%
Other	159	5.3%	220	5.3%
<b>Total</b>	<b>3,000</b>	<b>100.0%</b>	<b>4,160</b>	<b>100.0%</b>

As a to-be-established ASC, the center is not yet in a position to execute and negotiate contracts or letters of intent with Medicaid Managed Care plans. The center intends to pursue contracts with the same Medicaid Managed Care plans with which Hospital for Special Surgery (HSS) contracts. These include: Emblem Health; HealthFirst; Affinity Health; and United Healthcare Community Plan. The center will adopt HSS's current charity care policies, and will collaborate with HSS on community outreach initiatives. The applicant is committed to serving all persons in need without regard to ability to pay or source of payment.

**Conclusion**

Approval of this project will provide increased access to orthopedic surgery services in a freestanding ambulatory surgery environment for the communities of New York County.

**Recommendation**

**From a need perspective, contingent approval is recommended for a period of five years.**

**Program Analysis**

**Program Description**

Hospital for Special Surgery Ambulatory Surgery Center of Manhattan, LLC d/b/a HSS ASC of Manhattan, requests approval to establish and construct an Article 28 diagnostic and treatment center at 1233 Second Avenue, New York (New York County) which will be certified as a single-specialty freestanding ambulatory surgery center specializing in orthopedic surgery.

<b>Proposed Operator</b>	Hospital for Special Surgery Ambulatory Surgery Center of Manhattan, LLC
<b>Doing Business As</b>	HSS ASC of Manhattan
<b>Site Address</b>	1233 Second Avenue New York, NY (New York County)
<b>Surgical Specialties</b>	Single Specialty: Orthopedics
<b>Operating Rooms</b>	4 (Class C)
<b>Procedure Rooms</b>	0
<b>Hours of Operation</b>	Monday through Friday from 7:00 am to 5:00 pm
<b>Staffing (1<sup>st</sup> / 3<sup>rd</sup> Year)</b>	29.00 FTEs / 41.00 FTEs
<b>Medical Director</b>	David S. Levine, M. D.
<b>In-Patient &amp; Backup Support Services Agreement and Distance</b>	Will be provided by Hospital for Special Surgery 0.6 miles / 12 minutes
<b>On-call service</b>	Patients will be given their surgeon's office number which will be answered by a 24/7 phone service.

### Character and Competence

The proposed ownership of the Center consists of 20 individual Hospital for Special Surgery (HSS) orthopedic surgeons, who will collectively own 49% Class A membership interest, and the New York Society for Relief of the Ruptured and Crippled, the operator of the Hospital for Special Surgery, a 215-bed, not-for-profit, Article 28 hospital located in Manhattan, with a 51% Class B membership interest.

<b>Name</b>	<b>Membership</b>
<b>Individual Physicians (Class A Members)</b>	<b>49.0%</b>
Frank Cordasco, MD (2.88%)	
Aaron Daluiski, MD (2.88%)	
Joshua Dines, MD (1.92%)	
Mark Drakos, MD (2.88%)	
Andrew Elliott, MD (0.96%)	
Scott Ellis, MD (2.88%)	
Stephen Fealy, MD (1.92%)	
Lawrence Gulotta, MD (2.88%)	
Robert Hotchkiss, MD (2.88%)	
Lana Kang, MD (1.92%)	
Steve Lee, MD (2.88%)	
David Levine, MD (2.88%)	
Robert Marx, MD (2.88%)	
Andrew Pearle, MD (2.88%)	
Anil Ranawat, MD (0.96%)	
Matthew Roberts, MD (2.88%)	
Scott Rodeo, MD (1.92%)	
Beth Shubin Stein, MD (2.88%)	
Sabrina Strickland, MD (2.88%)	
Scott Wolfe, MD (1.92%)	
<b>New York Society for Relief of the Ruptured and Crippled* (Class B Member)</b>	<b>51.0%</b>
<i>Kendrick Wilson, Chair</i>	
<i>Mike Esposito, Vice Chair</i>	
<i>Thomas Lister, Vice Chair</i>	
<i>Deirdre Stanley, Vice Chair</i>	

*\*Character & Competence Reviews were conducted on 56 individuals who comprise the Board of Trustees & Officers of the Hospital for Special Surgery which the New York Society for Relief of the Ruptured and Crippled maintains.*

Each HSS orthopedic surgeon Class A member is board-certified in orthopedic surgery and is a full time member of HSS's medical staff. David S. Levine, M.D., a board-certified orthopedic surgeon who is currently an Assistant Attending orthopedic surgeon at HSS and an Assistant Professor of orthopedic surgery at Weill Cornell Medical College, will be the Medical Director of the Center.

The Center will be managed by a seven (7) member Board of Managers, three of whom are Class A members and four of whom are appointed by HSS. The proposed Managers of Hospital for Special Surgery Ambulatory Surgery Center of Manhattan, LLC are:

<b>Class A Managers</b>	<b>Class B Managers</b>
Beth E. Shubin Stein, MD	Louis Shapiro
Robert G. Marx, MD	Stacey Malakoff
David Levine, MD	Lisa Goldstein
	Irene Koch, Esq.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted for the 20 Individual Physician members and 56 individuals who comprise the Board of Trustees and Officers of the Hospital for Special Surgery regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

*Drs. Drakos, Lee, Rodeo and Warren each disclosed one open/pending malpractice case. Drs. Ellis and Cornell each disclosed two open/pending malpractice cases. Drs. Albert, Dines and Roberts each disclosed one settled malpractice case. Dr. Sculco disclosed one settled and two open/pending malpractice cases.*

*Ms. Cornfeld reported that she stopped practicing law in 2001, however, on April 2, 2009, the First Judicial Department issued a discipline under Judiciary Law 468-a which relates to failure to file biennial registration statements with the Office of Court Administration.*

*Mr. Ivey has an affiliation with Con Edison. He disclosed a Small Claims matter in that capacity.*

*Mr. Madden disclosed that, in 2011, as Director of a pharmaceutical company, suits alleging breach of fiduciary duty were filed when the company was sold. Those suits were subsequently settled.*

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

### **Integration with Community Resources**

The proposed ASC plans to work closely with its patients to educate them regarding the availability of primary care services offered by local providers, including the broad array of services offered by Hospital for Special Surgery. Prior to leaving the Center, each patient will be provided information concerning the local availability of primary care services.

The Center will collaborate with Hospital for Special Surgery on community outreach initiatives and will adopt its charity care policies to ensure that care is provided to all who are referred to the Center without regard to their ability to pay.

Additionally, the ASC intends on utilizing an electronic medical record (EMR) and to fully integrating and exchanging information with an established Regional Health Information Organization that has the capability for clinical referral and event notification.

### Recommendation

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

### Recommendation

**From a programmatic perspective, contingent approval is recommended.**

## Financial Analysis

### Total Project Cost and Financing

The total project cost for renovations, movable equipment, and fees is estimated at \$16,210,340, broken down as follows:

Renovation & Demolition	\$7,733,000
Design Contingency	773,300
Construction Contingency	773,300
Architect/Engineering Fees	812,100
Construction Manager Fee	377,642
Other Fees	23,475
Movable Equipment	5,082,452
Financing Costs	145,500
Interim Interest Expense	398,913
Application Fees	2,000
Additional Processing Fees	<u>88,658</u>
<b>Total Project Cost</b>	<b>\$16,210,340</b>

Project costs are based on a construction start date of April 1, 2016, with a 12-month construction period.

The financing for this project will be as follows:

Members' Equity	\$1,710,340
Bank loan	
(4.3% interest, 10-yr. term, 2 yrs. interest only, 10-yr. principal amortization)	<u>\$14,500,000</u>
<b>Total</b>	<b>\$16,210,340</b>

TD Bank has provided a letter of interest.

BFA Attachments B and C are the individual surgeon members' net worth summaries and the 2013-2014 certified financial statements of New York Society for Relief of the Ruptured and Crippled (HSS), respectively, which shows sufficient resources to meet the equity requirement.

### Lease Rental Agreements

The applicant has submitted lease rental agreements for the site to be occupied, summarized below:

#### Lease:

Date:	March 19, 2015
Premises:	The Condominium known as the School Unit comprising a portion of the lower level, a portion of the ground floor, second floor and third floor of the building located at 250 East 65th Street, New York, NY
Landlord:	J Second Avenue LLC
Tenant:	HSS Properties Corporation
Term:	30 Years
Rental:	The Base rent for total leased space is \$3,046,620 per year for the first 5 years. Rent increase every 5 years as per Rent Schedule
Provisions:	Tenant is responsible for real estate taxes, insurance, utilities, maintenance

**Sub-Lease:**

Date:	May 11, 2015
Premises:	22,425 sq. ft. (54% of total leased space), The Condominium known as the School Unit, 250 East 65th Street, New York, NY
Landlord:	J Second Avenue LLC
Sub-Landlord:	HSS Properties Corporation
Sub-Tenant:	HSS ASC of Manhattan, LLC
Term:	10 Years, 2 additional renewals of 5 years.
Rental:	Sub-Tenant's share at 54% of the base rent, plus Sub-Tenant's share of additional rent. Base rent for total leased space is \$3,046,620 per year for the first 5 years. Rent increases every 5 years as per Rent Schedule
Provisions:	Sub-Tenant is responsible for real estate taxes, insurance, utilities, maintenance

The applicant has submitted an affidavit stating the lease between the property owner (J Second Avenue LLC) and the sub-landlord (HSS Properties Corporation) is an arm's length arrangement, whereas the sub-landlord and sub-tenant (HSS ASC of Manhattan, LLC) are affiliated. The applicant has also submitted letters from two NYS licensed realtors attesting to the reasonableness of the per square foot rental rate.

**Developmental Administrative Services Agreement**

The applicant has submitted an executed developmental administrative services agreement, summarized as follows:

Date:	June 4, 2015
Owner:	HSS ASC of Manhattan, LLC
Administrator:	New York Society for the Relief of the Ruptured and Crippled, Maintaining the Hospital for Special Surgery
Developer Administrator Independent Contractor:	Compass Surgical Partners of Manhattan, LLC (CSP)
Administrative Terms:	Continue for 6 months after receiving approval to operate the Center.
Developer 's fee:	\$260,000 (\$65,000 at each of 4 developmental phases until CON approved); \$65,000/month during 1st six months of administrative service term.
Services Provided:	Assist in Development, administration and purchasing services and support to the Center. Pre-operational business development services, design and development, construction phase services, equipment selection, delivery and installation, licensure & certification, medical staff credentialing, clinical and administrative staffing, surgery center management systems and coordinating training program, quality management, inventory, public relations, assist owner in obtaining insurance.

The Facility operator will maintain ultimate authority and responsibility for the operations.

**Administrative Services Agreement**

The applicant has submitted a draft administrative services agreement, summarized as follows:

Administrator:	New York Society for the Relief of the Ruptured and Crippled (HSS)
Operator/Owner:	Hospital for Special Surgery Ambulatory Surgery Center of Manhattan, LLC d/b/a HSS ASC of Manhattan
Term:	10 years - automatically extends for one year unless written notice provided
Administrator's Fee:	\$41,333 per month
Services Provided:	Human Resources services, benefits management and payroll services; overseeing the financial operations of the Center; negotiate payor contracts; support for the clinical operations; IT services and support; materials management; group purchasing organization services; licensure, permitting, certifications, accreditations and approval required; operational oversight;



	oversee all liability insurance obtained by the owner, support services and access to an electronic medical records system.
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While New York Society for the Relief of the Ruptured and Crippled will provide all of the above services, the Licensed Operator retains ultimate authority, responsibility and control for the operations. There is a common ownership between the applicant and the administrative service agreement provider.

**Operating Budget**

The applicant has submitted an operating budget, in 2015 dollars, for years one and three, as summarized below:

	<u>Year One</u>	<u>Year Three</u>
<b>Revenues:</b>		
Medicaid (FFS & MC)	\$108,120	\$149,926
Medicare (FFS & MC)	983,904	1,364,347
Commercial Managed Care	12,380,536	17,171,773
Private Pay	119,952	166,333
All Other	418,488	576,821
Other/Charity Care *	<u>90,000</u>	<u>124,800</u>
<b>Total Revenue</b>	<b>\$14,101,000</b>	<b>\$19,554,000</b>
<b>Expenses:</b>		
Operating	\$8,205,000	\$9,870,000
Capital	<u>4,643,000</u>	<u>4,575,000</u>
<b>Total</b>	<b>\$12,848,000</b>	<b>\$14,445,000</b>
<b>Net Income</b>	<b>\$1,253,000</b>	<b>\$5,109,000</b>
<b>Total Procedures</b>	<b>3,000</b>	<b>4,160</b>
<b>Cost per Procedure</b>	<b>\$4,282.67</b>	<b>\$3,472.36</b>

\* Other/Charity Care reflects the expected dollar amount of certain procedures that will be partially paid by commercial and other payors. The unpaid portion of those procedures will be provided as charity care by the Center.

Utilization by payor source for Year One and Year Three is as follows:

<b>Payor</b>	<u>Year One</u>	<u>Year Three</u>
Medicaid (FFS & MC)	1.7%	1.7%
Medicare (FFS & MC)	14.8%	14.8%
Commercial-MC	76.3%	76.3%
Private Pay	0.7%	0.7%
All Other	5.3%	5.3%
Charity Care	<u>1.2%</u>	<u>1.2%</u>
<b>Total</b>	<b>100%</b>	<b>100%</b>

The following is noted with respect to the submitted budget:

- Revenue assumptions by payor are based on the experience of HSS and the participating surgeons in providing orthopedic ambulatory surgery services. Reimbursement rates reflect current and projected federal and state government rates for FASCs. Private pay rates reflect estimated negotiated rates and adjustments based on industry norms and HSS experience.
- Utilization assumptions are based on the number of ambulatory surgeries currently performed annually at HSS that will be transferred at the Center. Each HSS orthopedic surgeon Class A member has provided a letter supporting the year one utilization. The applicant has provided a conservative year one utilization projection to reflect start-up issues and ramp-up of physician practice and payor contracts.
- Expense assumptions are based on the historical experience of HSS, the participating surgeons in providing orthopedic ambulatory surgery services, as well as the experience of other FASCs in New York State.

- The breakeven utilization is approximately 91% or 2,733 procedures in year one.

The applicant indicated that projected FASC Medicaid and Charity Care utilization reflects the historical experience of HSS. Department review of Institutional Cost Report submissions by HSS for 2010-2014 supports that Medicaid accounted for only 2.2%, on average, of total inpatient days.

The budget appears reasonable.

#### Capability and Feasibility

The total project cost of \$16,210,340 will be satisfied with \$1,710,340 in members' equity and a bank loan for \$14,500,000 at the above stated terms. TD Bank has provided a letter of interest.

Working capital requirements are estimated at \$2,407,500 based on two months of third year expenses, and as a conservative measure the members will contribute an additional \$1,132,160 for total working capital of \$3,539,660. Funding for working capital will be provided as follows: \$2,339,660 from members equity with the remaining balance of \$1,200,000 being satisfied through a five-year loan, interest only for the first two years, followed by the monthly principal payments based on a three-year amortization with interest at LIBOR plus 1.50% (interest rate would be 2.37% as of October 28, 2015). TD Bank has provided a letter of interest. Review of BFA Attachments B and C, the physician members' personal net worth statements and the 2013-2014 certified financial statements of the Class B member, respectively, shows sufficient liquid resources to meet all of the projects equity requirements.

BFA Attachment E is the pro-forma balance sheet for HSS ASC of Manhattan, LLC, which shows the operation will start with \$5,250,000 in members' equity.

The submitted budget projects a net income of \$1,253,000 and \$5,109,000 during Years One and Three of operations, respectively. Medicare and Medicaid reimbursement rates are based on the current and projected federal and state government rates for FASCs. The Private Pay rates reflect anticipated adjustments to be negotiated based on industry norms and the experience of HSS. Commercial reimbursement rates are based on the historical experience of the surgeons and HSS in providing orthopedic ambulatory surgery services. The budget appears reasonable.

BFA Attachments C is New York Society for the Relief of the Ruptured and Crippled's 2013-2014 certified financial statement, which shows positive working capital position, positive equity position and positive net income position for the period. BFA Attachment D is the internal financial statements of HSS as of September 30, 2015, which shows the entity had positive working capital position of \$428,878,000, positive net asset position of \$754,140,000 and a positive operating income of \$42,108,000.

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	Organization Chart
BFA Attachment B	Net Worth Statement of Proposed Members of HSS ASC of Manhattan, LLC.
BFA Attachment C	2013-2014 Certified Financial Statements – New York Society for the Relief of the Ruptured and Crippled, Maintaining the Hospital for Special Surgery
BFA Attachment D	2015 Internal Financial Statements – New York Society for the Relief of the Ruptured and Crippled Maintaining the Hospital for Special Surgery
BFA Attachment E	Pro-Forma balance sheet of HSS ASC of Manhattan, LLC

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 10<sup>th</sup> day of December, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a single-specialty freestanding orthopedic ambulatory surgical center to be located at 1233 Second Avenue, New York, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

151277 B

FACILITY/APPLICANT:

Hospital for Special Surgery Ambulatory  
Surgery Center of Manhattan, LLC  
d/b/a HSS ASC of Manhattan

APPROVAL CONTINGENT UPON:

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

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. A copy of the check must be uploaded into NYSECON when mailed. [PMU]
2. 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]
3. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to DOH beginning in the second year of operation. These reports should include:
  - a. Data showing actual utilization including procedures;
  - b. Data showing breakdown of visits by payer source;
  - c. Data showing number of patients who needed 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]
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 of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
6. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
7. Submission of an executed sub-lease agreement, acceptable to the Department of Health. [BFA]
8. Submission of an executed loan commitment, acceptable to the Department of Health. [BFA]
9. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
10. Submission of an executed administrative service agreement, acceptable to the Department of Health. [BFA]

11. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-03. The drawings must include the satisfactory response and resolution of DASNY schematic design review comments. [DAS]
12. Submission of documentation from CMS that the entire building does not require sprinklers. [DAS]
13. Submission of a photocopy of the proposed and executed certificate of amendment of the articles of organization of HSS ASC of Manhattan, LLC, which is acceptable to the Department. [CSL]
14. Submission of a photocopy of the executed proposed operating agreement of Hospital for Special Surgery Ambulatory Surgery Center of Manhattan, LLC, which is acceptable to the Department. [CSL]
15. Submission of a photocopy of a completed administrative agreement between Hospital for Special Surgery Ambulatory Surgery Center of Manhattan, LLC and New York Society for the Relief of the Ruptured and Crippled, maintaining the Hospital for Special Surgery, which is acceptable to the Department. [CSL]
16. Submission of a photocopy of a fully executed copy of the agreement between Second Avenue Realty and HSS Properties Corporation, which is acceptable to the Department. [CSL]
17. Submission of a photocopy of a fully executed copy of the easement agreement between J Second Avenue, LLC and Second Avenue Realty Co., which is acceptable to the Department. [CSL]
18. Submission of a photocopy of a fully executed copy of the escrow agreement between J Second Avenue, LLC and Royal Abstract of New York LLC, which is acceptable to the Department. [CSL]
19. Submission of a photocopy of an executed copy of the sublease of 250 East 65<sup>th</sup> Street, New York, NY, which is acceptable to the Department. [CSL]
20. Submission of a photocopy of an executed copy of the condo agreement between the Board of Managers of 250 East 65<sup>th</sup> Street Condominium, J Second Avenue, LLC and HSS Properties Corporation, which is acceptable to the Department. [CSL]
21. Submission of a photocopy of a fully executed memorandum of lease between J Second Avenue, LLC and HSS Properties Corporation, which is acceptable to the Department. [CSL]
22. Submission of a photocopy of a fully executed copy of the SNDA form, which is acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [DASNY]
3. Construction must start on or before 04/01/2016 and construction must be completed by 03/30/2017, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Part 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



## MEMORANDUM

**To:** Members of the Public Health and Health Planning Council

**From:** George Macko  
Director  
Division of Planning and Licensure

**Date:** December 3, 2015

**Subject:** CON #151008 Pittsford Pain Center, LLC

This application first came before the full Public Health and Health Planning Council at its meeting of June 11, 2015, following earlier review by the Establishment and Project Review Committee, whose members were unable to agree on a recommendation.

The proposed ASC was the subject of considerable discussion at the PHHPC meeting, mainly because of the recommendation of the Finger Lakes Health Systems Agency (HSA) for disapproval. With two members recusing, 14 of the 16 members in attendance were eligible to vote on the application. By a tally of 11 in favor and three opposed, the motion to accept the Department's recommendation for approval of the proposed ASC fell two votes short of the required 13.

Rather than entertain an alternate motion for disapproval of the application, members noted the absence of six members and elected to defer further consideration of the proposal until a PHHPC meeting with fuller attendance. Because it was anticipated that the PHHPC's August meeting may also have the low attendance typical of the summer vacation season, the Department scheduled the application for consideration in the September/October cycle.

The project was then presented at the September 24, 2015 EPRC and the recommendation of contingent approval passed. At the October 10, 2015 PHHPC meeting there was a vote of 12 in favor and three opposed to accept the Department's and the EPRC's recommendation of contingent approval, falling one vote short of the required 13.

Subsequently there was a motion to defer the project one cycle, to return directly to the PHHPC, with the hope that more Council members would be in attendance in December.



**Project # 151008-B  
Pittsford Pain Center LLC**

**Program:** Diagnostic and Treatment Center    **County:** Monroe  
**Purpose:** Establishment and Construction    **Acknowledged:** January 14, 2015

**Executive Summary**

**Description**

Pittsford Pain Center, LLC, a to-be-formed New York limited liability company, requests approval to develop a single-specialty Article 28 freestanding ambulatory surgery center (FASC) to provide pain management services. The Center will be located in leased space at 727 Linden Avenue, Pittsford (Monroe County), and will consist of four operating rooms.

The proposed members of Pittsford Pain Center, LLC and their ownership percentages are as follows:

Ajai Nemani, M.D.	47.50%
Roser Ng, M.D.	47.50%
Heritage Ambulatory Surgery Center Alliance	5.00%

The members of Heritage Ambulatory Surgery Center Alliance, LLC are as follows:

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

The two physician owners, Ajai Nemani, M.D. and Roger Ng, M.D., currently provide pain management services in their individual offices located in Rochester. The Heritage Ambulatory Surgery Center Alliance (HASCA) provides administrative and consulting services to ambulatory surgery centers.

**OPCHSM Recommendation**

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

**Need Summary**

The vast majority of procedures to be performed at Pittsford Pain Center, LLC are presently being performed in physicians' private offices. (Fewer than 50 per year are performed elsewhere, mostly in freestanding ASCs.)

The number of projected procedures is 6,001 in Year 1, with Medicaid at 3.5% and charity care at 2.0%.

**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 \$404,698 will be met as follows: Equity of \$44,698 and a bank loan of \$360,000 at an interest rate of 5% for a five year term.

**Budget:**

Revenues	\$6,231,234
Expenses	<u>4,827,355</u>
Net Income	\$1,403,879



## Recommendations

Health Systems Agency

The Finger Lakes HSA recommends Disapproval of this project.

Office of Primary Care and Health Systems Management

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

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to DOH beginning in the second year of operation. These reports should include:
  - a. Data showing actual utilization including procedures;
  - b. Data showing breakdown of visits by payer source;
  - c. Data showing number of patients who needed 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 executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
7. Submission of an executed administrative service agreement, acceptable to the Department. [BFA]
8. Submission of an executed building lease, acceptable to the Department. [BFA]
9. Submission of an executed loan commitment, acceptable to the Department. [BFA]
10. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
11. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-03 (See Attached). [AER]
12. Submission of a photocopy of the executed Operating Agreement of Pittsford Pain Center, LLC, acceptable to the Department. [CSL]
13. Submission of a photocopy of the executed Lease Agreement between N & N Real Estate Holding Rochester LLC and the applicant, 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]
6. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's request for, and the Department's granting approval for the start of construction (See Attached). [AER]
7. The applicant shall start construction on or before 09/15/2015 and complete construction by 05/15/2016 upon the filing of Final Construction Documents in accordance with 10NYCRR 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

**May 21, 2015 EPRC – No Recommendation**

**June 11, 2015 PHHPC – No Recommendation**

**September 24, 2015 EPRC – Recommended Contingent Approval**

**October 8, 2015 PHHPC – Deferred one cycle to be returned directly to PHHPC**

**December 10, 2015**

## Need Analysis

### Project Description

Pittsford Pain Center, LLC, a to-be-formed New York limited liability company, is seeking approval to establish and construct a freestanding ambulatory surgery center to provide single specialty pain management surgery services at 727 Linden Avenue, Pittsford, 14534, in Monroe County.

### Analysis

The primary service area consists of Monroe County. Monroe County has a total of five freestanding multi-specialty ASCs. The table below shows the number of patients utilizing Ambulatory Surgery Centers in Monroe County for 2012 & 2013 (Source: SPARCS).

Specialty Type	Name of Facility	Patients-2012	Patients-2013
Multi	Brighton Surgery Center ,LLC	4,745	6,778
Multi	Lindsay House Surgery Center, LLC	599	674
Multi	Rochester Ambulatory Surgery Center	3,614	4,411
Multi	Unity Linden Oaks Surgery Center	4,923	5,689
Multi	Westfall Surgery Center, LLP	14,224	13,639
Total		28,105	31,191

For Monroe County, the total number of patient visits for ASC's was 28,105 in 2012 and 31,191 in 2013. This represents a 9.9% increase in the number of patients served by Ambulatory Surgery Centers in Monroe County from 2012 to 2013.

The applicant projects 6,001 procedures in Year 1 and 7,260 in Year 3. These projections are based on the current practices of participating surgeons. The table below shows the projected payor source utilization for Pittsford Pain Center.

Projections	Year 1 Procedures	Year 1 Percentage	Year 3 Procedures	Year 3 Percentage
Commercial Ins	2,064	34.4%	2,498	34.4%
Medicare	2,184	36.4%	2,642	36.4%
Medicaid	212	3.5%	256	3.5%
Private Pay	230	3.8%	278	3.8%
Charity Care	120	2.0%	145	2.0%
Other	1,191	19.8%	1,441	19.8%
Total	6,001	100.0%	7,260	100.0%

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

### Conclusion

Approval of this project will bring office-based pain management surgical procedures into an Article 28 Ambulatory Surgery Center serving the communities of Monroe County.

### Recommendation

**From a need perspective, contingent approval is recommended for a limited period of five years.**

## Program Analysis

### Project Proposal

Pittsford Pain Center, LLC seeks approval to establish and construct a single specialty ambulatory surgery center at 727 Linden Avenue, Pittsford (Monroe County) which will provide pain management services.

<b>Proposed Operator</b>	Pittsford Pain Center, LLC
<b>Site Address</b>	727 Linden Avenue, Pittsford (Monroe County)
<b>Surgical Specialties</b>	Pain Management
<b>Operating Rooms</b>	4 (Class B)
<b>Procedure Rooms</b>	0
<b>Hours of Operation</b>	Monday through Friday from 7:30 am to 4:00 pm
<b>Staffing (1<sup>st</sup> / 3<sup>rd</sup> Year)</b>	14.6 FTEs / 17.4 FTEs
<b>Medical Director</b>	Ajai K. Nemani, MD
<b>Emergency, In-Patient &amp; Backup Support Services Agreement and Distance</b>	Expected to be provided by Rochester General Hospital 12 miles / 16 minutes
<b>On-call service</b>	24/7 on-call service to connect patients to the facility's on-call physician during hours when the facility is closed.

### Character and Competence

The members of Pittsford Pain Center, LLC are:

<b>Name</b>	<b>Membership</b>
<b>Individual Physicians</b>	<b>95%</b>
Ajai Nemani, MD (47.50%)	
Roger R. Ng, MD (47.50%)	
<b>Heritage Ambulatory Surgery Center Alliance, LLC</b>	<b>5%</b>
Robert L. Tiso, MD (37.50%)	
Joseph A. Catania, MD (37.50%)	
Eric Tallarico, MD (5.00%)	
Nameer Haider, MD (20.00%)	

The proposed Center's ownership is comprised of two physicians, Drs. Nemani and Ng—both practicing physicians (Board Certified in Anesthesiology and Pain Medicine) who will perform procedures at the Center, and Heritage Ambulatory Surgery Center Alliance, which is comprised of four physicians who will provide administrative and consulting services to the Center.

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

*Drs. Tallarico and Tiso each disclosed one open malpractice case. Dr. Catania disclosed one settled and three (3) open malpractice cases.*

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

### Integration with Community Resources

The proposed ASC will establish and maintain a list of physicians in and around the facility's location who are accepting new patients. The list will be available to any patient who does not have a primary care physician. Pain management services will be provided to all who are referred to the physicians credentialed by the ASC, without regard to their ability to pay.

The center intends on utilizing an electronic medical record. Another goal of the ASC is to integrate into a Regional Health Information Organization (RHIO) and/or Health Information Exchange (HIE). Additionally, the applicant is open to becoming a part of an Accountable Care Organization or Medical Home, based on regulatory and market demands.

### Recommendation

**From a programmatic perspective, contingent approval is recommended.**

## Financial Analysis

### Administrative Services Agreement

The applicant has submitted a draft administrative services agreement, which is summarized below:

Facility:	Pittsford Pain Center, LLC
Contractor:	Heritage Ambulatory Surgery Center Alliance, LLC
Term:	Two years with automatic renewal of successive terms of one year.
Services Provided:	The Contractor shall provide the following services: billing and collection services, detailed revenue analysis on monthly and annual collections, manage the EMR /Billing system software and vendor relationship, provide decision support reporting out of the EMR and Billing system, provide facility level financial statements in format consistent with all HASCA facilities, complete and file the NYS ACHF Cost Report required for all Article 28 facilities in NYS, attend member meetings to monitor compliance with Medicare and NYS DOH requirements, provide information systems consulting services as needed to ensure interface of systems is maintained and provide guidance on Center policies related to HIPAA compliance, HITECH Security and a Corporate Compliance Plan.
Fee:	Year One - \$190,000
	Year Two - \$250,000
	Year Three - \$250,000
	Year Four - \$257,500
	Year Five - \$265,225

While HASCA will be providing the above noted services, the applicant retains ultimate control in all of the final decisions associated with the services and has full control over the management of the Center. The applicant shall retain, in its sole discretion, the following powers:

- Direct independent authority over the appointment and/or dismissal of the Center's management level employees and all licensed or certified health care staff;
- The right to adopt and approve the Center's operating and capital budgets;
- Independent control over, and physical possession of, the Center's books and records;
- The right to independently adopt, approve and enforce the Center's operating policies and procedures;
- Authority over the disposition of assets and authority to incur debt;
- The right to approve settlements of administrative proceedings or litigation to which the Center is a party;
- The Center or a person directly employed by and salaried by Center shall manage and personally direct the Center's day to day operations; and

- The individual responsible for the Center's financial oversight shall be employed or contracted directly by Center and shall be independent of HASCA.

#### Lease Rental Agreement

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

Premises:	9,594 square feet located at 727 Linden Avenue, Pittsford, New York
Lessor:	N & N Real Estate Holding Rochester, LLC
Lessee:	Pittsford Pain Center, LLC
Term:	10 years
Rental:	Year One - \$316,602 (\$33.00 per sq. ft.) with a 2% annual increase thereafter.
Provisions	The lessor shall be responsible for maintenance, real estate taxes and utilities.

The applicant has submitted an affidavit indicating that the lease agreement will be an arms-length lease agreement. The applicant has submitted letters from two NYS licensed real estate agents attesting to the reasonableness of the per square foot rental.

#### Total Project Cost and Financing

Total project cost of \$404,698, which is for moveable equipment and CON fees, is further broken down as follows:

Moveable Equipment	\$400,495
CON Fee	2,000
Additional Processing Fee	<u>2,203</u>
Total Project Cost	\$404,698

The applicant's financing plan appears as follows:

Equity	\$44,698
Bank Loan (5% interest rate, 5 year term)	\$360,000

Equity will be provided by the proposed members proportionate to their ownership interest. A letter of interest has been provided by M&T Bank attesting to the loan terms noted above for the purchase of moveable equipment.

#### Operating Budget

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

	<u>Year One</u>	<u>Year Three</u>
Revenues:	\$5,149,780	\$6,231,234
Expenses:		
Operating	\$3,628,574	\$4,397,380
Capital	<u>431,585</u>	<u>429,975</u>
Total Expenses	\$4,060,159	\$4,827,355
Net Income	\$1,089,621	\$1,403,879
Utilization (Procedures)	6,000	7,260
Cost Per Procedure	\$676.70	\$664.92

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

	<u>Year One</u>	<u>Year Three</u>
Medicaid Managed Care	3.53%	3.53%
Medicare Fee For Service	10.03%	10.03%
Medicare Managed Care	26.37%	26.37%
Commercial Managed Care	34.40%	34.40%
Private Pay	3.83%	3.83%
Workers Compensation	19.78%	19.78%
Charity Care	2.00%	2.00%
Other	.06%	.06%
Total	100.00%	100.00%

The payor mix reflects the historical experience of the physicians in their private practice. Both physicians participate with Medicaid and Medicaid Managed Care plans in their area. Medicare enrollees (including managed care) constitute 36% of patient visits, commercial/managed care accounts for 34%, and workers compensation for 20% of current patient volume. The FASC intends to contract with all Medicaid managed care plans in its service area as well as develop agreements with Community Health Centers and Federally Qualified Health Centers located nearby, which may lead to a higher percentage of Medicaid enrollees being served.

Utilization assumptions are based on current physician procedure volumes. Expense assumptions are based on historical experience of the physicians. The applicant has submitted physician referral letters in support of utilization projections.

#### Capability and Feasibility

Project costs of \$404,698 will be met as follows: Equity of \$44,698 and a bank loan of \$360,000 at an interest rate of 5% for a five year term. M&T Bank has provided a letter of interest for the loan to finance the project cost.

Working capital requirements are estimated at \$804,560, which is equivalent to two months of third year expenses. The applicant will finance \$360,000 at an interest rate of 5% for a five year term. A letter of interest has been provided by M&T Bank for the working capital financing. The remaining \$444,560 will be provided as equity by the proposed members of Pittsford Pain Center, LLC proportionate to their ownership interest. BFA Attachment A is the personal net worth statements of the proposed members of Pittsford Pain Management, LLC, which indicates the availability of sufficient funds for the equity contribution. BFA Attachment B is the pro forma balance sheet of Pittsford Pain Management, LLC as of the first day of operation, which indicates a positive net asset position of \$485,055.

The submitted budget indicates a net income of \$1,089,621 and \$1,403,879 during the first and third years, respectively. Revenues are based on current reimbursement rates for pain management services. The submitted budget appears reasonable.

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

#### Recommendation

**From a financial perspective, contingent approval is recommended.**

## Supplemental Information

### Hospital Responses

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas.

**Facility:** Strong Memorial Hospital  
601 Elmwood Avenue  
Rochester, New York 14642

Current OR Use (% of capacity)	Surgery Cases <sup>1</sup>		Amb. Surg. Cases by Applicant Physicians	Reserved OR Time for Applicant Physicians
	Ambulatory	Inpatient		
53% Main site 62% Off-site	54%	46%	None	None

Strong Memorial Hospital opposes this application based on existing operating room capacity within the Strong system, the low volume of pain procedures provided in an operating room setting and concerns over the quality and management of pain cases that would be treated at the proposed ASC.

In 2012 Strong Memorial had operating expenses of \$1,083,726,520 on revenue of \$1,179,855,300 for a gain of \$96,128,780. In 2013, operating expenses totaled \$1,163,324,922 and revenue was \$1,286,605,893, for a gain of \$123,280,971. Current assets in 2012 were \$538,431,207 and current liabilities were \$231,840,446 for a working capital ratio of 2.3 to 1.0. In 2013, current assets were \$644,356,490, and current liabilities were \$220,328,133, for a working capital ratio of 2.9 to 1.0. In its fiscal year 2013, Strong Memorial incurred bad debt of \$19.3 million and provided charity care in the amount of \$37.5 million. In fiscal year 2014, the hospital incurred \$22.9 million in bad debt and provided \$37.8 million in charity care.

**Facility:** Highland Hospital  
1000 South Avenue  
Rochester, New York 14620

Current OR Use (% of capacity)	Surgery Cases		Ambulatory Surgery Cases by Applicant Physicians	Reserved OR Time for Applicant Physicians
	Ambulatory	Inpatient		
Operating Rms. 63.8%	49.0%	51.0%	Yes <sup>2</sup>	No
Procedure Ctr. 42.1%	78.9%	21.1%		

Highland Hospital opposes the application on the grounds that there is sufficient OR capacity at Highland and elsewhere in the community to obviate the need for an additional ASC, especially in a time of growing consolidation and affiliation among providers. The hospital also states that approval of the proposed ASC

<sup>1</sup> Main site and off-site combined.

<sup>2</sup> Four cases in 2014



could potentially reduce current OR utilization. Highland does not quantify what effect such a reduction would have on its surgical revenues or on its community-oriented services.

In 2012 Highland Hospital had operating expenses of \$280,395,263 on revenue of \$294,378,157 for a gain of \$13,982,894. In 2013, operating expenses totaled \$297,751,531 and revenue was \$312,863,256, for a gain of \$15,111,725. Current assets in 2012 were \$112,366,882, and current liabilities were \$28,059,340 for a working capital ratio of 4.0 to 1.0. In 2013, current assets were \$127,086,005, and current liabilities were \$30,448,992, for a working capital ratio of 4.2 to 1.0. In 2012, Highland Hospital incurred bad debt of \$3.2 million and provided charity care in the amount of \$4.9 million. In 2013, the hospital incurred \$4.1 million in bad debt and provided \$5.7 million in charity care.

**Facility:** Rochester General Hospital -- **No Response**  
1425 Portland Avenue  
Rochester, New York 14621

Supplemental Information from Applicant

**Need and Source of Cases:** The applicant states that patients of the proposed facility would receive care from staff focused only on the provision of pain management procedures and that the better organized and more efficient nature of a new state-of-the-art ASC would result in reduced wait times, increased patient satisfaction and an overall better patient experience. Oversight by DOH will also help ensure that quality care is provided.

**Staff Recruitment and Retention:** Staff will be drawn from among the current staff of the office practices of the applicant physicians.

**Office-Based Cases:** The applicant states that virtually all of the projected cases for the proposed ASC are currently performed in the office practices of the applicant physicians. Of those that are not (fewer than 50 per year), most are performed in freestanding ASCs.

DOH Comment

The comments from the responding hospitals do not describe a specific adverse impact of the proposed ASC on the facilities' surgical revenues or community-oriented programs. Nor does any such adverse impact seem likely, given that virtually all the procedures projected for the ASC are currently performed in office-based settings and that the applicant physicians have performed only a negligible number of cases at one of the responding hospitals. The Department concludes that the comments from area hospitals provide no basis for reconsideration of the recommendation for approval of the proposed ASC based on public need, financial feasibility and owner/operator character and competence.

# Finger Lakes HSA Review & Recommendation

## MEMO

**TO:** CON Project File

**RE:** CON Project 151008 – Pain Management ASC

**DATE:** March 20, 2015

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### *Service Location:*

727 Linden Avenue  
Pittsford, NY 14534

### *Description:*

Interventional Pain Management of Rochester, LLC proposes to develop a single-specialty ambulatory surgery center (ASC) to provide pain management services.

### *Projected Changes to Community Capacity:*

#### **Community Capacity**

There are four pain management centers currently operating in Monroe County:

1. Center for Pain Management at RGH
2. University of Rochester Pain Treatment Center at Sawgrass
3. University of Rochester Neuromedicine Pain Management Center at Strong
4. Highland Hospital Pain Management Center

FLHSA has access to a multi-payer claims database consisting of claims data from two major commercial insurers in the region. Because many of the proposed procedures are performed outside of the hospital setting, staff utilized this database as the primary source of information for this review. This database contains commercial, Medicare Advantage, and Managed Medicaid claims for Excellus Blue Cross Blue Shield and MVP for patients living in the twelve counties that make up the Finger Lakes region<sup>3</sup>. In reviewing the proposed services to be provided at the new facility, we reviewed claims data for January 2010- June 2014 for the region and the two physicians proposing to utilize the new facility.

The applicant has provided the top five (5) projected procedures at the new facility by CPT code, those procedures are located in Table 1. These procedures are expected to account for 85% of ASC's total projected procedure volume.

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<sup>3</sup> Chemung, Genesee, Livingston, Monroe, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne Wyoming, and Yates Counties

Table 1. Projected Procedures by Volume, Year 1 and Year 3

CPT	Description	Projected Volume Y1	Projected Volume Y3
64483	Injection(s), anesthetic agent and/or steroid transforaminal epidural, with imaging guidance (fluoro or CT); lumbar or sacral, single level	2,449	2,964
62311	Injection(s) of diagnostic or therapeutic substance(s), not including neurolytic substances, including needle or catheter placement, includes contrast for localization when performed, epidural or subarachnoid; lumbar or sacral (caudal)	928	1,123
64493	Injection(s), diagnostic or therapeutic agent, paravertebral facet joint with image guidance, lumbar or sacral; single level	891	1,078
64635	Destruction by neurolytic agent, paravertebral facet joint nerve(s), with imaging guidance; lumbar or sacral, single facet joint	450	544
62310	Injection(s), of diagnostic or therapeutic substance(s) not including neurolytic substances, including needle or catheter placement, includes contrast for localization when performed, epidural or subarachnoid; lumbar or sacral	944	1,142

Even with this source of information, total community capacity is difficult to determine. The procedures being proposed at the new facility are often performed in the office setting and can be performed by physicians of numerous specialties. Claims data indicate that of the top 5 projected procedures at the new facility 35% are performed in the office. 57% of procedures are performed in an outpatient surgery setting while only 4% are performed in an ambulatory surgery center or as inpatient procedures. It is unlikely that additional outpatient surgical capacity would result in a shift from inpatient to outpatient for these procedures.

The proposing physicians are currently performing nearly all of the proposed procedures in the office setting. ½ of 1% of the applicant's top five procedures proposed at the new facility have been performed in an outpatient surgery or ambulatory surgical center setting.

### Community Need

The applicant cites that 195,000 persons in the five county region the ASC proposes to serve will be affected by chronic pain. Staff estimates that there are approximately 117,000 individuals in Monroe County (proposed site's primary service area) over the age of 18 with chronic pain using an estimate of 30.7% of the population.<sup>4</sup> However, this number does not reflect the number of individuals that will seek treatment or that will meet criteria for the interventions to be provided at the proposed center

The applicant indicates that wait times for patients at offices of both physicians proposing to utilize the new facility are between four and six weeks. It is unknown if there are other practices in the region experiencing similar wait times. The issues apparent with determining community capacity are mirrored regarding community need. Our estimation of need will rely on the evidence apparent in the literature and the applicant's estimated wait times.

<sup>4</sup> Johannes, C; Le, T; Zhou X. The Prevalence of Chronic Pain in United States Adults: Results of an Internet-Based Survey. The Journal of Pain. 2010;11(11):1230-1239

There are no national guidelines for wait times for patients with chronic pain. The most current literature found<sup>5</sup> indicates that patient wait times of 6 months or longer are medically unacceptable. This study also found that only one country had any benchmarks for wait times (United Kingdom, 13 weeks). It should be noted that in many countries wait times for cancer patients are dramatically reduced / eliminated. Wait times in the United States are estimated in one study to be three to four weeks with the local example of Strong Memorial Hospital having a policy of trying to keep wait times to less than two weeks<sup>6</sup>.

Although no national guidelines exist, The Centers for Medicare and Medicaid Services has developed local coverage determinations (LCD's) regarding the facet joint (spinal) injections which are proposed to account for 28% of the practice at the new ASC. The LCD which covers our area prescribes very specific timelines and limits for the application of this treatment modality. The LCD does not require that procedures are completed in an outpatient or ambulatory surgery setting, but does require fluoroscopic guidance. Additionally the LCD notes that "... the evidence of clinical efficacy and utility has not been well-established in the medical literature, which is replete with non-comparable and inadequately designed studies. Further, there is a singular dearth of long-term outcomes reports."<sup>7</sup> There is some national concern about the abuse of these procedures.

National data indicate that the wait times at Dr. Ng and Dr. Nemani's practices are typical of pain management practices across the United States. The wait times listed for United States practices are the shortest of the countries surveyed in the previously noted study. There is no definitive evidence that these wait times result in poorer patient outcomes.

### **Need Conclusion**

It is unclear how the conversion to Article 28 status will improve patient wait times, other than by improving patient flow and efficiency, which could be achieved without the costs associated Article 28 status.

It is not apparent that there is community need for a single specialty Ambulatory Surgical Center for the purposes of pain management.

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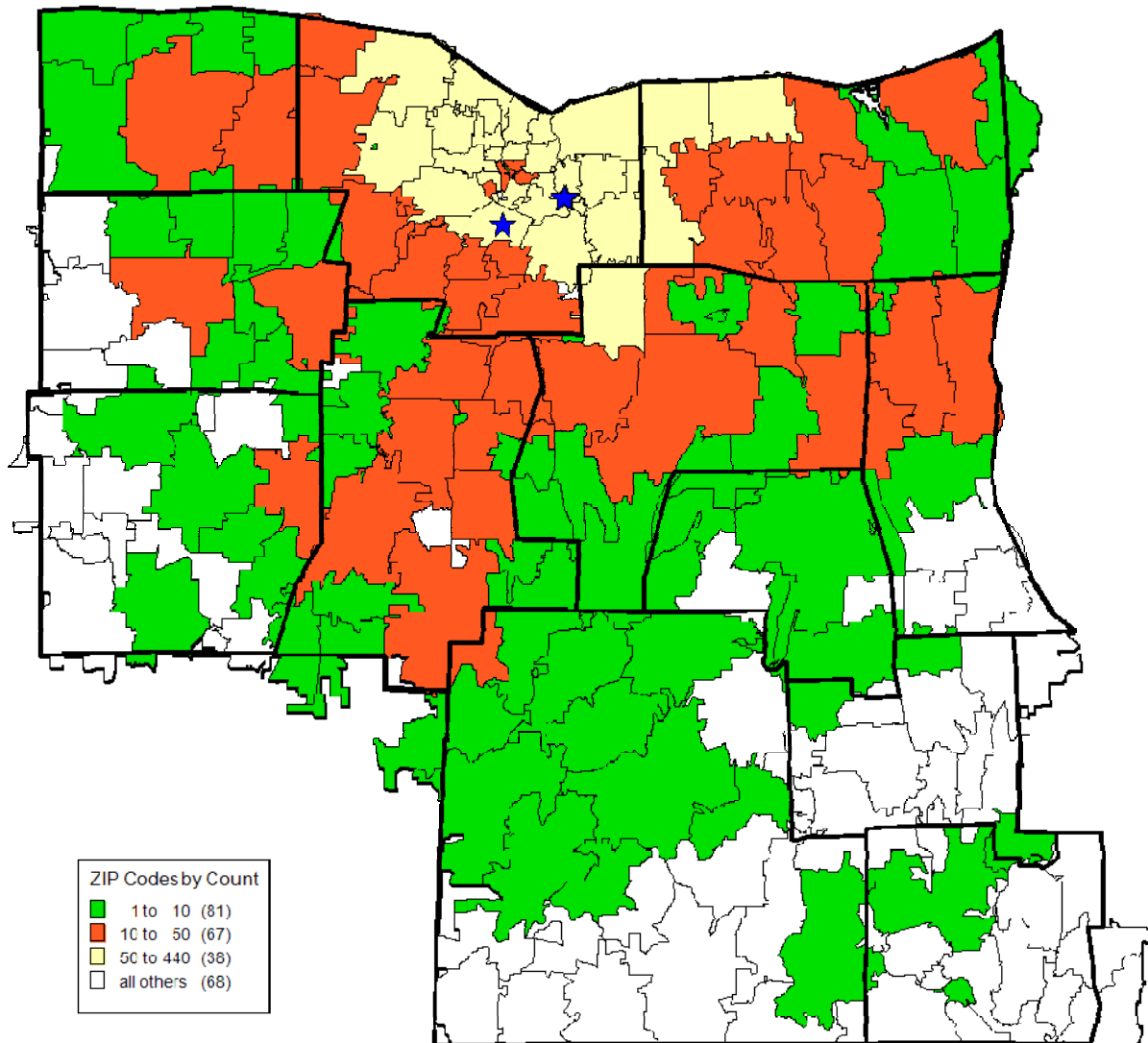
<sup>5</sup> Lynch, ME; Campbell, F; Clark, A; et al. A systematic review of the effect of waiting for treatment for chronic pain. *Pain*. 2008;136:97-116.

<sup>6</sup> L Lynch, ME; Campbell, F; Clark, A; et al. Waiting for treatment for chronic pain – a survey of existing benchmarks: Toward establishing evidence-based benchmarks for medically acceptable waiting times. *Pain Research and Management*. 2007;112(4):245-248

<sup>7</sup> National Government Services LCD L35336. Facet Joint Injections, Medial Branch Blocks, and Facet Joint Radiofrequency Neurotomy 12/16/2014

### *Projected Changes to Community Access:*

The ASC does not appear to significantly alter geographic access for the practices' respective patient population. The proposed center is 1.2 miles from Dr. Nemani's office and 10.0 miles from Dr. Ng's current office location. Below is a map of the physician's current patient population by ZIP code (from claims data).



The applicant projects 3.5% of patient volume to be from Medicaid Managed care and projects no utilization from Medicaid FFS patients. The relatively low volume of Medicaid patients is concerning in that access may be limited by ability to pay at the new ASC.

**Project Cost & Revenue:**

Pittsford Pain Center, LLC proposes to establish a new 9,594 square foot single-specialty Ambulatory Surgical Center to provide pain management services. The new facility is to contain four operating rooms with eight (8) pre-operative and ten (10) post-operative recovery beds. The floor plan also contains a central supply, consult room, decontamination and separate clean and soiled linen space.

Capital costs are expected to be \$400,495. The entirety of the cost is for moveable equipment, suggesting that other renovation costs are being covered by the building developer and are included in the lease expense. \$175,000 is allotted for two C-Arm imaging devices. \$50,000 will be used to install an EMR system in two rooms. The remainder of the costs are for various surgical and / or office infrastructure.

Incremental operating costs are anticipated to be \$4,827,355 by year three, with an incremental operating revenue of \$6,231,234. Table 2 outlines total project costs. Staffing is anticipated to increase by 17.4 FTE's by year three. New staffing will include 8 RNs 3 LPNs as well as management, technician, clerical and medical assistants. The applicants indicate that it is unlikely that current office staff will be re-allocated or repurposed for the new facility.

*Table 2. Project Costs*

	<b>Current Year</b>	<b>Year 1 Incremental</b>	<b>Year 3 Incremental</b>
Project Capital Cost	\$400,495	N/A	N/A
Operating Cost	\$0	\$4,060,159	\$4,827,355
Operating Revenue	\$0	\$5,149,780	\$6,231,234

Project financing will be accomplished with a \$360,000 bank loan at an interest rate of 5% with a five (5) year term and the remainder paid for in cash (\$44,698). The space for the facility will be rented with a lease term of ten (10) years.

There are significant incremental operating costs associated with this project. Staff have submitted questions to the applicant asking to identify the amount of incremental operating revenue that is expected due to the shift from office to ASC based procedures. While unable to provide this information, the applicant has made laudable efforts to identify the cost increases associated with the shift and has provided Medicare proposed reimbursements and anticipated revenues for the five (5) procedures noted previously. Utilizing this information we are able to estimate that incremental revenue for these procedures is anticipated to be \$2.26M per year.

*Table 3. Medicare Proposed Payments by Setting*  
**2015 Medicare Proposed Total  
 Payment Per Procedure**

CPT Code	Office	ASC
64483	\$222.46	\$485.53
62311	\$225.32	\$461.88
64493	\$175.17	\$464.03
64635	\$424.86	\$1,055.34
62310	\$244.67	\$481.95

Table 4. Estimated Revenue Increase due to Change in Place of Service

CPT Code	Expected Office Reimbursement	Expected ASC Reimbursement	Difference	Proposed Number of Procedures	Estimated Difference in Total Revenue
64483	\$202	\$566	\$364	2,449	\$891,436
62311	\$231	\$728	\$497	928	\$461,216
64493	\$181	\$566	\$385	891	\$343,035
64635	\$399	\$943	\$544	450	\$244,800
62310	\$214	\$561	\$347	944	\$327,568
<b>TOTAL DIFFERENCE IN REVENUE</b>					<b>\$2,268,055</b>

**Comments:**

The applicant had the opportunity to present the same proposal to the Community Technology Assessment Advisory Board (CTAAB). CTAAB consists of employers, consumers, clinicians, health systems and health insurance representatives and has a 20 year history of making recommendations to the payer community regarding issues of health technology and community capacity. This board considered the needs analysis conducted by Finger Lakes Health Systems Agency (FLHSA), the CON application materials, and the applicant’s presentation to the Board.

Based on the information available, CTAAB concluded there is not a need for the proposed capacity and cited the following reasons:

- There is no demonstrated community need for additional Pain Management Capacity
  - Wait times at the physician offices do not appear to be atypical for that specialty
  - While defining total capacity is difficult, there is no evidence that current capacity is not meeting patient needs
- There are significant incremental costs associated with the project and no evidence of improved outcomes for patients
- Increases in efficiency and quality could be achieved without article 28 status.
- There is no demonstrated improvement in access
  - Geographic access is not significantly altered
  - There is limited access projected for the Managed Medicaid population, with no access indicated for the Medicaid FFS population.

This recommendation was communicated to the Rochester payer community.

**Recommendation - Disapproval**

**Contingencies:** N/A

**Conditions:** N/A

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## Attachments

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BFA Attachment A    Personal Net Worth Statement  
BFA Attachment B    Pro Forma Balance Sheet



## RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 10<sup>th</sup> day of December, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a single specialty ambulatory surgery center to provide pain management services at 727 Linden Avenue, Pittsford, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

151008 B

FACILITY/APPLICANT:

Pittsford Pain Center LLC

APPROVAL CONTINGENT UPON:

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

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to DOH beginning in the second year of operation. These reports should include:
  - a. Data showing actual utilization including procedures;
  - b. Data showing breakdown of visits by payer source;
  - c. Data showing number of patients who needed 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 executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
7. Submission of an executed administrative service agreement, acceptable to the Department. [BFA]
8. Submission of an executed building lease, acceptable to the Department. [BFA]
9. Submission of an executed loan commitment, acceptable to the Department. [BFA]
10. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
11. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-03 (See Attached). [AER]
12. Submission of a photocopy of the executed Operating Agreement of Pittsford Pain Center, LLC, acceptable to the Department. [CSL]

13. Submission of a photocopy of the executed Lease Agreement between N & N Real Estate Holding Rochester LLC and the applicant, 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]
6. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's request for, and the Department's granting approval for the start of construction (See Attached). [AER]
7. The applicant shall start construction on or before 09/15/2015 and complete construction by 05/15/2016 upon the filing of Final Construction Documents in accordance with 10NYCRR 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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



Project # 152094-B  
Sea Crest Acquisition II, LLC  
d/b/a Sea Crest Dialysis Center

**Program:** Diagnostic and Treatment Center    **County:** Kings  
**Purpose:** Establishment and Construction    **Acknowledged:** August 25, 2015

**Executive Summary**

**Description**

Sea Crest Acquisition II, LLC d/b/a Sea Crest Dialysis Center, an existing New York limited liability company, requests approval to establish and construct a 9-station Article 28 end stage renal dialysis (ESRD) center. The proposed facility will be located in separate designated space at Sea-Crest Health Care Center, a 320-bed, Article 28 residential health care facility (RHCF) located at 3035 West 24<sup>th</sup> Street, Brooklyn (Kings County). The RHCF space to be renovated is currently occupied by administrative offices that will be relocated. The entrance to the ESRD center will be located directly off the main RHCF building entrance. The facility will offer on-site dialysis services to the RHCF's patients and to community residents, with its primary service area being Kings County.

The proposed members of Sea Crest Acquisition II, LLC are:

<u>Member</u>	<u>Interest</u>
Pasquale DeBenedictis	32.5%
Alex Solovey	32.5%
Michael Schrieber	30.0%
Solomon Rutenberg	5.0%

On June 18, 2015, the proposed members were given final Public Health and Health Planning Council approval under CON 131349 for ownership in the skilled nursing facility, Sea-Crest Health Care Center.

**OPCHSM Recommendation**  
Contingent Approval

**Need Summary**

There is currently an unmet need in Kings County. The addition of these 9 new stations will help make services available to dialysis patients in the area, specifically the nursing home residents, by reducing travel and inconvenience for the frail elderly.

**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**

Construction of the center is being completed as building improvements by the landlord. The applicant will enter into a licensing agreement with the landlord for site control of the center. The landlord's total project cost of \$1,928,241 for the improvements associated with this application will be financed with equity of \$192,824 and a bank loan for \$1,735,417 at 6% interest for a ten-year term. A bank letter of interest has been provided. The budget is as follows:

Revenues:	\$2,973,226
Expenses:	<u>2,516,745</u>
Net Income:	\$456,481

## 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. A copy of the check must be uploaded into NYSECON. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed Consultative/Administrative Services Agreement, acceptable to the Department. [HSP]
4. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of an executed license agreement, acceptable to the Department of Health. [BFA]
6. Submission of an executed Consulting Agreement, acceptable to the Department of Health. [BFA]
7. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
8. Submission of the executed restated Articles of Organization of Sea Crest Acquisition II, LLC., acceptable to the Department. [CSL]
9. Submission of the executed Lease Agreement. [CSL]
10. Submission of the executed Operating Agreement of Sea Crest Acquisition II, LLC., acceptable to the Department. [CSL]
11. Submission of the executed Consulting Agreement between Geripro Dialysis Consultants, LLC. And the applicant. [CSL]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction. [AER]
7. Construction must be completed by July 30, 2016, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not complete by this date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the construction dates. [AER]

Council Action Date  
December 10, 2015

# Need Analysis

## Project Description

Sea Crest Acquisition II, LLC d/b/a Sea Crest Dialysis Center is seeking approval to construct a 9 station dialysis center to be located within Sea Crest Nursing Home at 3035 West 24<sup>th</sup> Street, Brooklyn, (Kings County) New York, 11224.

## Analysis

The primary service area for the new facility is Kings County, which had an estimated population of 2,621,793 in 2014. 12% of the population was aged 65 and over and 50.7% was non-white. Statistically, these 2 groups are disproportionately represented among those requiring end stage renal dialysis. Comparisons between Kings County and New York State are listed below.

	<u>County</u>	<u>State</u>
Ages 65 and Over:	11.1%	14.4%
Nonwhite:	50.7%	29.6%

Source: U.S. Census 2015

## 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 projected 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 is 15 patients per week, per station [(2.5 x 6) x 52 weeks] equals 780 treatments per year. Assuming a 90% utilization rate based on the expected number of annual treatments (780), the projected number of annual treatments per free standing station is 702. The estimated average number of dialysis procedures each patient receives from a free standing station per year is 156.
- One hospital-based station is calculated at 499 treatments per year per station. This is the result of 2.0 shifts per day x 6 days per week x 52 weeks x 80% utilization rate. One hospital-based station can treat 3 patients per year.
- Per Department policy, hospital-based stations may treat fewer patients per year than do free-standing stations. Statewide, the majority of stations are free-standing, as are the majority of applications for new stations. As such, when calculating the need for additional stations, the Department bases the projected need on establishing additional free-standing stations.
- There are currently 696 free-standing chronic dialysis stations operating in Kings County and 210 in pipeline for a total of 906.
- Based upon DOH methodology, the 696 existing free standing stations in Kings County could treat a total of 3132 patients annually. Including the additional 210 pipeline stations, the county could treat a total of 4077 patients annually.

Need Projections

	2014	2015	2019	
	Total Patients Treated	Total Residents Treated	Projected Total Patients Treated	Projected Residents Treated
	4,318	4,846	5,006	5,455
Free-standing Stations Needed	960	1,077	1,113	1,213
Existing Stations	696	696	696	696
Pipeline Stations	210	210	210	210
Total stations, including this CON	915	915	915	915
Unmet Need, With this Approval	45	162	197	298

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 2014 of information.

Conclusion

The 696 stations in Kings County currently serve a population of 2,621,793 and are inadequate to treat the 4,846 residents that need treatment. The approval of these 9 additional stations is recommended to help reduce the existing unmet need.

Recommendation

**From a need perspective, approval is recommended.**

**Program Analysis**

Project Proposal

Sea Crest Acquisition II, LLC d/b/a Sea Crest Dialysis Center seeks approval to establish and construct a 9-station end stage renal dialysis center to be located in a designated space on the first floor of Sea-Crest Health Care Center, an existing 320-bed residential health care facility (RHCF) located at 3035 West 24th Street, in Brooklyn (Kings County).

Proposed Operator	Sea Crest Acquisition II, LLC
Doing Business As	Sea Crest Dialysis Center
Site Address	3035 West 24th Street Brooklyn, NY 11224 (Kings County)
Approved Services	Chronic Renal Dialysis (9 Stations)
Shifts/Hours/Schedule	Will operate at least 12 hours per day, 6 days per week, with additional hours as indicated by demand.
Staffing (1 <sup>st</sup> Year / 3 <sup>rd</sup> Year)	10.4 FTEs / 19.3 FTEs
Medical Director(s)	Henry Lipner, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Coney Island Hospital 2.0 miles / 10 minutes

## Character and Competence

The members of the LLC are:

<u>Name</u>	<u>Interest</u>	<u>Title</u>
Pasquale DeBenedictis	32.50%	Manager/Member
Alex Solovey	32.50%	Manager/Member
Michael Schrieber	30.00%	Member
Soloman Rutenberg	5.00%	Member

The proposed members have extensive experience operating health related facilities and associated programs. Mr. DeBenedictis is managing member and Chief Financial Officer of Cassena Care, LLC. He has over ten years of experience in the field of accounting and finance. Mr. Solovey, a physical therapist licensed in New York State for over 20 years, has been employed by Theradynamics Rehab since 1999 and currently serves as the Director of Rehabilitation. Mr. Schrieber, a licensed Nursing Home Administrator, has been employed by New Sea Crest Health Care Center since 2004 where he currently serves as Executive Director with responsibility for the oversight of the facility. Additionally, since March 2013, Mr. Schrieber has served as the Vice President of Strategic Planning at Cassena Care providing back office support and consulting services to nursing facilities. Mr. Rutenberg has been employed by Workman's Circle Multicare Center in the Bronx since 2006 and currently serves as the Chief Executive Officer. Prior to that, Mr. Rutenberg had ten years of experience as Assistant Administrator of a residential health care facility.

Disclosure information was similarly submitted and reviewed for the proposed Medical Director, Henry I. Lipner, MD. Dr. Lipner is a physician who has operated a private practice for the last 20 years. He is board-certified in Internal Medicine and Nephrology and has more than 40 years of experience in the care and treatment of dialysis patients.

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

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

Messrs. DeBenedictis and Solovey disclosed membership interest in Cassena Care of Norwalk (Connecticut), a 120-bed RHCF and Barnwell Nursing and Rehabilitation Center (Columbia County), a 236-bed RHCF.

*On November 15, 2013, a Stipulation and Order was issued to Cassena Care for regulatory violations noted during an investigation conducted in September 2013. The facility was fined \$1020 and directed to arrange for an Independent Nurse Consultant to be at the facility for 20 hours weekly.*

*On January 12, 2014, the Department issued a Stipulation and Order and fine of \$2,000 to Barnwell Nursing and Rehabilitation Center for March 13, 2012 surveillance findings related to Quality of Care Accidents/Supervision.*

## Recommendation

**From a programmatic perspective, contingent approval is recommended.**



## Financial Analysis

### License Agreement

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

Premises:	2,900 square feet located on the first floor of 3035 West 24 <sup>th</sup> Street, Brooklyn, New York
Licensor:	Sea Crest Acquisition I, LLC
Licensee:	Sea Crest Acquisition II, LLC
Term:	Licensed space will be available 7 days a week between the hours of 12:00AM and 11:59PM and is subject to Sea Crest Acquisition I, LLC's lease agreement which expires March 31, 2061.
License Fee:	\$204,300 annually (\$17,025/month), which includes \$87,000 (rent) and \$117,300 (debt service) annually.
Provisions:	Insurance

The proposed license agreement is a non-arm's length transaction since the parties are related. The applicant has submitted an affidavit stating as such and letters from two area realtors have been submitted attesting to the rent reasonableness.

### Consulting Agreement

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

Consultant:	Geripro Dialysis Consultants, LLC
Facility:	Sea Crest Acquisition II, LLC d/b/a Sea Crest Dialysis Center
Services:	Development and start-up services, quality management and administrative services
Compensation:	\$10,000/month (\$120,000 annually) for administrative and management services, There is no anticipated start-up service fee.
Terms:	Two (5) year terms which automatically renew every two years.

There is a business contractual relationship between Geripro Dialysis consultants, LLC and Sea Crest Acquisition II, LLC, but no common ownership between the two entities.

### Total Project Cost and Financing

Total project cost, which is for renovations and the acquisition of fixed and moveable equipment, is estimated at \$1,928,241 broken down as follows:

Renovation and Demolition	\$984,390
Design Contingency	98,439
Construction Contingency	98,439
Fixed Equipment	193,325
Architect/Engineering Fees	94,217
Other Fees (Consultant)	75,000
Moveable Equipment	286,121
Financing Costs	54,898
Interim Interest Expense	30,876
CON Fee	2,000
Additional Processing Fee	<u>10,536</u>
Total Project Cost	<u>\$1,928,241</u>

Project costs are based on a construction start date of February 1, 2016, and a six-month construction period.

Construction of the center is being completed as building improvements by the landlord. The applicant will enter into a licensing agreement with the landlord, as previously noted, for site control of the center. The landlord's costs for bringing the center online will be borne as follows:

Equity	\$192,824
Bank Loan (6% interest, ten-year term and payout period)	\$1,735,417

Sterling National Bank has provided a letter of interest for the financing at the above stated terms.

#### Operating Budget

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

	<u>Per Diem</u>	<u>Year One</u>	<u>Per Diem</u>	<u>Year Three</u>
Revenues:				
Medicare Fee-For-Service	\$305	\$1,027,728	\$305	\$2,398,032
Medicaid Fee-For-Service	\$297	125,096	\$297	291,892
Commercial Fee-For-Service	\$288	<u>121,416</u>	\$288	<u>283,302</u>
Total Revenues		\$1,274,240		\$2,973,226
Expenses:				
Operating	\$287.28	\$1,210,016	\$230.35	\$2,263,832
Capital	<u>61.72</u>	<u>259,991</u>	<u>25.73</u>	<u>252,913</u>
Total Expenses	\$349.00	\$1,470,007	\$256.08	\$2,516,745
Net Income(Loss)		<u>\$(195,767)</u>		<u>\$456,481</u>
Utilization (treatments)		4,212		9,828
Cost Per Treatment		\$349.00		\$256.08

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

Medicare Fee-For-Service	80.0%
Medicaid Fee-For-Service	10.0%
Commercial Fee-For-Service	10.0%

Revenue assumptions are based upon current reimbursement methodologies by payor for chronic renal dialysis services. Expense and utilization assumptions are based on historical trends of other dialysis centers within Kings County.

#### Capability and Feasibility

Construction of the dialysis center is being completed as building improvements by the landlord. The total project cost of \$1,928,241 will be met by the landlord via equity of \$192,824 and a bank loan for \$1,735,417 with interest at 6% for a ten-year term. The applicant will enter into a licensing agreement with the landlord for site control of the center.

Working capital requirements have been estimated at \$419,458 based on two months of third year expenses and will be met by \$209,729 in equity and \$209,729 will be provided through a bank loan at 5.5% over a three-year term. A letter of interest has been submitted by the applicant. BFA Attachment A is the net worth statement of the proposed members, which indicates sufficient resources to meet the equity requirements of this application. BFA Attachment B is the pro forma balance sheet of Sea Crest Dialysis Center as of the first day of operation, which indicates positive members' equity of \$402,553.

The submitted budget projects a net loss of \$195,767 in year one and net income of \$456,481 in year three. Revenues are based on the current reimbursement methodologies for dialysis services. The budget appears reasonable.

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

Recommendation

**From a financial perspective, contingent approval is recommended.**

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## Attachments

BFA Attachment A  
BFA Attachment B

Net Worth Statement of proposed members  
Pro Forma Balance Sheet of Sea Crest Dialysis

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 10<sup>th</sup> day of December, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a nine (9) station end stage renal dialysis center to be located inside Sea-Crest Health Care Center at 3035 West 24th Street, Brooklyn , and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

152094 B

FACILITY/APPLICANT:

Sea Crest Acquisition II, LLC  
d/b/a Sea Crest Dialysis Center

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. A copy of the check must be uploaded into NYSECON. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed Consultative/Administrative Services Agreement, acceptable to the Department. [HSP]
4. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of an executed license agreement, acceptable to the Department of Health. [BFA]
6. Submission of an executed Consulting Agreement, acceptable to the Department of Health. [BFA]
7. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
8. Submission of the executed restated Articles of Organization of Sea Crest Acquisition II, LLC., acceptable to the Department. [CSL]
9. Submission of the executed Lease Agreement. [CSL]
10. Submission of the executed Operating Agreement of Sea Crest Acquisition II, LLC., acceptable to the Department. [CSL]
11. Submission of the executed Consulting Agreement between Geripro Dialysis Consultants, LLC. And the applicant. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction. [AER]

7. Construction must be completed by July 30, 2016, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not complete by this date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the construction dates. [AER]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



**Project # 152164-B  
Dialyze Direct NY, LLC**

**Program:** Diagnostic & Treatment Center      **County:** Kings  
**Purpose:** Establishment and Construction      **Acknowledged:** September 16, 2015

**Executive Summary**

**Description**

Dialyze Direct NY, LLC (Dialyze Direct), an existing New York limited liability company, requests approval to establish and construct a freestanding Article 28 home hemodialysis training center. The training center will be located in leased space at 4714 16<sup>th</sup> Avenue, Brooklyn (Kings County). The applicant will provide home hemodialysis training and support services only; offering education and training using NxStage System One Home Hemodialysis equipment. The center will function as a support site for End Stage Renal Disease (ESRD) patients who prefer home hemodialysis.

Dialyze Direct NY, LLC is a wholly owned subsidiary of Dialyze Holdings, LLC whose members are as follows:

Dialyze Holdings, LLC	
<b>Members:</b>	<b>%</b>
Dialyze Manager, LLC	77%
Dialan Consulting, LLC	2%
Dialyze Holdings LP1, LLC	10%
Dialyze Holdings LP2, LLC	6%
Dialyze Holdings LP3, LLC	5%

BFA Attachment A presents the organizational Chart of Dialyze Direct. BFA Attachment D presents the names and ownership interests of The Dialyze Holdings, LLC entities listed above.

**OPCHSM Recommendation**  
Contingent Approval

**Need Summary**

There is no Need Methodology for home training and support. Therefore, there will be no Need review for this project.

**Program Summary**

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

**Financial Summary**

Total project costs of \$723,650 will be funded with equity.

**Budget:**

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,766,564	\$5,957,934
Expenses	<u>\$2,755,669</u>	<u>\$4,267,133</u>
Net Income/(Loss)	(\$989,105)	\$1,690,801

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 an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
4. Submission of a photocopy of Dialyze Holdings, LLC, Second Amended and Restated Limited Liability Company Agreement, amending Article V (3) and Article V (8), acceptable to the Department. [CSL]
5. Submission of a photocopy of Dialyze Direct, NY LLC's Operating Agreement amending Section 5 (c), acceptable to the Department. [CSL]
6. Submission of a photocopy of Dialyze Manger, LLC's Operating Agreement amending Section 5 (d), acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant's proof of site control of the facility, 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]
6. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction. [AER]
7. The applicant shall complete construction by May 1, 2016. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

**December 10, 2015**



## Program Analysis

### Program Proposal

Dialyze Direct NY, LLC proposes to establish and construct a stand-alone home hemodialysis training facility (Article 28 Diagnostic and Treatment Center) at 4714 16th Street in Brooklyn (Kings County).

Dialyze Direct plans to provide education and training to end stage renal patients who prefer home hemodialysis. The center's interdisciplinary team will consist of LPN's and/or certified patient care technicians, a board-certified Medical Director, RN manager, Registered Dietitian and Social Worker. Once training is complete, RNs, LPNs and certified patient care technicians will assist home hemodialysis patients, in their preferred setting, utilizing their own personal dialysis machine, the NxStage Home HemoDialysis machine, which does not require a water source and aims to reduce risk associated with patient-to-patient cross contamination.

Dialyze Direct will have an agreement with a local end-stage renal dialysis center to provide back-up dialysis services for their patients in the event of an emergency that would leave Dialyze Direct unable to render services.

<b>Proposed Operator</b>	Dialyze Direct NY, LLC
<b>Site Address</b>	4714 16th Street Brooklyn, NY (Kings County)
<b>Services</b>	Home Hemodialysis Training and Support
<b>Hours of Operation</b>	Early morning, late afternoon and weekend shifts will be available in order to accommodate patients' preferences.
<b>Staffing (1st Year / 3rd Year)</b>	47.0 FTEs/125.0 FTEs
<b>Medical Director(s)</b>	Allen M. Kaufman, M.D.
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Expected to be provided by provided by Lenox Hill Hospital 13.92 miles/29 minutes
<b>On-call service</b>	Access to facility staff 24/7

### Character and Competence

The proposed members of Dialyze Direct NY, LLC and their membership interests are:

<b>Name</b>	<b>Percentage</b>
<b>Dialyze Manager, LLC</b> H3 Health Group, LLC (100%) Henry Kauftheil [100%]**	<b>77.0%</b>
<b>Dialan Consulting, LLC</b> Allen Kaufman, M.D. (100%)	<b>2.0%</b>
<b>Dialyze Holdings LP1, LLC</b> H3 Health Group, LLC (70%) Henry Kauftheil [100%]** Ira Moosheage-Hagen (30%)**	<b>10.0%</b>
<b>Dialyze Holdings LP2, LLC</b> Shlomo Gornish (50%) Paul Hellman (33.33%) Solomon Rubinfeld (16.67%)	<b>6.0%</b>
<b>Dialyze Holdings LP3, LLC</b> Ira Mooshage-Hagen (40%) Denise Ledvina & Joseph Ledvina (16%) Binyomin Meisels (8%) Hilda Herzfeld (8%) Gerald Maslin Residuary Trust (8%) Jordan Ledvina (20%)	<b>5.0%</b>

**\*\*Members subject to Character & Competence review as ownership interest is 10% or more.**

Mr. Kauftheil, has over 25 years of experience managing and operating multiple businesses in industries that include healthcare, retail and real estate. He also has over three decades of experience in advertising and marketing. Mr. Kauftheil's experience in health and wellness related services include involvement with Care To Care, LLC, a multi-specialty medical benefits management company; Segterra, Inc., a personalized health analytics company; and Selfhealth.me, an integrated, consumer-facing health and wellness platform. Mr. Kauftheil expressed a passion for charity and community service, and he has been involved with several non-profit organizations serving the community, to include youth education, mentoring, and various services for the sick and needy.

The Medical Director, Dr. Allen M. Kaufman, has over 30 years of experience in the field of nephrology. Dr. Kaufman completed his nephrology fellowship at the Mount Sinai School of Medicine and is board certified in Internal Medicine and Nephrology. He is currently an attending physician at Lenox Hill Hospital and has served as Principal Investigator on a number of research initiatives focusing on the improvement of care and management of the dialysis population.

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

*Dr. Kaufman disclosed one (1) open malpractice case.*

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

Recommendation

**From a programmatic perspective, contingent approval is recommended.**

## Financial Analysis

Total Project Costs and Financing

Total project costs estimated at \$723,650 are as broken down as follows:

New Construction	\$484,950
Design Contingency	\$48,495
Construction Contingency	\$24,247
Architect/Engineering Fees	\$56,011
Movable Equipment	\$104,000
CON Fee	\$2,000
Additional Processing Fee	<u>\$3,947</u>
Total Project Cost	\$723,650

Project costs are based on a construction completion date of May 1, 2016.

The project will be fully funded by Mr. Henry Kauftheil, one of the members of Dialyze Direct NY, LLC, who has provided an affidavit attesting to provide this funding. Mr. Kauftheil's net worth is shown as BFA Attachment B.

## Lease Rental Agreement

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

Date:	April 28, 2015
Premises:	4,000 sq. ft. on the 4 <sup>th</sup> floor of the building located at 4714 16 <sup>th</sup> Avenue, Brooklyn, NY
Lessor:	4714 Associates, LLC
Lessee:	Dialyze Direct NY, LLC
Term:	5 Years with 1 (5) year renewal term
Rental:	\$140,000 annually for year one with an annual increase of 3% per year for years two through ten.
Provisions:	The lessee shall be responsible for maintenance, utilities and real estate taxes.

The applicant indicated that the lease arrangement is an arm's length lease. The applicant has submitted letters from two NYS licensed realtors attesting to the reasonableness of the per square foot rental.

## Operating Budget

The applicant submitted an operating budget, in 2015 dollars, for the Years One and Three of operations, summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Treatment</u>	<u>Total</u>	<u>Per Treatment</u>	<u>Total</u>
Revenues:				
Medicare FFS	\$275	\$1,208,900	\$275	\$4,077,150
Commercial FFS	\$325	\$612,300	\$325	\$2,065,050
Charity Care		<u>(\$54,636)</u>		<u>(\$184,266)</u>
Total Revenues		\$1,766,564		\$5,957,934
Expenses:				
Operating	\$425	\$2,665,829	\$204	\$4,311,966
Capital	<u>\$14</u>	<u>\$89,840</u>	<u>(\$2)</u>	<u>(\$44,833)</u>
Total Expenses	\$439	\$2,755,669	\$202	\$4,267,133
Net Income/(Loss):		<u>(\$989,105)</u>		<u>\$1,690,801</u>
Utilization (Treatments):		6,280		21,180

Utilization broken down by payor source for, both Years One and Three, is as follows:

	<u>Utilization</u>
Medicare FFS	70%
Commercial FFS	<u>30%</u>
Total	100%

The following is noted with respect to the submitted budget:

- Revenue assumptions are based on the CMS bundled payment rate adjusted for average comorbidities associated with the target population and based on 20 treatments per patient per month.
- Expense assumptions are based on comparable industry standards for operating a Home Hemodialysis training center, incorporating staffing pattern requirements, supplies and equipment needs.
- Utilization assumptions are based on the current ESRD census in the area and discussions with area skilled nursing facilities that have ESRD patients.

The budget is reasonable.

### Capability and Feasibility

Project costs of \$723,650 will be met entirely from equity as stated above. Working capital requirements are estimated at \$711,189 based on two months of year three expenses. Mr. Henry Kauftheil, one of the members of Dialyze Direct NY, LLC, has provided an affidavit attesting that he will provide the required funds for both the total project costs and the working capital requirement.

BFA Attachment B is the personal net worth statements of Mr. Kauftheil and Dr. Allen Kaufman which indicates Mr. Kauftheil has sufficient liquid resources to cover the equity requirements associated with this application. Dr. Kaufman is not contributing any assets at this time to the facility.

BFA Attachment C is the Pro Forma balance sheet for Dialyze Direct NY, LLC which shows the facility will begin operations with members' equity of \$1,500,000.

The submitted budget projects a net loss of \$989,105 in Year One and a net income of \$1,690,801 in Year Three. The budget is reasonable.

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 Dialyze Direct NY, LLC
- BFA Attachment B Net Worth Statement for the proposed owners of Dialyze Direct NY, LLC
- BFA Attachment C Pro Forma Balance Sheet for Dialyze Direct NY, LLC
- BFA Attachment D List of owners associated with Dialyze Direct NY, LLC

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 10<sup>th</sup> day of December, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a hemodialysis training center to be located at 4714 16th Avenue, Brooklyn, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

152164 B

Dialyze Direct NY, LLC

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
4. Submission of a photocopy of Dialyze Holdings, LLC, Second Amended and Restated Limited Liability Company Agreement, amending Article V (3) and Article V (8), acceptable to the Department. [CSL]
5. Submission of a photocopy of Dialyze Direct, NY LLC's Operating Agreement amending Section 5 (c), acceptable to the Department. [CSL]
6. Submission of a photocopy of Dialyze Manger, LLC's Operating Agreement amending Section 5 (d), acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant's proof of site control of the facility, 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]
6. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction. [AER]
7. The applicant shall complete construction by May 1, 2016. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



**Project # 151108-B**  
**MLAP Acquisition 1, LLC d/b/a Long Beach Nursing and Rehabilitation Center**

**Program:** Residential Health Care Facility      **County:** Nassau  
**Purpose:** Establishment and Construction      **Acknowledged:** March 13, 2015

**Executive Summary**

**Description**

MLAP Acquisition I, LLC, a New York limited liability company, requests approval to be established as the new operator of The Komanoff Center for Geriatric & Rehabilitative Medicine (The Komanoff Center), a voluntary not-for-profit, Article 28 residential health care facility (RHCF) located at 375 East Bay Drive, Long Beach (Nassau County). The RHCF is currently operated by Long Beach Memorial Nursing Home, Inc. (LBMNH), which is related through common ownership to Long Beach Medical Center (LBMC), a now closed hospital located at 455 East Bay Drive, Long Beach. MLAP Acquisition I, LLC member Michael Melnicke, designated manager, has been operating the facility as the Receiver since November 3, 2014. Due to severe damage by Superstorm Sandy in October 2012, the RHCF's certified capacity was reduced from 200 to 150 beds. The applicant requests approval to operate the facility at the current 150-bed certified capacity. Upon approval of this application, the name of the facility will be changed to Long Beach Nursing and Rehabilitation Center. There will be no change in services provided.

A separate entity, MLAP Acquisition II, LLC, will acquire the real property. The applicant will lease the premises from MLAP Acquisition II, LLC. There is a relationship between MLAP Acquisition I, LLC and MLAP Acquisition II, LLC in that the entities have identical membership.

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

Current Operator	
Long Beach Memorial Nursing Home, Inc.	100%

Proposed Operator	
MLAP Acquisition I, LLC d/b/a Long Beach Nursing & Rehabilitation Center	
<b>Members:</b>	<b>%</b>
Alex Solovey	25%
Michael Melnicke	25%
Leopold Friedman	25%
Pasquale DeBenedictis	25%

On February 19, 2014, LBMC and its affiliate, LBMNH, filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. On May 8, 2014, LBMNH and MLAP Acquisition I, LLC entered into an Asset Purchase Agreement (APA) whereby MLAP Acquisition I, LLC agreed to purchase the RHCF operations and certain other assets from LBMNH for \$1,600,000. On May 9, 2014, LBMNH and MLAP Acquisition II, LLC entered into a Purchase and Sale Agreement (PSA) whereby MLAP Acquisition II, LLC agreed to purchase the RHCF real estate from LBMNH for \$14,000,000. The Bankruptcy Court approved the APA and PSA transactions on June 30, 2014, along with essential terms and provisions of a receivership agreement to be entered into between LBMNH and MLAP Acquisition I, LLC. On October 28, 2014, the Bankruptcy Court approved amendments to the APA, PSA, and Form of Receivership, which reduced the total purchase price to \$11,750,000 for the realty, plus the assumption of certain liabilities for the operation. The Receivership

Agreement was approved by the Department of Health on October 22, 2014.

BFA Attachment F presents the ownership of the real property before and after the requested change.

OPCHSM Recommendation  
Contingent Approval

Need Summary

Utilization has been steadily increasing since the facility and the community were devastated by Superstorm Sandy. This change in ownership will maintain a vital resource for the residents of Long Beach.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants identified as new members. The applicant has indicated it will not enter into any consulting and services agreements.

Financial Summary

MLAP Acquisition I, LLC will acquire the RHCF operating assets by assuming certain liabilities valued at \$2,800,000. Concurrently, MLAP Acquisition II, LLC will purchase the real property for \$11,750,000 which will be funded via \$1,175,000 from the members' equity and a \$10,575,000 loan. The loan terms are: 5-years with a 5-year renewal option (Borrower's option), 25-year principal amortization, with an interest rate at 30-day Libor plus 3% float (approximately 3.36% as of 11/11/15) or fixed at 5-Year Libor Swap plus 3% (approximately 4.72% as of 11/13/15). Bank Leumi USA has provided a letter of interest at the stated terms.

There are no project costs associated with this application. The operating budget is as follows:

	<u>Year One</u>
Revenues	\$16,832,500
Expenses	<u>\$15,502,120</u>
Net Income	\$1,330,380



## 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 commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
  - Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
  - Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
3. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
  - Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
  - Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
  - Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
  - Other factors as determined by the applicant to be pertinent. [RNR]
4. Submission and programmatic approval of floor plans for the 150 beds, including the layouts for all nursing units. Plans should also show details of the residential services which will be provided on the first and second floors of the facility. [LTC]
5. Submission of an executed loan commitment for the realty, acceptable to the Department of Health. [BFA]
6. Submission of a working capital loan commitment, acceptable to the Department of Health. [BFA]
7. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
8. Submission of an executed asset purchase agreement, acceptable to the Department of Health. [BFA]
9. Submission of an executed real estate purchase agreement, acceptable to the Department of Health. [BFA]
10. Submission of a photocopy of the executed copy of the Certificate of Amendment of the Articles of Organization of MLAP Acquisition I, LLC, acceptable to the Department. [CSL]
11. Submission of a photocopy of a dated Amended and Restated Operating Agreement for MLAP Acquisition I, LLC, acceptable to the Department. [CSL]

12. Submission of a photocopy of the fully executed Asset Agreement between Long Beach Memorial Nursing Home Inc. d/b/a The Komanoff Center for Geriatric and Rehabilitative Medicine and MLAP Acquisition II, LLC, acceptable to the Department. [CSL]
13. Submission of a photocopy of the fully executed Purchase and Sale Agreement between Long Beach Memorial Nursing Home Inc. d/b/a The Komanoff Center for Geriatric and Rehabilitative Medicine and MLAP Acquisition II, LLC, acceptable to the Department. [CSL]
14. Submission of a photocopy of the fully executed Operating Lease between MLAP Acquisition II, LLC and MLAP Acquisition I, LLC. [CSL]

**Approval conditional upon:**

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Completion of all work detailed in Construction Notice #1178 filed on July 27, 2015. [LTC]
3. The facility meeting all state and federal requirements regarding the site, including the provision of all necessary measures to comply with the 100 year flood plain regulations. [LTC]

Council Action Date

**December 10, 2015**

# Need Analysis

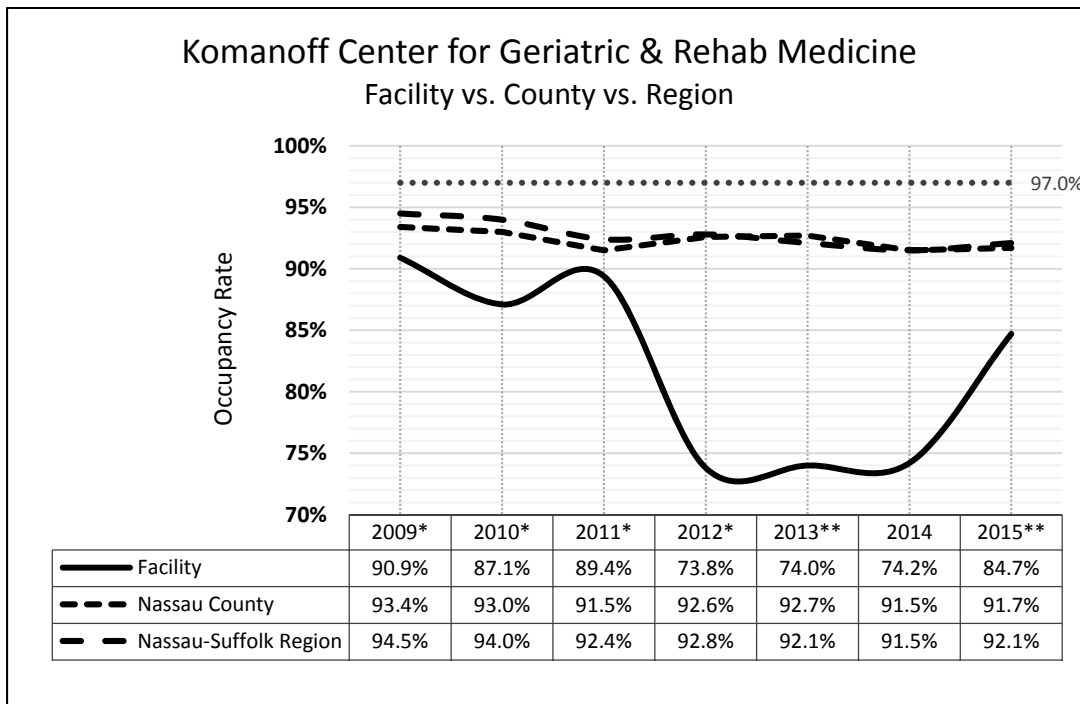
## Analysis

According to the need methodology, there is currently a need for 2,065 beds in the Nassau-Suffolk Region as indicated in following table:

### RHCF Need – Nassau-Suffolk Region

2016 Projected Need	16,962
Current Beds	15,352
Beds Under Construction	-455
Total Resources	14,897
Unmet Need	2,065

The overall occupancy for the Nassau-Suffolk Region has been between 91.5% and 92.8% since 2012 as indicated in the following chart:



\*2009-2012 occupancy based on 200 beds. 2012 occupancy was impacted by Superstorm Sandy.

\*\*unaudited, facility reported data. 2015 is year-to-date.

The applicant noted low utilization due to the following reasons:

- From 2009 through 2012, Komanoff was financially distressed, with losses averaging \$1,000,000 per year. This precluded making necessary capital enhancements to remain competitive in the marketplace.
- In October 2012, the facility was evacuated and shut down due to Superstorm Sandy. The facility experienced extensive damage on the first floor. Prior to that, the facility's occupancy rate for 2012 was 90.4% with approximately 181 of the 200 beds occupied.
- As a result of storm damage, the facility reopened in early 2013 at a reduced capacity of 150 beds.
- In early 2014, Komanoff filed for Chapter 11, which further impacted occupancy rates due to community uncertainty as to the continued operation of the facility.

As a result of receiving a life safety code violation while the CON application was pending, the applicant requested and was granted a limited waiver to complete necessary renovations to the facility that had not

been addressed by the operator after Superstorm Sandy. A construction notice was filed and the scope of the work included:

- Renovation of the west side of the building (left vacant since Superstorm Sandy), administrative offices, and the physical and occupational therapy departments;
- Removal of the existing partitions and ceilings;
- Electrical wiring; and
- Facelift of the existing lobby.

According to the applicant, reopening the first floor of the facility as a contained unit for implementing rehabilitation programs will increase occupancy to the Department's planning optimum. Also, the applicant has been engaged in discussions with South Nassau Communities Hospital (SNCH) regarding a collaboration for the purpose of meeting the needs of the community. The applicant is working to enhance the sub-acute resident program to better serve that population.

Current CMI for the facility is 1.10 and, for the Medicaid-only residents the CMI has increased to 1.07

There are six RHCFS in the county within four miles of the facility, including two others on the Long Beach Barrier Island. Occupancy of these nearby facilities is approximately 96%, with four RHCFS, within the last two months, exceeding the Department's planning optimum, as shown below:

Surrounding Facilities	Distance/Time	Beds	Occupancy	As of
<i>Komanoff Center</i>	0.0	150	89.3%	11/11/2015
South Point Plaza (Bayview)	0.7 mi/3 mins	185	97.8%	11/11/2015
Park Avenue ECF	1.1 mi/6 mins	240	94.2%	11/11/2015
Grandell Rehab & Nursing Ctr	2.1 mi/9 mins	278	98.2%	10/28/2015
Beach Terrace Care Center	2.3 mi/10 mins	182	97.8%	11/11/2015
Oceanside Care Center	3.9 mi/11 mins	100	98.0%	11/18/2015
<b>Area Total</b>		<b>1,135</b>	<b>95.9%</b>	

#### 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.

The Center's Medicaid admissions of 75.0% in 2012 and 94.4% in 2013 far exceeded the Nassau County 75% rates of 14.0% in 2012 and 10.6% in 2013. Komanoff's 2013 Medicaid admissions rate is based on only two months of data as reported by the applicant.

#### Conclusion

Considering Komanoff's pre-Sandy occupancy of 181 out of 200 beds, the current high occupancy of their immediate neighbors, their steady increase in occupancy post-Sandy, as well as recent and planned improvements to the facility, maintaining 150 beds is reasonable. Approval of this application will preserve a community resource.

#### Recommendation

**From a need perspective, contingent approval is recommended.**

# Program Analysis

## Program Description

This application will establish the current receiver, MLAP Acquisition 1, LLC, as the permanent operator of the facility. No negative information has been received concerning the character and competence of the proposed applicants identified as new members. The applicant has indicated it will not enter into any consulting and services agreements.

## Facility Information

	Existing	Proposed
Facility Name	Komanoff Center for Geriatric & Rehab Medicine	Long Beach Nursing and Rehabilitation Center
Address	375 East Bay Drive Long Beach, NY 11561	Same
RHCF Capacity	150	150
ADHC Program Capacity	N/A	Same
Type of Operator	Not for Profit Corporation	Limited Liability Company
Class of Operator	Voluntary	Proprietary
Operator	Long Beach Memorial Nursing Home Inc.  Receivership MLAP Acquisition 1, LLC Michael Melnicke      100%	MLAP Acquisition 1, LLC. <u>Members</u> Pasquale DeBenedictis*    25% Alex Solovey*                25% Michael Melnicke            25% Leo Friedman                 25% *managing members

## Character and Competence - Background

### Facilities Reviewed

Barnwell Nursing and Rehabilitation Center	11/2005 to present
Brooklyn Gardens Nursing and Rehabilitation Center	04/2014 to present
Cassena Care at Norwalk (NH - CT)	06/2013 to present
Caton Park Nursing Home	1/2005 to present
DeWitt Rehabilitation and Nursing Center	06/2015 to present
East Neck Nursing and Rehabilitation Center	02/2005 to present
Hempstead Park Nursing Home	11/2005 to present
Komanoff Center for Geriatric & Rehab Medicine (receiver)	11/3/2014 to present
Mills Pond Dialysis Center LLC (D&TC)	08/2015 to present
Mills Pond Nursing and Rehabilitation Center	10/2010 to present
Morningside Nursing and Rehabilitation Center	07/2014 to present
Park Nursing Home	11/2005 to present
Peninsula Center for Extended Care and Rehabilitation	01/2013 to present
Regency Extended Care Center	11/2005 to present
Rockaway Care Center	11/2005 to present
Sayville Nursing and Rehabilitation Center	12/2012 to present
Shore View Nursing and Rehabilitation Center	06/2014 to present
Workmen's Circle Multicare Center	07/2013 to present

### Individual Background Review

**Pasquale DeBenedictis** is currently employed as the Director of Finance at the Carillon Nursing and Rehabilitation Center, since 1997. Mr. DeBenedictis discloses ownership interests in the following health care facilities:

Barnwell Nursing and Rehabilitation Center	11/2003 to present
DeWitt Rehabilitation and Nursing Center	06/2015 to present
East Neck Nursing and Rehabilitation Center	02/2005 to present
Mills Pond Nursing and Rehabilitation Center	10/2010 to present

Morningside Nursing and Rehabilitation Center	07/2014 to present
Peninsula Nursing and Rehabilitation Center	08/2014 to present
Sayville Nursing and Rehabilitation Center	12/2012 to present
Shore View Nursing and Rehabilitation Center	06/2014 to present
Workmen's Circle Multicare Center	07/2013 to present
Cassena Care at Norwalk (NH - CT)	06/2013 to present
Mills Pond Dialysis Center LLC (D&TC)	08/2015 to present

Mr. DeBenedictis has received Public Health and Health Planning Council approval to operate Sea-Crest Nursing and Rehabilitation, Workmen's Circle Dialysis Center (D&TC), and Cassena Care Dialysis at Peninsula (D&TC). These facilities are not included in the character and competence review because the applicant has not closed on the purchases.

**Alex Solovey** is a New York State licensed physical therapist, since 1994, considered to be in good standing. He is the founder and CEO of Theradynamics Physical Therapy Rehabilitation P.C. since 1999. Mr. Solovey discloses ownership interests in the following residential health care facilities:

Barnwell Nursing and Rehabilitation Center	11/2003 to present
DeWitt Rehabilitation and Nursing Center	06/2015 to present
East Neck Nursing and Rehabilitation Center	02/2005 to present
Mills Pond Nursing and Rehabilitation Center	0/2010 to present
Morningside Nursing and Rehabilitation Center	07/2014 to present
Peninsula Nursing and Rehabilitation Center	08/2014 to present
Sayville Nursing and Rehabilitation Center	12/2012 to present
Shore View Nursing and Rehabilitation Center	06/2014 to present
Workmen's Circle Multicare Center	07/2013 to present
Cassena Care at Norwalk (NH - CT)	06/2013 to present
Mills Pond Dialysis Center LLC (D&TC)	08/2015 to present

Mr. Solovey has received Public Health and Health Planning Council approval to operate Sea-Crest Nursing and Rehabilitation, Workmen's Circle Dialysis Center (D&TC), and Cassena Care Dialysis at Peninsula (D&TC). These facilities are not included in the character and competence review because the applicant has not closed on the purchases.

**Michael Melnicke** is a licensed nursing home administrator in the states of New York and Connecticut and is considered to be in good standing. Mr. Melnicke previously held nursing home licenses in the states of Florida, California, and New Jersey which are currently expired. Mr. Melnicke discloses the following ownership interests:

Park Nursing Home	01/1987 to present
Rockaway Care Center	01/1992 to present
Regency Extended Care Center	01/1993 to present
Caton Park Nursing Home	01/1994 to present
Hempstead Park Nursing Home	01/1998 to present
Peninsula Center for Extended Care & Rehabilitation (rec/op)	01/2013 to present
Brooklyn Gardens Nursing and Rehabilitation Center	04/2014 to present
Komanoff Center for Geriatric & Rehab Medicine (receiver)	11/3/2014 to present

Mr. Melnicke has received Public Health and Health Planning Council approval to operate Cassena Care Dialysis at Peninsula (D&TC). This facility has not been included in the character and competence review because the applicant has not closed on the purchase.

**Leopold Friedman** is the Chief Executive Officer, since 2006, of Advanced Care Staffing, Inc., a healthcare staffing agency. Mr. Friedman discloses the following ownership interests:

Peninsula Center for Extended Care & Rehabilitation	01/2013 to present
DeWitt Rehabilitation and Nursing Center	07/2015 to present
Brooklyn Gardens Nursing & Rehabilitation Center	07/2014 to present
Hendon Garden Nursing and Rehabilitation Center	11/2014 to present
Ultimate Care, Inc. (LHCSA)	02/2010 to present
Highland View Care Center (receiver)	02/2015 to present

Mr. Friedman has received Public Health and Health Planning Council approval to operate Brooklyn Gardens Dialysis Center (D&TC), Highland View Care Center (receiver since 02/03/2015), and Cassena Care Dialysis at Peninsula (D&TC). The applicant has not closed on these purchases.

#### Character and Competence - Analysis

A review of Barnwell Nursing and Rehabilitation Center for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to Stipulation and Order NH-15-001 issued January 12, 2014 for surveillance findings on March 13, 2012. Deficiencies were found under 10 NYCRR 415.12(h)(1) – Quality of Care : Accidents/Supervision.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-15-038 for surveillance findings on February 1, 2013. Deficiencies were found under 10NYCRR 415.12(m)(2) Quality of Care Significant Medication Errors; 10NYCRR 415.26 Administration; and 10NYCRR 415.27 Quality Assurance.
- The facility was fined \$8,000 pursuant to Stipulation and Order NH-15-038 for surveillance findings on September 26, 2013. Deficiencies were found under 10NYCRR 415.4(b)(1)(2)(3) Free from Mistreatment Neglect and Misappropriation of Property; and 10NYCRR 415.12 Quality of Care Highest Practicable Potential.
- The nursing home paid a CMP of \$5,000 for Immediate Jeopardy on 2/1/13.
- The nursing home paid a CMP of \$8,000 for Immediate Jeopardy on 9/26/13.

A review of the Regency Extended Care Center for the period identified above reveals the following:

- That the facility was fined \$2,000 pursuant to a Stipulation and Order for surveillance findings on November 17, 2005. Deficiencies were found under 10 NYCRR 415.12 – Quality of Care.

A review of the Hempstead Park Nursing Home for the period identified above reveals the following:

- The facility was fined \$10,000 pursuant to Stipulation and Order NH 12-001 for surveillance findings on January 9, 2009. Deficiencies were found under 10 NYCRR 415.12 — Quality of Care.
- The facility was fined \$8,000 pursuant to Stipulation and Order 11-066 for surveillance findings on September 28, 2011. Deficiencies were found under 10 NYCRR 415.4(b) – Mistreatment/Neglect, Policies and Procedures; 10 NYCRR 415.4(b)(1)(ii) – Investigate/Report, Allegations; 10 NYCRR 415.5(g)(1)(i–xv) – Medically Related Social Services; and 10 NYCRR 415.26 – Administration.
- The nursing home paid a CMP of \$1300 for Immediate Jeopardy on April 11, 2008.
- The facility incurred a \$48,680 CMP related to an Immediate Jeopardy from 10/7/10-11-26-10. The action is currently under appeal.

A review of operations for Park Nursing Home for the period identified above reveals the following:

- The facility was fined \$6,000 pursuant to a Stipulation and Order for surveillance findings on May 14, 2008. Deficiencies were found under 10 NYCRR 415.12 - Quality of Care, 10 NYCRR 415.15(b)(1)(i)&(ii) – Medical Services: Physician Services; and 10 NYCRR 415.18(a) – Pharmacy Services.
- The nursing home paid a Civil Monetary Penalty (CMP) of \$5,550 for an Immediate Jeopardy on April 9, 2013 which did not receive a corresponding state enforcement.

A review of operations for Barnwell Nursing and Rehabilitation Center, Park Nursing Home, Regency Extended Care Center, and Hempstead Park Nursing Home for the period identified above, results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of operations for Brooklyn Gardens Nursing & Rehabilitation Center, Carillon Nursing & Rehabilitation Center, Caton Park Nursing Home, East Neck Nursing and Rehabilitation Center, Hendon Garden Nursing and Rehabilitation Center, Highland View Care Center, Kamanoff Center for Geriatric and Rehab Medicine, Mills Pond Nursing and Rehabilitation Center, Morningside Nursing and Rehabilitation Center, Rockaway Care Center, Sayville Nursing and Rehabilitation Center, Peninsula Center for Extended Care and Rehabilitation and Workmen's Circle Multicare Center for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

The applicant has submitted an affidavit which attests that there have been no enforcement actions for Cassena Care at Norwalk in the State of Connecticut for the periods identified above which results in a conclusion of substantially consistent high level of care.

A review of operations for Mills Pond Dialysis Center, LLC (D&TC) and Carillon Dialysis Center (D&TC) for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of Ultimate Care LLC (LHCSA) for the periods identified earlier, results in a conclusion of substantially consistent high level of care since there were no enforcements.

#### Project Review

When Superstorm Sandy struck in 2012 the Komanoff Center for Geriatric & Rehab Medicine (Kamanoff) was rendered uninhabitable with all residents evacuated to other nursing homes. The ground floor was severely damaged and would require a gut renovation before residents could return. Following the repair of the electrical and life safety systems the nursing home reopened in February 2013 at a reduced capacity of 150 beds, with the first floor unoccupied. The Center has been staffed and operated as a 150 bed nursing home while the first floor underwent renovation to house the services which were relocated to the second floor in order to re-occupy the facility.

Following the bankruptcy bidding process Long Beach Memorial Nursing Home, Inc. (LBMNH) and MLAP Acquisition I, LLC (MLAP) entered into an Asset Purchase Agreement. On May 9, 2014, MLAP agreed to purchase the nursing home building. The Bankruptcy Court approved these transactions on June 30, 2014. On October 28, 2014, the Bankruptcy Court approved Amendments to the Asset Purchase Agreement, the Purchase and Sale Agreement and the Form of Receivership Agreement, which enabled the nursing home to be operated as a receivership.

Subsequent to a survey citing the facility for life safety deficiencies, the applicant was granted a limited waiver to complete renovations to the facility. On July 27, 2015 a Construction Notice was filed to undertake nearly \$2 million in renovations. The scope of the project will include the renovation of the West side of the building, which has been vacant since Superstorm Sandy. The work includes removal of the existing partitions and ceilings, electrical wiring and miscellaneous wiring for the reconstruction of the facility. The project also provides for a facelift of the existing lobby, administrative offices, physical therapy and occupational therapy departments.

#### Conclusion

This application will establish the current receiver, MLAP Acquisition 1, LLC, as the permanent operator of the facility. The receiver has filed Construction Notice #1178 to address physical plant deficiencies cited on a recent survey. The nearly \$2 million in construction will address necessary renovations to the facility. The facility is currently operating in receivership and as a result of this application the facility will be approved to permanently operate at a capacity of 150 beds.

No negative information has been received concerning the character and competence of the proposed applicants identified as new members. The applicant has indicated it will not enter into any consulting and services agreements.

#### Recommendation

**From a programmatic perspective, contingent approval is recommended.**



## Financial Analysis

### Asset Purchase Agreement

The applicant submitted a draft Asset Purchase Agreement to acquire the operating interests of the RHC, summarized as follows:

Date:	May 8, 2014
Seller:	Long Beach Memorial Nursing Home, Inc.
Buyer:	MLAP Acquisition I, LLC
Asset Acquired:	Transfer, assign, convey all title and interest in the purchased assets used exclusively in the business including: real property leases; furniture and equipment, inventory, all other tangible personal property; intellectual property license; assigned contracts; documents relating to services provided; permits; Medicare and Medicaid provider numbers; goodwill and other intangible assets; menus, policy/procedures manuals; telephone/telefax numbers; security deposits and prepayments; accounts receivables generated on and after the Closing Date, relating to periods on and after the Closing Date, and all cash maintained by the Purchaser, subject to terms of the receivership agreement.
Excluded Assets:	Cash, cash equivalents, bank deposits and all pre-closing accounts receivable, any refunds prior to the closing date, personnel files of employees not hired by the purchaser, documents not permitted by law to be transferred, any right to receive or expectancy of seller in any charitable gift, grant bequest or legacy. All other assets and properties of seller that are subject to the real estate contract.
Assumption of Liabilities:	Liabilities related to operation of the facility prior to the Closing.
Purchase Price:	Assumption of Liabilities approximately estimated at \$2,800,000, which will be reconciled at the closing date. These amounts are based on schedules received by the applicant in the bankruptcy proceedings.
Payment of Purchase Price:	Liabilities assumed at Closing.

The applicant submitted an original affidavit, acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Outstanding Medicaid liabilities due the Department totaled \$255,329 as of September 7, 2015.

### Real Estate Purchase Agreement

The applicant submitted a draft Purchase and Sale Agreement for the purchase of the property, summarized as follows:

Date:	May 9, 2014
Seller:	Long Beach Memorial Nursing Home, Inc.
Buyer:	MLAP Acquisition II, LLC
Asset Transferred:	All rights, title and interest in the real property including the land, buildings, structures and improvements, fixtures.
Purchase Price:	\$11,750,000
Payment of Purchase Price:	5% of purchase price deposited, held in Escrow; Balance due at Closing.

The purchase agreements are consistent with the Bankruptcy Court orders. The purchase price for the realty is as follows:

Equity	\$1,175,000
Loan (30-day Libor + 3% floating or fixed 5-Year Libor Swap + 3%, 5-year term with a 5-year renewal at Borrower's option, 25-year amortization)	<u>\$10,575,000</u>
Total	<u>\$11,750,000</u>

Bank Leumi USA, an international global banking system, has provided a letter of interest at the above stated terms. Alex Solovey, Michael Melnicke and Pasquale DeBenedictis have submitted affidavits attesting they will personally contribute resources to fund the balloon payment should acceptable financing not available at the time of refinancing. The applicant anticipates obtaining a HUD loan after the five-year term.

BFA Attachment A is the net worth summary for the proposed members of MLAP Acquisition I & II, LLCs, which reveals sufficient resources to meet the equity requirement for the project. It is noted that liquid resources may not be available in proportion to the proposed ownership interest. Alex Solovey, Michael Melnicke and Pasquale DeBenedictis have provided affidavits stating that they are willing to contribute resources disproportionate to their membership interest.

#### Lease Agreement

The applicant has submitted a draft Lease Agreement for the site, summarized as follows:

Premises:	375 East Bay Drive, Long Beach, NY, 11561(Nassau County)
Landlord:	MLAP Acquisition II, LLC
Lessee:	MLAP Acquisition I, LLC
Term:	50 years
Rental:	\$1,500,000 per annum ( \$125,000 per Month)
Provisions:	Tenant is responsible for maintenance, utilities, insurance and real estate taxes.

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting that there is a relationship between the landlord and the tenant in that the entities have the same membership interest.

After the change in the ownership, Medicaid capital reimbursement will be based on return of/return on equity methodology.

#### Operating Budget

The applicant has provided and operating budget, in 2015 dollars, for the first and third years of operations subsequent to the change in ownership, as summarized below:

	<u>Per Diem</u>	<u>Year One</u>	<u>Per Diem</u>	<u>Year Three</u>
<b>Revenues</b>				
Medicaid-MC	\$246.06	\$10,159,900	\$246.06	\$10,159,900
Medicare-MC	\$634.53	\$4,465,200	\$634.53	\$4,465,200
Commercial-FFS	\$384.99	\$1,329,000	\$384.99	\$1,329,000
Private Pay	\$414.98	\$551,100	\$414.98	\$551,100
All Other-Hospice		<u>\$327,300</u>		<u>\$327,300</u>
Total Revenue		\$16,832,500		\$16,832,500
<b>Expenses</b>				
Operating	\$262.23	\$12,881,220	\$262.23	\$12,926,620
Capital	<u>\$ 31.53</u>	<u>\$2,620,900</u>	<u>\$ 31.53</u>	<u>\$2,570,000</u>
Total	\$293.76	\$15,502,120	\$293.76	\$15,496,620
Net Income		<u>\$1,330,380</u>		<u>\$1,335,880</u>

Total Patient Days	53,108	53,108
Occupancy	97%	97%

The following is noted with respect to the submitted budget:

- Actual calendar year 2014 revenues and expenses are not available. As Receiver beginning operations effective November 3, 2014, MLAP Acquisition I, LLC was required to file only a Part I RCHF-4 cost report with the Department that reflected statistical information for dates subsequent to the effective date of receivership.
- Medicaid revenues are projected based on the facility's current 2015 Medicaid FFS rate. Medicare revenues are based on the federal payment rate, reflective of the facility's case mix, per Medicare's prospective payment system in effect for 2015. Private pay and other rates are projected based on similar facilities in the same geographical area.
- Prior to Superstorm Sandy, the facility had a certified capacity of 200 beds and maintained occupancy at 90.4% for the period January 2012 to October 2012. Subsequent to Sandy, the facility was closed and the residents were temporarily transferred to other facilities. The facility reopened in February 2013 at a reduced capacity of 150 beds and occupancy rates have steadily improved from 76% during 2014 up to 84.7% as of September 30, 2015.
- Utilization by payer source for the first year and third year is projected as follows:

	<u>Year One and Three</u>
Medicaid- MC	77.7%
Medicare-MC	13.3%
Commercial-FFS	6.5%
Private Pay / Other	<u>2.5%</u>
Total	100.0%

- The breakeven utilization is projected at 89.9% (49,222 patient days) for the first year.

#### Capability and Feasibility

The purchase price of \$2,800,000 for the operations is based on the assumption of certain liabilities (\$1.7 million of accrued payroll plus \$1.1 million contingent liabilities). Simultaneously, MLAP Acquisition II, LLC will purchase the real property for \$11,750,000 which will be funded with \$1,175,000 in members' equity and a \$10,575,000 loan at the above stated terms. Bank Leumi USA has provided a letter of interest for the real property loan. BFA Attachment I provides an amortization table for the balloon payment after five years. The applicant anticipates obtaining a HUD loan after the five-year term. Proposed realty members Alex Solovey, Michael Melnicke and Pasquale DeBenedictis provided affidavits stating that they are willing to contribute resources disproportionate to their membership interest and have attested that they will personally contribute resources to fund the balloon payment should acceptable financing not be available at the time of refinancing.

The working capital requirement is estimated at \$2,583,686 based on two months of the first year expenses. The applicant will provide \$1,283,686 from the members' equity. The remaining \$1,300,000 will be satisfied through a bank loan for a one-year term at prime plus 0.25% interest (approximately 3.253% as of 11/11/15). Bank Leumi USA has provided letter of interest for the working capital loan. BFA Attachment A, the members' net worth summaries, shows sufficient assets overall to meet both the project and working capital equity requirements, but liquid resources may not be available in proportion to the proposed ownership interest. As noted above, three of the proposed members have provided affidavits stating that they are willing to contribute resources disproportionate to their membership interest.

BFA Attachment B, Pro Forma Balance Sheet of MLAP Acquisition I, LLC d/b/a Long Beach Nursing & Rehabilitation Center, shows the facility will start off with net assets of \$1,800,000.

The submitted budget projects a net income of \$1,330,380 in the first year after the change in ownership. The budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented

statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment C is a summary of The Komanoff Center's 2012-2013 certified financial statements and their internal financial statements as of November 30, 2014. As shown, the entity had an average negative working capital position of \$6,151,854, an average negative net asset position of \$11,515,223 and an average net loss of \$1,328,222 as of November 30, 2014.

MLAP Acquisition I, LLC was awarded receivership of the RHCF and began operations November 3, 2014. BFA Attachment G is an audited-draft financial statement of MLAP Acquisition I, LLC as Receiver for the two month period ended December 31, 2014. As shown, the entity has a positive income of \$206,865, a positive working capital position of \$143,457 and a positive net asset position of \$206,865. BFA Attachment H, the internal financial statements of MLAP Acquisition I, LLC as of September 30, 2015, shows the entity had net income from operations of \$1,752,571.

BFA Attachment E, financial summary of the proposed members' affiliated nursing homes, shows that the facilities have maintained a positive net asset position and had a positive income from operations for the year 2012 through 2014, with the exception of the following facilities:

- Regency Extended Care Center had a negative working capital position for the period shown due to a \$1.2 million line of credit currently classified as a current liability, but will be reclassified as a long term liability on the facility's balance sheet. In addition, there is a reserve of \$1.5 million relating to a potential state audit exposure.
- Hempstead Park Nursing Home had a negative working capital position and a negative net asset position for the period ending December 31, 2014 due to a revenue assessment from 2012 that was due to New York State and \$887,000 payroll related expenses which were not paid out at the end of 2014.

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

Recommendation

**From a financial perspective, contingent approval is recommended.**

## Attachments

BNHLC Attachment A	Quality Measures and Inspection Report
BFA Attachment A	Net Worth of MLAP Acquisition I, LLC's Members
BFA Attachment B	Pro Forma Balance Sheet – MLAP Acquisition I, LLC & MLAP Acquisition II, LLC
BFA Attachment C	Financial Summary- Long Beach Memorial Nursing Home, Inc. d/b/a Komanoff Center for Geriatric & Rehab Center, 2012-2014
BFA Attachment D	MLAP Acquisition I LLC-Proposed Members' Ownership Interest in Affiliated Nursing Home
BFA Attachment E	Financial Summary of Proposed Members' Affiliated Nursing Home
BFA Attachment F	Pre and post Ownership of the Real Property
BFA Attachment G	Audited-Draft Financial Statement from November 2, 2014 to December 31, 2014, MLAP Acquisition I, LLC, As a Receiver
BFA Attachment H	Internal financial Statement as of September 30, 2015 - MLAP Acquisition I, LLC, as a Receiver
BFA Attachment I	Amortization Table

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 10<sup>th</sup> day of December, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish MLAP Acquisition 1, LLC as the new operator of a 150-bed residential health care facility located at 375 East Bay Drive, Long Beach, currently operated as Komanoff Center for Geriatric and Rehabilitative Medicine, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

151108 B

MLAP Acquisition 1, LLC d/b/a Long Beach  
Nursing and Rehabilitation Center

APPROVAL CONTINGENT UPON:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
  - Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
  - Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
3. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
  - Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
  - Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
  - Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
  - Other factors as determined by the applicant to be pertinent. [RNR]
4. Submission and programmatic approval of floor plans for the 150 beds, including the layouts for all nursing units. Plans should also show details of the residential services which will be provided on the first and second floors of the facility. [LTC]
5. Submission of an executed loan commitment for the realty, acceptable to the Department of Health. [BFA]
6. Submission of a working capital loan commitment, acceptable to the Department of Health. [BFA]
7. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
8. Submission of an executed asset purchase agreement, acceptable to the Department of Health. [BFA]
9. Submission of an executed real estate purchase agreement, acceptable to the Department of Health. [BFA]
10. Submission of a photocopy of the executed copy of the Certificate of Amendment of the Articles of Organization of MLAP Acquisition I, LLC, acceptable to the Department. [CSL]

11. Submission of a photocopy of a dated Amended and Restated Operating Agreement for MLAP Acquisition I, LLC, acceptable to the Department. [CSL]
12. Submission of a photocopy of the fully executed Asset Agreement between Long Beach Memorial Nursing Home Inc. d/b/a The Komanoff Center for Geriatric and Rehabilitative Medicine and MLAP Acquisition II, LLC, acceptable to the Department. [CSL]
13. Submission of a photocopy of the fully executed Purchase and Sale Agreement between Long Beach Memorial Nursing Home Inc. d/b/a The Komanoff Center for Geriatric and Rehabilitative Medicine and MLAP Acquisition II, LLC, acceptable to the Department. [CSL]
14. Submission of a photocopy of the fully executed Operating Lease between MLAP Acquisition II, LLC and MLAP Acquisition I, LLC. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Completion of all work detailed in Construction Notice #1178 filed on July 27, 2015. [LTC]
3. The facility meeting all state and federal requirements regarding the site, including the provision of all necessary measures to comply with the 100 year flood plain regulations. [LTC]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.