

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

**COMMITTEE DAY**

**AGENDA**

*September 22, 2016*  
*10:00 a.m.*

*90 Church Street 4<sup>th</sup> Floor, Room 4A & 4B, New York City*

**I. COMMITTEE ON ESTABLISHMENT AND PROJECT REVIEW**

Peter Robinson, Chair

**A. Applications for Construction of Health Care Facilities/Agencies**

**Residential Health Care Facilities - Construction**

**Exhibit # 1**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
1.	132129 C	Brooklyn Center for Rehabilitation and Residential Health Care (Kings County)

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

**Acute Care Services – Establish/Construct**

**Exhibit # 2**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
1.	161389 E	The Burdett Care Center (Rensselaer County)
2.	161400 E	Saratoga Hospital (Saratoga County)
3.	162007 E	New York Community Hospital of Brooklyn, Inc. (Kings County)
4.	162008 E	Lawrence Hospital Center d/b/a New York Presbyterian/Lawrence Hospital (Westchester County)
5.	162009 E	New York Methodist Hospital (Kings County)
6.	162036 E	Bassett Healthcare Network (Otsego County)

**Ambulatory Surgery Centers - Establish/Construct**

**Exhibit # 3**

<u>Number</u>	<u>Applicant/Facility</u>
1. 152377 B	Northern Westchester Facility Project, LLC d/b/a Northern Westchester Regional Surgery Center (Westchester County)
2. 161415 E	Carnegie Hill Endo, LLC (New York County)
3. 161456 E	Manhattan Endoscopy Center, LLC (New York County)

**Dialysis Services - Establish/Construct**

**Exhibit # 4**

<u>Number</u>	<u>Applicant/Facility</u>
1. 161243 B	Cassena Care Dialysis at Morningside (Bronx County)

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

**Exhibit # 5**

<u>Number</u>	<u>Applicant/Facility</u>
1. 152135 E	Delmar Acquisition I LLC d/b/a Bethlehem Commons Nursing and Rehabilitation Center (Albany County)
2. 161156 E	Renaissance Rehabilitation and Nursing Care Center (Dutchess County)
3. 162141 E	The Bethel Methodist Home (Westchester County)

**TO BE DISTRIBUTED UNDER SEPARATE COVER**

**Certified Home Health Agencies - Establish/Construct**

**Exhibit # 6**

<u>Number</u>	<u>Applicant/Facility</u>
1. 161393 E	HCR/HCR Home Care (Clinton County)
2. 161394 E	HCR/HCR Home Care (Schoharie County)
3. 161397 E	HCR/HCR Home Care (Onondaga County)

**C. Home Health Agency Licensures**

**Home Health Agency Licensures**

**Exhibit # 7**

**New LHCSA**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
1.	162118 E	LifeWorx Care LLC (amends and supersedes #2545L) (New York, Bronx, Kings, Richmond, Queens and Westchester Counties)

**Changes of Ownership**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
	2560 L	Dragon Home Care, LLC (Kings, Queens, Bronx, Richmond, New York and Nassau Counties)
	2580 L	Elite Services NY, Inc. (Bronx, Rockland, Nassau, Sullivan, Putnam, Ulster, Dutchess, Westchester, and Orange Counties)
	2600 L	Alere of New York, Inc. (Suffolk, Rockland, Nassau, Sullivan, Putnam, Ulster, Dutchess, Westchester, Orange, Columbia, Kings, Queens, New York, Bronx, and Richmond Counties)
	151259 E	Open Door NY Home Care Services, Inc. (Bronx, Richmond, Kings, Nassau, New York and Queens Counties)
	152024 E	Elite Services NY, Inc. d/b/a Simply the Best Home Care (Fulton, Schenectady, Hamilton, Schoharie, Montgomery, Warren and Saratoga Counties)
	152124 E	Core Care, LLC (Bronx, Queens, Kings, Richmond, Nassau and New York Counties)
	161228 E	Responsible Homecare, Inc. (Kings, Bronx, Queens, Richmond, New York and Nassau Counties)
	161333 E	Supreme Homecare Agency of NY Inc. d/b/a NU Home Care (Queens, Bronx, Kings, Richmond, New York and Nassau Counties)

- 161347 E      Arista Home Care, LLC  
(Kings, Queens, Bronx, Richmond and New York  
Counties)
- 161349 E      Global Home Care, Inc.  
(Kings, Bronx, Queens, Richmond, New York and  
Nassau Counties)
- 161404 E      Elener Associates LLC d/b/a Riverdale Home Care  
Agency  
(Bronx, Kings, New York, Queens, Richmond, and  
Westchester Counties)

**D. Certificates**

**Exhibit # 8**

**Certificate of Amendment of Certificate of Incorporation**

Applicant

1. Prospect Park Nursing Home, Inc.



**Project # 132129-C  
Brooklyn Center for Rehabilitation and  
Residential Health Care**

**Program:** Residential Health Care Facility  
**Purpose:** Construction

**County:** Kings  
**Acknowledged:** September 9, 2013

**Executive Summary**

**Description**

Prospect Park Operating, LLC d/b/a Brooklyn Center for Rehabilitation and Residential Health Care (Brooklyn Center), a 215-bed residential health care facility (RHCF) located at 1455 Coney Island Avenue in the Borough Park neighborhood of Brooklyn (Kings County), is requesting to relocate its outdated facility to the now vacant St. Mary's Hospital at 170 Buffalo Avenue in the Crown Heights neighborhood of Brooklyn. In addition, the applicant is seeking to certify 66 additional beds at the new site. Upon completion of this CON, the total certified bed capacity of the Brooklyn Center will be 281 beds. The former hospital will be substantially renovated as part of the conversion to a RHCF.

Buffalo Ave. Realty Associates, LLC, whose managing member is Daryl Hagler, will purchase the former hospital building and perform the necessary renovations. Prospect Park Operating, LLC will lease the premises from Buffalo Ave. Realty Associates, LLC. There is a relationship between landlord and tenant in that the members have previous business relationships involving real estate transactions of other RHCFs.

**OPCHSM Recommendation  
Contingent Approval**

**Need Summary**

Brooklyn Center's utilization was 96.9%, 96.1%, and 96.1%, for 2012, 2013 and 2014, respectively. Current utilization, as of August 31, 2016 is 98.1%, with four vacant beds.

Based on the average utilization of the surrounding facilities where the proposed site is located, the addition of 66 RHCF beds will help serve the needs of the aging population throughout Kings County and New York City.

**Program Summary**

The project will result in the critically needed replacement of an obsolete nursing facility with a contemporary resident centered nursing home. The new Brooklyn Center will present residents with choice, and offer a home-like environment.

**Financial Summary**

The total project cost is \$79,370,437. However, as the costs exceed the maximum allowable RHCF bed cap cost for renovations, the total project cost for reimbursement purposes is \$74, 594,012.

The total project cost of \$79,370,437 will be met with \$24,223,751 Equity (landlord, Daryl Hagler) and a bank loan of \$55,146,686 at 5% interest for a 10-year term and 25-year amortization period. The applicant has indicated that the landlord intends to refinance when the balloon payment becomes due. The landlord has provided an affidavit attesting that he will provide equity to meet the balloon payment if acceptable refinancing is not available. The projected budget is as follows:

Revenues	\$32,596,594
Expenses	<u>32,192,380</u>
Net Income	\$404,214

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
3. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
  - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
  - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
4. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
  - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
  - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
  - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
  - e. Other factors as determined by the applicant to be pertinent. [RNR]
5. Submission and programmatic review and approval of the final floor plans. [LTC]
6. Submission of a commitment for a permanent mortgage for the project (building acquisition and construction) to be provided from a recognized lending institution at a prevailing rate of interest that is determined to be acceptable to the Department. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
7. Submission of an executed working capital loan commitment acceptable to the Department of Health. [BFA]
8. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-04 for Nursing Homes. [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. Within two years from the date of 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 as prescribed by the related contingency. Once the Medicaid patient admissions standard is reached, the facility shall not reduce its proportion of Medicaid patient admissions below the 75 percent standard unless and until the applicant, in writing, requests the approval of the Department to adjust the 75 percent standard and the Department's written approval is obtained. [RNR]
3. Submission of annual reports to the Department for at least two years demonstrating substantial progress with the implementation of the facility's Medicaid Access Plan as prescribed by the related contingency. Reports will be due within 30 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. For example, if the Operating Certificate Effective Date is June 15, 2017, the first report is due to the Department no later than July 15, 2018. The Department reserves the right to require continued reporting beyond the two year period. [RNR]
4. Construction must start on or before January 1, 2017 and construction must be completed by January 1, 2018, presuming the Department has issued a letter deeming all contingencies have been satisfied 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. [PMU]

Council Action Date

**October 6, 2016**

# Need Analysis

## Background

Prospect Park Operating, LLC, seeks approval to relocate Brooklyn Center for Rehabilitation and Residential Health Care (Brooklyn Center), an existing 215-bed Article 28 residential health care facility (RHCF) located at 1455 Coney Island Avenue, Brooklyn, 11320, in Kings County, to the former St. Mary's Hospital site, located at 170 Buffalo Avenue, Brooklyn, 11213, and certify an additional 66 beds in the new location.

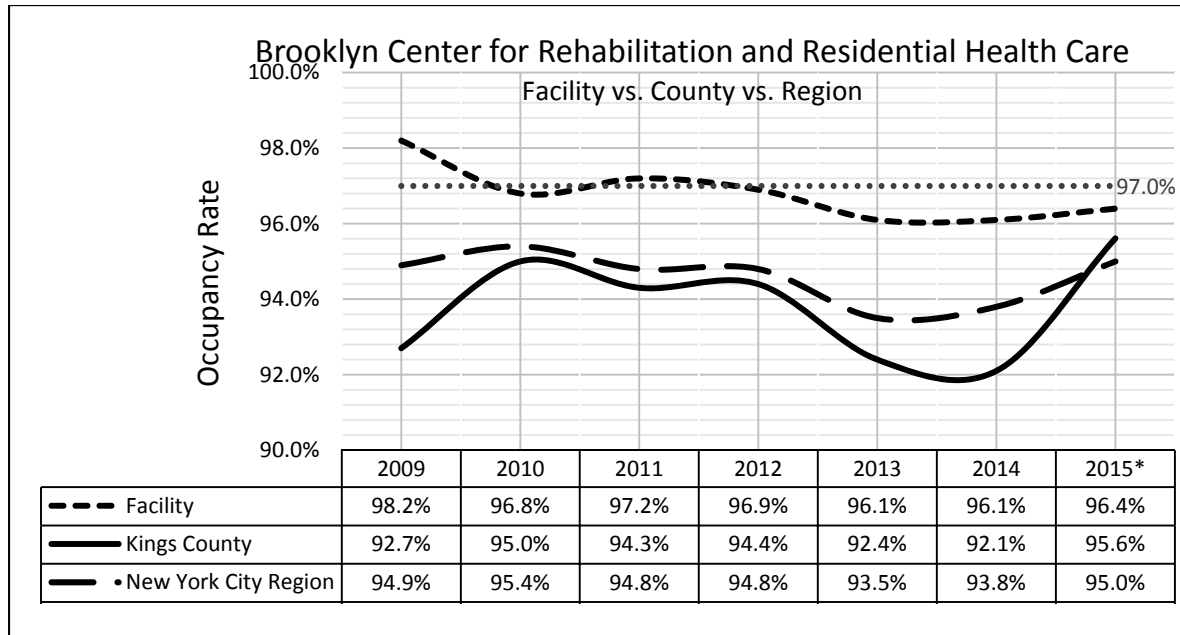
## Analysis

Per the need methodology, there is currently a need for 9,482 beds in the New York Region as indicated below:

### RHCF Need – New York City Region

2016 Projected Need	51,071
Current Beds	41,769
Beds Under Construction	-180
Total Resources	41,589
Unmet Need	9,482

The average RHCF occupancy rate in 2014 for the New York City Region was 93.8%, and 92.1% for Kings County, as indicated in the following chart. However, occupancy in 2015 and year-to-date 2016 has increased to approximately 95% in New York City and 96% in Kings County as of June 15, 2016.



\*unaudited; based off facility reports

Because the New York City Region's overall RHCF utilization rate is below that of the 97% percent planning optimum, there is a presumption of no need for additional beds in the area, as set forth in 709.3(f). However, this subdivision also provides for a rebuttal of this presumption based on local factors in the facility's service area.

Among such factors that may be considered are occupancy rates at other RHCFs. Although the occupancy rate for RHCFs overall in the New York City Planning Region is below the planning optimum of 97%, the facilities in the area of Brooklyn where the proposed new site is to be located demonstrate higher occupancy rates than the Region. The chart below shows facilities within a five-mile radius of the



proposed site, with their respective RHCf bed capacity, 2014 occupancy, and current RHCf occupancy rate, as of June 15, 2016:

Surrounding Facilities*	Distance/Time	RHCf Beds	2014 Occupancy	Current Occupancy
Brooklyn Center	0.0	215	96.1%	97.2%
Brooklyn Gardens	.4 mi/7 mins	240	96.1%	97.9%
Rutland Nursing Home	1.4 mi/9 mins	404	97.2%	94.8%
Schulman & Schachne	1.7 mi/9 mins	300	96.1%	96.7%
Dr. Susan Smith Mckinney	1.7 mi/11 mins	320	97.0%	95.0%
Crown Heights Center	1.9 mi/10 mins	295	92.4%	96.3%
Buena Vida Continuing Care	2.0 mi/13 mins	240	95.5%	91.3%
Concord Nursing Home	2.0 mi/14 mins	123	86.4%	78.0%
Center for Nursing & Rehab	2.4 mi/14 mins	320	97.9%	98.8%
New Carlton Rehab	2.9 mi/20 mins	148	92.1%	90.5%
Oxford Nursing Home	3.0 mi/18 mins	235	92.4%	96.6%
New York Congregational	3.1 mi/18 mins	200	96.7%	95.5%
Atrium Center for Rehab	3.2 mi/15 mins	380	95.9%	97.6%
Spring Creek Rehab	3.5 mi/15 mins	188	95.7%	96.3%
Caton Park Nursing Home	3.8 mi/21 mins	119	96.7%	97.5%
Ditmas Park Care Center	4.2 mi/22 mins	200	96.4%	98.0%
<b>5-mile Radius Total</b>		<b>3,927</b>	<b>95.5%</b>	<b>95.5%</b>

\*Facilities surrounding the *proposed* site.

Brooklyn Center's utilization was 96.9% in 2012, 96.1% in 2013, and 96.1% in 2014. As the table above indicates, the majority of the facilities within five miles of the proposed site have occupancy rates near or above the 97% optimum. According to the applicant, while most of these facilities offer some of the same services as Brooklyn Center, the majority of them do not provide as comprehensive an array of services as those available at Brooklyn Center, such as tracheostomy care, respiratory management, wound care and wound vac, IV antibiotic therapy, complex medical care, enteral nutrition therapy, post-surgical orthopedic care, stroke recovery program, and amputee recovery and training program.

The applicant noted that Brooklyn Center has been distinguished as receiving a 5 star rating on Nursing Home Compare Quality Measures, both overall and in respect to quality measures. Currently, the facility provides quality care to a relatively large population needing short-term rehabilitation (average 32 residents per month in 2013). With respect to this population, the applicant noted Brooklyn Center has better quality indicators when compared to both New York and national averages for:

- Percent of short-stay residents who self-report moderate to severe pain (13.7% vs. 14.7% for NY and 19.3% for the nation); and
- Percent of short-stay residents with pressure ulcers that are new or worsened (0.7% vs. 1.4% for NY and 1.3% for the nation).\*

Brooklyn Center has developed several initiatives that reduce unnecessary hospitalizations. These efforts include:

- The use of an in-house physician;
- Implementation of QA/QI initiatives, which include
  - Implementation of EHR solutions
  - Reevaluating staffing patterns
  - Providing education to staff and physicians on the management of specific diseases processes
  - Education to patients and families on end of life care options

The ability to accept difficult-to-serve residents contributes to Brooklyn Center's relatively high case mix index, which is currently 1.25 overall and 1.23 for Medicaid-only residents. The facility also treats higher acuity residents without hospital assistance, as indicated by its low hospital readmission rate.

Brooklyn Center has developed strong working relationships with Coney Island Hospital and Beth Israel that help ensure the prompt discharge of patients appropriate for RHCf care. With the proposed

relocation site being among financially struggling hospitals in the Bedford-Stuyvesant and Crown Heights neighborhoods of Central Brooklyn, the applicant has the ability to partner with these facilities and provide vital safety net care.

According to the US Census Bureau, American Community Survey (2013), Brooklyn is home to the highest percentage of disabled elderly residents living in poverty, in New York City, as well as the highest percentage of the disabled baby-boomer cohort living in poverty. As a result, the proposed service area is in particular need of affordable long term care. Additionally, in the past six years two nursing homes in Kings County have closed, for a loss of over 250 beds.

#### 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.

Brooklyn Center for Rehabilitation and Residential Health Care's Medicaid admissions of 70.7% in 2013 and 71.0% in 2014 far exceeded the Kings County 75% rates of 24.8% in 2013 and 22.2% in 2014.

#### Conclusion

Approval of this application will result in increased availability of health care services to Brooklyn's safety net population in an modern, code-compliment, home-like setting.

#### Recommendation

**From a need perspective, contingent approval is recommended.**

## Program Analysis

#### Facility Information

	Existing	Proposed
Facility Name	Brooklyn Center for Rehabilitation and Residential Health Care	Same
Address	1455 Coney Island Avenue Brooklyn, NY 11230	170 Buffalo Avenue Brooklyn, NY 11213
RHCF Capacity	215	281
ADHC Program Capacity	N/A	Same
Type of Operator	Limited Liability Company	Same
Class of Operator	Proprietary	Same
Operator	Prospect Park Operating LLC	Same

#### Construction Application Review

Brooklyn Center for Rehabilitation and Residential Health Care is an antiquated 215 bed nursing home located in the Midwood neighborhood in Brooklyn. The existing building dates back to the 1960's, when it was converted from a movie theater to a nursing home. While the nursing home continues to garner a high occupancy rate, it suffers greatly from a residential environment that is sub-standard and institutional. The building does not meet current codes for corridor width, resident amenities and staff support areas,

and the resident rooms are grossly undersized. Almost all of the resident rooms are five-bedded institutional wards with non-ADA compliant toilet rooms.

Recognizing the severe limitations posed by the existing building, Brooklyn has opted to relocate the nursing home into the building formerly housing St. Mary's Hospital in the Crown Heights neighborhood of Brooklyn. St. Mary's was originally part of Interfaith Medical Center. The applicant intends to undertake a gut rehabilitation of the seven-story building to create a contemporary residential environment. The spacious structure will permit the addition of 66 beds without compromising resident care, for a total bed complement of 281 beds.

### **Physical Environment**

The current St. Mary's is located on a 2.34 acre site at 170 Buffalo Avenue. The replacement facility will consist of 259,464 square feet on seven floors with mechanical penthouse, and a cellar with two sub-basement levels. The St. Mary's Hospital building has been largely vacant for a number of years, although the structure remains in decent condition. The applicant intends to undertake significant infrastructure modernization, including the complete replacement of all of the mechanical, electrical and fire safety systems in the sub-cellar levels. The building HVAC will be modernized including new boilers, and a new roof and windows will be installed on the building exterior. The central kitchen will also undergo a complete upgrade, including a separate kosher kitchen.

The design of the facility will attempt to fit a contemporary residential environment into a hospital shell. Usually conversions of hospitals to nursing homes result in an institutional setting with less-than-optimal configurations. But in this case the design largely succeeds in creating a home-like and resident-centered atmosphere, avoiding comparisons to its former acute care past.

The two sub-cellar levels will undergo limited renovation to create additional storage, along with the aforementioned replacement of building systems. The cellar will undergo a radical transformation to a resident service and recreational center. The floor will include the staff dining, staff lockers and central kitchen, and traditional nursing home spaces including dual treatment rooms, dental suite, a beauty salon/spa, a large dining room and a separate country kitchen and "cozy kitchen" dining area. The floor will also feature an innovative "Main Street" with a town square surrounded by shops and socialization venues. Programming for this area will continue through the design development process, but will likely include an arcade, billiards room, large activity/game room with shuffle board and ping pong, coffee bar, an internet café, and an array of stores including a bank, post office, gift shop and even a market. The architect is looking at various alternatives to provide outside light into the below grade area, with refinements expected as the design progresses.

Entry into the nursing home will be made on the first floor through the existing vehicular drop off into a 2,000 square foot lobby. A separate ambulance/staff entrance is available on the opposite side of the floor. A central corridor which ends in the main elevator bank bifurcates the floor into public and residential areas. To the left as you enter is a suite of offices, a 655 square foot admissions office and administrator, nursing, finance and social work offices, and an array of meeting and conference rooms. Past the office suite at the back end is a 6,500 square foot rehabilitation "racetrack" which includes everything from fitness to activities of daily living functions.

Situated to the right of the corridor is a 24-bed short term rehabilitation nursing unit consisting of ten doubles and four singles. The unit is arranged in a traditional bracket with the resident rooms situated along the outside wall. The dining room or "bistro", country kitchen and lounge are located on one side of the nursing station with the clean and soiled utility rooms, multipurpose room and central spa on the other side.

The double resident rooms on the first and most of the second floors employ an innovative design. The resident rooms are a rectangular shaped, longer than they are wide, associated with their previous use as patient rooms. The narrowness of the room constrains the bed placement, but the depth creates opportunities for creative solutions. Entry is made into a sitting area, complete with television, separated from the beds by the bathrooms, (not toilet rooms) located in the center. A head to head bed configuration is dictated by the room dimensions, but the additional socialization opportunities offset the lack of privacy. All the bathrooms throughout the nursing home, both singles and doubles, include 5' by 5' showers, sized to permit staff to assist residents who wish to shower in their own room.

The second floor contains the largest nursing unit, with 27 doubles and six singles, divided into two neighborhoods of 29 and 31 beds. Each neighborhood includes three singles and either 13 or 14 doubles, most being long doubles. Each neighborhood includes a generously sized spa room with stretcher shower and immersive tub, and an attractive lounge towards the end of the unit. A large dining area is in the center of the floor, between the two neighborhoods. The elevator bank is located on the opposite side, with a central core area of support and service functions.

The upper floors are smaller units, with the square footage reduced by the building setbacks. The third floor is the smallest residential unit. Although the schematic design is incomplete, the nursing unit will contain 33 beds; 13 doubles and seven singles. Most of the double bedded rooms will be configured as enhanced doubles, with a partition forming a common headwall between the two beds. The floor will include two lounges, and on-floor dining will take place in the middle of the unit, with a country kitchen available for between-meal snacks. The dining room will open up to an outdoor patio on top of the second floor. The applicant is examining the possibility of planting the space as a “green roof”, enhancing its value as outdoor space. As the design of the floor is refined, attention to reducing the congestion in the service area adjacent to the elevator is needed.

Floors four through seven will contain 40 beds each, consisting of 16 doubles and eight singles. Most of the doubles will be enhanced doubles with a partition separating the beds. The nursing units will employ a conventional design with resident rooms occupying the outside walls, and lounge, dining and service functions in the interior. A single spa room will be available on the floor, but the inclusion of showers in all resident rooms provides adequate bathing capacity. The central dining/country kitchen/activity area requires more development to differentiate the space and improve the circulation within the unit. Similarly, a re-planning of the service areas adjacent to the elevator bank would reduce congestion in the core.

#### Compliance

Brooklyn Rehabilitation and Nursing Center is currently in substantial compliance operationally, however the severe physical plant shortcomings preclude compliance with current Life Safety Code.

#### Project Analysis and Conclusion

The replacement of Brooklyn Rehabilitation and Nursing Center represents a major investment in improving the living conditions for its residents. An obsolete, non-code conforming nursing home building will be eliminated, and residents will transfer to a modern home-like facility providing ample opportunities for socialization and recreation. The contrast between the old and new settings is palpable. In the current building residents sleep in five-bedded wardrooms, bereft of privacy and dignity, in a crumbling outdated building. In the new building residents will wake up in a spacious bedroom and be able to shower in their own bathroom, as they choose. Privacy will be heightened by the room design, with most rooms either singles, or doubles with partitions between the beds or a separate living area.

The new facility will resemble a town, with the residents strolling down Main Street and interacting with each other as they dash into a café to surf the internet, or pick up a couple of items at the general store. Residents will be engaged by the ample recreational venues, and be free to dine where they wish or catch a snack between mealtimes. If the residents prefer to simply “hang out” they will be able to access the variety of lounges scattered throughout the building. Residents will be confronted by something they had never experienced before—choice, and a degree of control over their day to day routine.

#### Recommendation

**From a programmatic perspective, contingent approval is recommended.**

## Financial Analysis

### Building Acquisition Agreement

The applicant has submitted an executed building acquisition agreement, which is summarized below:

Date:	July 29, 2013
Premises:	170 Buffalo Avenue, Brooklyn, New York
Seller:	The Mazel Group, LLC
Purchaser:	Buffalo Ave. Realty Associates, LLC
Purchase Price:	\$19,500,000
Payment of Purchase Price:	\$1,950,000 down payment upon execution of this agreement \$17,550,000 due at Closing.

The purchase price will be met as follows:

Equity (Daryl Hagler)	\$3,900,000
Bank Loan (5% interest, 10-year term, 25-year amortization period)	15,600,000

Mr. Hagler has submitted an affidavit indicating he will provide equity to meet the balloon payment if acceptable refinancing is not available when the payment becomes due.

### Lease Rental Agreement

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

Date	August 5, 2013
Premises	For the site located at 170 Buffalo Avenue, Brooklyn, New York.
Lessor	Buffalo Ave Realty Associates, LLC
Lessee	Prospect Park Operating, LLC
Term	15 years
Rental	\$1,500,000 annually
Provisions	The lessee shall be responsible for taxes, insurance and utilities.

The applicant indicated that the lease agreement will be considered a non-arm's length lease arrangement. However, the applicant has submitted an affidavit attesting to the relationship between the landlord and the operating entity in that the members of each have previous business relationships involving real estate transactions of other RHCF's.

### Total Project Cost and Financing

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$79,370,437, further broken down as follows:

Building Acquisition	\$19,500,000
Renovation and Demolition	41,498,970
Temporary Utilities	4,000,000
Design Contingency	4,149,897
Construction Contingency	4,149,897
Moveable Equipment	2,930,150
Interim Interest Expense	2,731,511
CON Fee	2,000
Additional Processing Fee*	<u>408,012</u>
<b>Total Project Cost</b>	<b>\$79,370,437</b>
<b>Total Reimbursable Project Cost*</b>	<b>\$74,594,012</b>

\* Determined based on maximum allowable RHCF cost per bed cap for renovations.

Project costs are based on a construction start date of January 1, 2017, and a twelve-month construction period.

The Bureau of Architectural and Engineering Review has determined that the costs exceed the maximum allowable RHCF bed cap cost for renovations. It has been determined that the approved total project cost for Medicaid reimbursement purposes is \$74,594,012, subject to allowable costs for the acquisition of the building being held to the lower of the submitted MAI appraisal value or the Medicaid allowable transfer price (MATP). The applicant has submitted an MAI appraisal supporting the value of the building acquisition.

The applicant's financing plan appears as follows:

Equity (landlord, Daryl Hagler)	\$24,223,751
Bank Loan (5% for a 10-year term and a 25-year amortization period.)	55,146,686

The applicant indicated that the landlord intends to refinance when the balloon payment becomes due. Daryl Hagler has submitted an affidavit indicating that if refinancing is not available, he will provide equity to meet the balloon payment.

#### Operating Budget

The applicant has submitted an operating budget for the 281 beds, in 2016 dollars, during the first and third years, summarized below:

	<u>Current Year (2015)</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
<u>Revenues</u>						
Medicaid FFS	\$258.14	\$12,820,137	\$256.62	\$16,346,951	\$256.62	\$16,691,078
Medicaid MC	\$307.18	1,275,398	256.62	1,366,758	\$256.62	1,395,500
Medicare FFS	\$831.58	8,131,150	716.17	8,982,204	\$716.17	9,171,273
Medicare MC	\$383.68	546,357	383.68	700,600	\$383.68	715,563
Commercial FFS	\$326.71	1,821,755	309.45	2,213,186	\$309.45	2,259,913
Commercial MC	\$287.33	1,250,753	287.33	1,604,163	\$287.33	1,638,068
Private Pay	\$543.22	<u>553,545</u>	543.22	<u>709,989</u>	\$543.22	<u>725,199</u>
Total Revenues		\$26,399,095		\$31,923,851		\$32,596,594
<u>Expenses</u>						
Operating	\$256.86	\$19,512,506	\$277.52	\$27,041,108	\$271.80	\$27,041,108
Capital	<u>66.86</u>	<u>5,079,130</u>	<u>53.39</u>	<u>5,201,989</u>	<u>51.78</u>	<u>5,151,272</u>
Total Expenses	\$323.72	\$24,591,636	\$330.91	\$32,243,097	\$323.57	\$32,192,380
Net Income		<u>\$1,807,459</u>		<u>(\$319,246)</u>		<u>\$404,214</u>
Patient Days		75,966		97,437		99,490
Occupancy		96.80%		95.00%		97.00%

Utilization for the 281 beds, broken down by payor source during the current, first and third years, is as follows:

	<u>Current (2015)</u>	<u>Years One and Three</u>
Medicaid FFS	65.38%	65.38%
Medicaid MC	5.47%	5.47%
Medicare FFS	12.87%	12.87%
Medicare MC	1.87%	1.87%
Commercial FFS	7.34%	7.34%
Commercial MC	5.73%	5.73%
Private Pay	1.34%	1.34%

Expense and utilization assumptions are based on the historical experience of the facility. In addition, the applicant will execute and expand on contracts with existing managed long term care plans, including Centers Plan MLTCP, to meet the needs of the nursing home eligible population as it is carved into Managed Care.

#### Capability and Feasibility

The landlord, Buffalo Ave Realty Associates, LLC, will finance \$55,146,686 at an interest rate of 5% for a ten-year term and twenty-five year amortization period. Daryl Hagler, managing member of Buffalo Ave Realty Associates, LLC, intends to refinance when the balloon payment becomes due and has submitted an affidavit indicating that he will provide equity to meet the balloon payment if acceptable refinancing is not available. The remaining \$24,223,751 will be met via equity from the landlord, Daryl Hagler. BFA Attachment A is the personal net worth statement for Daryl Hagler, which indicates the availability of sufficient funds for the equity contribution for the total project cost portion and the balloon payment if refinancing is not available.

Working capital requirements are estimated at \$1,586,037, which is equivalent to two months of third year incremental expenses and takes into account the first year loss. The applicant will finance \$793,018 at an interest rate of 5% for a five-year term. A letter of interest has been submitted in regard to the financing. The members of Prospect Park Operating, LLC will provide equity of \$793,019 to meet the remaining working capital requirement. Kenneth Rozenberg has submitted an affidavit indicating that he will provide equity disproportionate to his ownership interests. BFA Attachment A is the personal net worth statement of the members of Prospect Park Operating, LLC, which indicates the availability of sufficient funds for the equity contribution.

The submitted budget indicates a net income of (\$319,246) and \$404,214 during the first and third years respectively. The first year loss will be offset from the working capital requirement and the proposed member's personal resources. The submitted budget appears reasonable.

BFA Attachment B is the financial summary of Brooklyn Center for Rehabilitation & Residential Health Care Center from 2013 through 2015. As shown, the facility had an average positive working capital position and an average positive net asset position from 2013 through 2015. Also, the entity achieved an average net income of \$1,962,390 from 2013 through 2015.

BFA Attachment D is the 2013-2015 financial summaries of the proposed members' affiliated RHCFs. The facilities have maintained an average positive net asset position and had positive income from operations for the period shown. Some of the facilities had a negative working capital position in 2014 due to CMI and capital reimbursement changes, and vacation and sick time accruals. The applicant indicated that the reason for the losses for Bushwick (2013) and Chittenango Center (2012) was the result of a capital audit take-back.

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

#### Recommendation

**From a financial perspective, contingent approval is recommended.**

## Attachments

BFA Attachment A	Personal Net Worth Statement- Members of Operating Company and Realty Company
BFA Attachment B	Financial Summary- Brooklyn Center for Rehabilitation and Residential Care
BFA Attachment C	Applicant's ownership interest in affiliated RHCF's
BFA Attachment D	Financial summaries of members affiliated RHCF's
BPNR Attachment	Map



**Project # 161389-E  
The Burdett Care Center**

**Program: Hospital  
Purpose: Establishment**

**County: Rensselaer  
Acknowledged: June 2, 2016**

**Executive Summary**

**Description**

The Burdett Care Center is a 15-bed, voluntary not-for-profit, Article 28 hospital located on the second floor of Samaritan Hospital at 2215 Burdett Avenue, Troy (Rensselaer County). The hospital was established under CON 091172 with a five-year limited life to provide maternity services and reproductive-related procedures. The hospital began operations effective October 1, 2011, and submitted this CON before their limited life expiration date requesting approval for a three-year limited life extension. There will be no change in services provided.

The Public Health Council's approval of The Burdett Care Center was initially limited to five years to allow time to confirm that the hospital has integrated medical and midwife models of practice. The applicant indicated the hospital has done so, and has continuously had a midwife on its governing board.

The Burdett Care Center was formed as a result of the October 2011 merger of Northeast Health, Seton Health System and St. Peter's Health Care Services, and the formation of St. Peter's Health Partners. As a condition to merging with two Catholic systems, Northeast Health agreed to cease providing services that were prohibited by Catholic ethical and religious directives, such as tubal ligations and vasectomies. Northeast Health and its subsidiary Samaritan Hospital formed The Burdett Care Center, which was not part of the merger, as a way to preserve the availability of these religiously restricted reproductive-related services for those in the hospital's service area. To assist with the operations of the Center, Samaritan Hospital established a \$5 million Trust for the benefit of

The Burdett Care Center to provide start-up operating and capital funds. The Trustee (M&T Bank) entered into a related Subvention Agreement with The Burdett Care Center obligating a repayment of funds drawn down from the Trust when the Center's financial condition permits. As of December 31, 2015, The Burdett Care Center's audited financial statements indicate they had withdrawn \$3,673,951 from the Trust. As of June 30, 2016, the Trust's Statement of Account Balance reports a balance of \$1,229,918 available to help fund operations.

Samaritan Hospital also entered into a Master Services Agreement with The Burdett Care Center to provide administrative and record keeping, financial, environmental and food services, anesthesia, imaging, pharmacy and infection control services, among others. Under the terms of the agreement, the Center is to compensate the Hospital for the services provided at actual cost. The Center retains ultimate authority and responsibility for its policies, management and overall operations.

**OPCHSM Recommendation**  
Contingent Approval with a three-year extension of the operating certificate from the date of the Public Health and Health Planning Council recommendation letter.



### Need Summary

The hospital is approved for Maternity and Ambulatory Surgery-Multi-Specialty.

Data submission by the applicant, as a contingency of CON 091172, has been completed. Based on CON 091172, The Burdett Care Center projected 1,022 inpatient discharges in Year 1 (2012-1<sup>st</sup> full year) and 2,478 in Year 3 (2014). Medicaid utilization was projected at 42.7 percent for Year 1 and 44.6 percent for Year 3. Based upon data submitted by the applicant, the number of inpatient discharges was 2,409 for Year 1 (2012) and 2,372 for Year 3 (2014). Medicaid utilization was 51.3 percent for Year 1 (2012) and 49.6 percent for Year 3 (2014).

### 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.

<u>Budget:</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$7,644,376	\$7,455,661	\$7,308,888
Expenses	<u>\$7,728,607</u>	<u>\$7,857,584</u>	<u>\$7,883,984</u>
Net Loss	(\$84,231)	(\$401,923)	(\$575,096)

The applicant has not demonstrated the capability to proceed in a financially feasible manner without ongoing support from the Trust set up by Samaritan Hospital. The Trust's purpose was to allow the Center to have sufficient cash reserves for equity and cash flow purposes. The Trust's balance was \$1.23 million as of June 30, 2016, which cannot support losses beyond three years going forward.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Contingent approval of a three-year extension of the operating certificate from the date of the Public Health and Health Planning Council recommendation letter.**

1. Submission of an executed Master Services Agreement, acceptable to the Department. [HSP]
2. Submission of a photocopy of the applicant's executed Master Services Agreement, 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

**October 6, 2016**

## Need Analysis

### Analysis

The primary service area is Rensselaer County. The population of Rensselaer County in 2010 was 159,429 with 31,390 individuals (19.7%) who are females between the ages of 15 and 44, which is the primary population group utilizing maternity services. Per Cornell Program on Applied Demographics (PAD) projection data, this population group is estimated to remain approximately the same with 19.3% of the projected population (31,393 individuals) by 2025.

The table below provides projections and utilization for Year 1 (2012) and Year 3 (2014) based upon CON 091172.

CON 091172	Year 1		Year 3	
	Projected	Actual	Projected	Actual
Inpatient Discharges				
Total	1,022	2,409	2,478	2,372

Burdett Care Center provides for inpatient and outpatient services for maternity, labor and delivery, and sterilization services. Burdett Care Center, a Level 1 Perinatal Center, is a voluntary not-for-profit 15-bed (Maternity) hospital with the following certified services. Northeast Health and its subsidiary Samaritan Hospital formed Burdett Care center as a way to preserve women's access to tubal ligation in conjunction with delivery, while proceeding with their merger with the Catholic system.

Certified Services	
Ambulatory Surgery- Multi Specialty	Clinical Laboratory Service
Clinical Laboratory Service O/P	Maternity
Transfusion Services- Limited	

The table below shows the number of live births in Rensselaer County, and the number of live births occurring at the Burdett Care Center.

	2012	2013	2014
Rensselaer County	1,598	1,750	1,648
Burdett Care Center	1,156	1,184	1,169
Percentage of county births occurring at Burdett Care Center	72.3%	67.7%	70.9%

Source: DOH, annual reports

### Conclusion

Burdett Care Center has been the provider of services for the majority of Rensselaer County births for the past few years. Approval of this project will allow for the continued access to maternity, labor and delivery, and sterilization services for the women of Rensselaer County.

### Recommendation

**From a need perspective, approval is recommended.**

# Program Analysis

## Program Proposal

The Burdett Care Center, an existing hospital located at on the second floor of Samaritan Hospital at 2215 Burdett Avenue in Troy (Rensselaer County), seeks approval for a three-year limited life extension following a five year conditional, limited life approval. The Center was established in Project No. 091172 and its operating certificate expires on October 1, 2016.

Burdett Care Center provides mostly maternity services, but also offers reproductive related procedures such as tubal ligation and vasectomy is an existing hospital located on the second floor of Samaritan Hospital in Troy NY. Burdett was formed when Northeast Health, Seton Health System and St. Peter's Health Care Services merged to form St. Peter's Health Partners. As a condition to merging with two Catholic systems, Northeast Health agreed to cease providing services that violate Catholic Ethical and Religious Directives, (i.e., abortion, tubal ligation and vasectomy). Northeast Health and its subsidiary Samaritan Hospital formed Burdett Care Center as a way to preserve women's access to some prohibited services, while proceeding with their merger with Catholic systems.

When Burdett Care was established by the Public Health Council, it was issued only a five year operating certificate. The time limitation resulted from the PHC's desire to confirm that Burdett Care integrated medical and midwife models of practice. Burdett Care has done that, and also has continuously had a midwife on its governing body.

The members of the Burdett Care Center Board (with their respective positions) is listed below:

<u>Director Name</u>	<u>Position Held</u>
Jane Altes	Board Member
Robert Audi	Board Member, Treasurer
Melody Bruce, MD	Board Member, Vice-Chair
Charlotte Buchanan	Board Member
Ann DiSarro	Board Member, Chair
Lisa Thorn, MD	Board Member
Margaret Holcomb, CNM	Board Member
Alicia Ouellette, JD	Board Member, Secretary
Laura Oswald, MD	Board Member

The Center is not proposing to add any new services and there is no construction or capital cost associated with this project. Staffing will increase by 1.5 FTEs in the first year post-approval and remain at that level through the third year.

## Compliance with Applicable Codes, Rules and Regulations

The medical staff will continue to ensure that procedures performed at the facility conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The facility's admissions policy will include anti-discrimination regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures will be performed in accordance with all applicable federal and state codes, rules and regulations, including standards for credentialing, anesthesiology services, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements.

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

Individual members of the Board disclosed that four St. Peter's Health Partners affiliates (as well as other Capital Region hospitals) were named as defendants in a 2006 Class Action alleging antitrust violations relating to nurse wages. Those lawsuits were settled in 2009-2011.

On August 16, 2010, a Stipulation and Order and a \$2,000 fine was issued to Our Lady of Mercy Life Center for issues related to Quality of Care discovered during a survey of June 1, 2009.

On August 17, 2010, a Stipulation and Order and a \$3,500 fine was issued to Eddy Visiting Nurse Association for issues related to Patient Assessment and Care Planning and Governing Authority.

St. Peter's Hospital (SPH) was one of hundreds of hospitals investigated in a nationwide U.S. Department of Justice investigation of claims for implantable cardioverter defibrillator (ICD) procedures. In August 2015, SPH settled that matter.

Recommendation

**From a programmatic perspective, contingent approval is recommended.**

<h2>Financial Analysis</h2>
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Master Services Agreement

The applicant has submitted an executed master services agreement; the terms are summarized below:

Date:	October 1, 2011
Facility:	The Burdett Care Center
Contractor:	Samaritan Hospital
Services Provided:	Assists The Burdett Care Center. in maintaining appropriate records, reports, claims and compliance programs. Provides administrative, anesthesia, architectural, human resources, financial, legal, linen, mailing, imaging, information technology, nutritional, pharmacy and infection control services.
Term:	Two-years with (4) additional two-year renewals
Fee:	The Center shall pay Samaritan Hospital for services provided at an amount equal to the Hospital's actual costs for providing the services. Billing is to be done on a monthly basis.
Note:	The Burdett Care Center will retain control of all administrative and management responsibilities. The services are to be provided at the request of The Burdett Care Center's CEO, who will make the decisions as to the scope of services being provided.

Operating Budget

The applicant submitted an operating budget, in 2016 dollars, for the first and third years following approval. The budget is summarized below:

	<u>Current Year (2015)</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Disch.</u>	<u>Total</u>	<u>Per Disch.</u>	<u>Total</u>	<u>Per Disch.</u>	<u>Total</u>
<b>Revenues: Inpt.</b>						
Medicaid	\$2,110	\$2,245,941	\$2,121	\$2,278,331	\$2,117	\$2,472,666
Medicare	\$2,430	\$145,823	\$2,453	\$147,181	\$2,425	\$160,113
Commercial	\$3,757	\$3,220,221	\$3,770	\$3,261,681	\$3,758	\$3,536,889
Private Pay	\$2,419	\$145,192	\$2,402	\$146,544	\$2,415	\$159,420
Other Operating *		<u>\$1,159,876</u>		<u>\$902,000</u>		<u>\$259,876</u>
Total Inpt. Rev.		\$6,917,053		\$6,735,737		\$6,588,964
<b>Revenue: Outpt.</b>						
Medicaid	\$197.46	\$141,974	\$197.22	\$140,419	\$197.22	\$140,419
Medicare	\$412.47	\$32,173	\$413.58	\$31,846	\$413.58	\$31,846
Commercial	\$833.02	\$542,296	\$832.22	\$536,779	\$832.22	\$536,779
Private Pay	\$906.67	<u>\$10,880</u>	\$906.67	<u>\$10,880</u>	\$906.67	<u>\$906.67</u>
Total Outpt. Rev.		\$727,323		\$719,924		\$719,924
<b>Total Revenue</b>		\$7,644,376		\$7,455,661		7,308,888

<u>Expenses</u>			
Operating	\$7,226,082	\$7,355,059	\$7,381,459
Capital	<u>\$502,525</u>	<u>\$502,525</u>	<u>\$502,525</u>
Total Expenses	\$7,728,607	\$7,857,584	\$7,883,984
Net Income (Loss)	<u>(\$84,231)</u>	<u>(\$401,923)</u>	<u>(\$575,096)</u>
Discharges	2,041	2,060	2,241
Visits	1,460	1,446	1,446

\* Includes: Electronic Record Incentive Payments of \$1,157,290 in 2015, which are expected to decline by \$900,000 by Year Three, plus nominal interest income and medical record transcript income.

Revenue, expense and utilization projections are based upon a continuation of the Center's current operations.

Utilization by payor for 2015 (actual) and projected for Years One and Three after approval is as follows:

	<u>2015</u>	<u>Year One</u>	<u>Year Three</u>
<u>Inpatient</u>			
Medicaid	52.13%	52.14%	52.12%
Medicare	2.94%	2.91%	2.95%
Commercial	41.99%	41.99%	41.99%
Private Pay	2.94%	2.96%	2.95%
<u>Outpatient</u>			
Medicaid	49.25%	49.24%	49.24%
Medicare	5.34%	5.33%	5.33%
Commercial	44.59%	44.61%	44.61%
Private Pay	.82%	.83%	.83%

The facility shows no charity care utilization due to their active enrollment of uninsured patients into the Medicaid program upon arrival to the Center.

When depreciation expense of \$499,862 is removed from the budget, the facility is able to achieve positive net incomes in the current and first year of \$415,631 and \$97,939 respectively, and has a minimal net loss of \$75,234 in the third year. The applicant believes that with the use of the Trust they will be able to maintain a positive cash flow while implementing the transformation plan over the three-year extension of the limited life. Upon completion of the extended limited life, the applicant believes it will be able to operate at break even or better due to increased utilization and slight changes in the payor mix.

#### Capability and Feasibility

There are no project costs associated with this application. The Burdett Care Center projects operating losses of \$401,923 in Year One and \$575,096 in Year Three subsequent to their initial five-year limited life. Medicaid and Medicare revenues are based on current and projected federal and state governmental reimbursement methodologies, while commercial and private payors are based on actual experience. The budget appears reasonable. The losses are expected to be covered by the Trust set up by Samaritan Hospital to fund start-up operations and capital needs. The Trust is currently valued at approximately \$1.23 million.

BFA Attachment A is the 2014-2015 certified financial statements of The Burdett Care Center, which shows the facility maintained an average positive working capital position, an average negative equity position, and had an average net loss of \$350,832 for the period 2014-2015. The applicant indicated that the reason for the loss was due to significant cost increases in general/malpractice insurance and overall liability and workers compensation premiums. They also experienced significant volume decreases due to the variability of physician providers. To rectify these losses, Burdett is engaging in marketing and

outreach efforts to the community, working with local hospitals and physician groups to encourage OB/GYN recruitment, and strengthen provider relationships. Burdett's insurance brokers were also able to lock in the 2015 premium rate for 2016, to eliminate any additional increases.

BFA Attachment B is the internal financial statements of the Burdett Care Center as of July 31, 2016, which shows the facility maintained a positive working capital position, a negative equity position, and had a net loss of \$869,394 for the period. The reasons for the current year's losses and solutions are the same as stated above.

#### Conclusion

The applicant has not demonstrated the capability to proceed in a financially feasible manner independent of ongoing support from the Trust for the Benefit of The Burdett Care Center that was set up by Samaritan Hospital to fund the Center's start-up and capital cost needs. The Trust was established with a total value of \$5 million and had a balance of approximately \$1.23 million as of June 30, 2016, which will not allow the facility to cover its projected losses beyond approximately three years going forward. Therefore, the Department recommends a three-year extension of the current limited life to allow the applicant time to demonstrate financial feasibility.

#### Recommendation

**From a financial perspective, a three-year extension of the current limited life is recommended.**

## Attachments

BFA Attachment A 2014-2015 Certified Financial Statement for The Burdett Care Center, Inc.  
BFA Attachment B 1/1/2016-7/31/2016 Internal Financial Statement for The Burdett Care Center, Inc.



**Project # 161400-E  
Saratoga Hospital**

**Program: Hospital  
Purpose: Establishment**

**County: Saratoga  
Acknowledged: June 7, 2016**

**Executive Summary**

**Description**

Saratoga Hospital (SH), an existing not-for-profit 171-bed acute care hospital located at 211 Church Street, Saratoga Springs (Saratoga County), requests approval to establish Albany Medical Center Hospital (AMC) as its active parent/co-operator. Active parent status is sought as part of a proposed affiliation between the AMC and SH health care systems, as described in an Affiliation Agreement executed by both parties on May 17, 2016. The goals of the affiliation include optimizing clinical services and health benefits, the creation of a strong and effective long-term relationship between both hospitals, and ensuring that the charitable missions of both facilities are achieved over the long term. The applicant believes the affiliation will foster a comprehensive, integrated, cost-effective and efficient delivery system that better addresses the health care needs of the communities served by SH and AMC.

There will be no change in authorized services or beds resulting from the approval of this project. In addition, there are no projected changes in the utilization, revenues or expenses of SH as a direct result of this project. The 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 the project.

As active parent/co-operator, AMC will have the following rights, powers and authorities with respect to SH:

- Approval of members of the Corporation's board of trustees;

- Approval of capital and operating budgets and strategic plans;
- Amendment, repeal or replacement of the Corporation's Certificate of Incorporation, Bylaws and Medical Staff Bylaws;
- Approval of any voluntary dissolution, merger, consolidation, sale or transfer of substantially all of the Corporation's assets;
- Appointment and/or removal of President and Chief Executive Officer and recommendations regarding removal of senior management;
- Approval of unbudgeted capital expenditures or substitution of budgeted capital expenditures in excess of \$750,000 and approval of incurrence of debt where amount is in excess of \$1,000,000;
- Approval of entry into, renewal or termination of contracts to provide covered healthcare services to beneficiaries of health insurance, managed care or payer contracts;
- Approval of any application by the Corporation for establishment approval, certificate of need and/or modification of its operating certificate;
- Approval of any sale or transfer of the corporation's assets to affiliated entity or third-party entity;
- Approval of any significant changes in Corporation's insurance specifications or limits;
- Approval of any contract for physician services with an annual value greater than \$300,000;



- Approval of hospital operating policies and procedures;
- Approval of significant hospital contracts for management or clinical services; and
- Approval of litigation settlements in excess of \$250,000 over policy limits or other disposition of state or federal governmental administrative proceedings.

Effective upon closing under the Affiliation Agreement, both organizations will have representation on each other's boards and SH will become the sole member of Saratoga Care, Inc., which is currently its passive parent. BFA Attachment A presents the post-closing organizational chart of SH.

OPCHSM Recommendation  
Contingent Approval

#### Need Summary

There will not be any change in beds or services and there are no anticipated utilization changes as a result of this project.

#### Program Summary

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

#### Financial Summary

There are no project costs associated with this application.

## 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 executed Affiliation Agreement by and between Albany Medical Center, Saratoga Care Inc. and the Saratoga Hospital, acceptable to the Department. [CSL]
2. Submission of a photocopy of Saratoga Hospital's executed bylaws, acceptable to the Department. [CSL]
3. Submission of a photocopy of the executed Restated Certificate of Incorporation of the Saratoga Hospital, acceptable to the Department. [CSL]
4. Submission of a photocopy of Albany Medical Center's amended bylaws, 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

**October 6, 2016**

## Need Analysis

### Background

Saratoga Hospital is a 171 bed Article 28 hospital located at 211 Church Street, Saratoga Springs, NY 12866, in Saratoga County. This application requests that Albany Medical Center (AMC) become the active parent/co-operator of Saratoga Hospital.

There are no bed or service changes requested in this project.

### Conclusion

The new affiliation will allow for the implementation of a comprehensive, integrated, cost-effective and efficient delivery system to better serve the health care needs of Saratoga and Albany residents.

### Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Program Proposal

As a result of this affiliation, Saratoga Hospital will become the sole member of Saratoga Care, Inc., which is currently its passive parent. Saratoga Care, Inc. will continue in its role as a supporting foundation for Saratoga Hospital. To strengthen the relationship between the AMC and Saratoga Hospital, each will have representation on the other's Board of Directors.

The purpose of this transaction is to optimize clinical services and health benefits; create a strong and effective long-term relationship between Saratoga Hospital and AMC; and ensure the charitable missions of both hospitals are achieved over the long term. It is expected that all services currently provided by Saratoga Hospital will continue.

### Character and Competence

The following individuals comprise the Officers and Directors of the Albany Medical Center:

Raimundo C. Archibold, Jr., Director	James J. Barba, President & CEO
Mary Gail Biebel, Director	Robert T. Cushing, Chairman
Joyce M. DeFazio, Director	R. Wayne Diesel, Director
Sharon Duker, Director	Peter H. Elitzer, Vice-Chair
Marc N. Fecteau, Director	Margaret Gillis, Director
David Golub, Director	Douglas Hamlin, Vice-Chair
Peter H. Heerwagen, Director	Robert J. Higgins, Director
James O. Jackson, PhD, Director	Robert J. Jones, PhD, Director
Ruth H. Mahoney, Director	Morris C. Massry, Director
Lillian Moy, Esq., Director	John J. Nigro, Director
John B. O'Connor, Director	Steven M. Parnes, M.D., Director
Daniel T. Pickett, III, Director	W. Michael Reickert, Director
John B. Robinson, Jr., Director	Janice Smith, Director
Jeffrey Sperry, Director	Jeffrey Stone, Vice-Chair
Todd M. Tidgewell, Director	Omar Usmani, Director
Candace King Weir, Director	
Matthew Bender, IV**	Mary C. Kahl, PhD**

*\*\* Emeritus Members, not subject to Character & Competence Review.*

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

Mr. Barba disclosed an affiliation with University Heights Association who, in 2006, filed in federal bankruptcy court to prevent the execution of a large judgment against it. The matter was later settled with all debts being fully paid.

Ms. Biebel disclosed that she was a Trustee of Columbia Memorial Hospital. During her period of affiliation, the Department issued a Stipulation and Order and imposed a \$64,000 fine based on investigations of several cases and a focused survey of the Emergency Room. Findings included two cases where an incorrect triage in the ER led to delays in care and deaths. Additionally a death following treatment of a fractured ankle revealed an unsafe administration of sedation.

Mr. Pickett disclosed a civil lawsuit was filed in 2005 by a former employee relating to an interpretation of a stock option plan. The matter was settled out of court in 2013.

Ms. Weir disclosed a pending civil suit dated March 28, 2013 in which a claimant asserted that CL King & Associates and Ms. Weir in her capacity as a "control person" of CL King, had a duty to analyze, determine and notify the claimant regarding potential risks in the account manages on a discretionary basis by an unaffiliated advisor who custodied its business at CL King.

Ms. Weir also disclosed a settlement with the United States Securities and Exchange Commission (SEC). According to an Order dated June 16, 2014, the SEC instituted cease-and-desist proceedings and directed retention of an independent compliance consultant against Ms. Weir and an entity she controlled (Paradigm Capital Management). Sanctions were imposed for violating provisions of the Advisors Act by not providing effective disclosure, or obtaining effective consent, relating to principal transactions involving a hedge fund client and for violating provisions of the Exchange Act by retaliating against the former trader who reported the activity to the government. Ms. Weir and her company agreed to pay \$2.2 million to settle the SEC's charges.

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 and reports from other state regulatory agencies if applicable. The review found that any citations were properly corrected with appropriate remedial action.

On March 8, 2009, a Stipulation and Order and \$6,000 fine was issued by the Department against Albany Medical Center Hospital – South Clinical Campus based on the findings that a pediatric patient was admitted for a left side inguinal hernia. A right side inguinal hernia repair was performed. Further review of records identified multiple instances where the facility was out of compliance with internal policy and state guidelines for performing surgery involving laterality.

#### 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, 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 2014 - 2015 certified financial statements of Albany Medical Center and Related Entities, which shows that the entity had an average positive working capital position and an average positive net asset position from 2014 through 2015. In addition, the entity had positive operating net income for 2014 and 2015.

BFA Attachment C is the 2014 - 2015 certified financial statements of Saratoga Hospital and Affiliate, which shows that the entity had an average positive working capital position and an average positive net asset position from 2014 through 2015. In addition, the entity had positive operating net income for 2014 and 2015.

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

### Recommendation

**From a financial perspective, approval is recommended.**

## Attachments

BFA Attachment A	Organizational Chart
BFA Attachment B	2014-2015 Consolidated Financial Statement, Albany Medical Center and Related Entities
BFA Attachment C	2014-2015 Consolidated Financial Statement, Saratoga Hospital and Affiliate



**Project # 162007-E  
New York Community Hospital of Brooklyn, Inc.**

**Program: Hospital  
Purpose: Establishment**

**County: Kings  
Acknowledged: July 7, 2016**

**Executive Summary**

**Description**

New York Community Hospital of Brooklyn, Inc. (NYCH), a 134-bed, voluntary not-for-profit, Article 28 acute care hospital located at 2525 Kings Highway, Brooklyn (Kings County), requests approval for the dis-establishment of NYHB, Inc. as the active parent and co-operator of the hospital. NYHB, Inc. became the sole member and active parent of NYCH and New York Methodist Hospital (NYM), under CON 121169, which received final Public Health and Health Planning Council (PHHPC) approval on January 11, 2013. Upon disestablishment, NYCH will not have an active parent. The Hospital will be a corporate member of the New York-Presbyterian Regional Hospital Network under a passive parent governing model.

Concurrently under review, NYP Community Programs, Inc. (NYPCP), an existing not-for-profit corporation, is seeking approval to become the sole member, active parent and co-operator of NYM (CON 162009). As part of that application request, NYHB, Inc. will simultaneously be dis-established as active parent and co-operator of NYM.

There are no costs associated with this project and no changes to staffing resulting from approval of this application. The hospital will remain a separate not-for-profit corporation licensed under Article 28 of the New York Public Health Law, maintaining its separate operating certificate following completion of the project. There will be no change in authorized services

or beds as a result of the proposed change in governance structure. This project is an Establishment-only CON related to active parent dis-establishment. Payor rates in the future will be subject to customary and routine negotiation.

BFA Attachment B is the current and proposed organizational charts.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

This change in ownership will not have an impact on utilization, and no changes to the 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 capital cost and no projected incremental change in staffing, operating expense or operating revenues 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 a photocopy of an executed Certificate of Amendment of Certificate of Incorporation of NYHB, Inc., acceptable to the Department. [CSL]
2. Submission of a photocopy of the executed Amended and Restated Bylaws of NYHB, Inc., acceptable to the Department. [CSL]
3. Submission of a photocopy of the enacted New York Community Hospital of Brooklyn's Bylaws, acceptable to the Department. [CSL]
4. Submission of a photocopy of the executed Certificate of Amendment of Certificate of Incorporation of The New York Community Hospital of Brooklyn, Inc., 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

**October 6, 2016**

## Need Analysis

### Project Description

New York Community Hospital of Brooklyn, Inc. (NYCH) is a 134 bed facility located at 2525 Kings Highway, Brooklyn, 11229. NYCH is proposing to disestablish NYHB, Inc. as an active parent and co-operator. Currently, New York Presbyterian Healthcare System, Inc. is the passive parent of NYHB, Inc., and will be the passive parent of NYCH upon approval.

### Conclusion

The re-organization of this part of the New York Presbyterian hospital system will help to create a more integrated and effective network.

### Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Project Proposal

The New York Community Hospital of Brooklyn, Inc. (NYCH), a 134-bed non-profit, acute care hospital, located at 2525 Kings Highway in Brooklyn (Kings County), requests approval of the disestablishment of NYHB, Inc. as its active parent and co-operator.

NYCH will be a corporate member of the NewYork-Presbyterian Regional Hospital Network under a passive parent governing model.

Under a companion CON (162009), NYP Community Programs, Inc. (NYPCP), an existing not-for-profit corporation and active parent of NewYork-Presbyterian/Hudson Valley Hospital and NewYork-Presbyterian/Queens, is seeking approval to become the sole member, active parent and co-operator of NYM. With approval of that application, NYHB will simultaneously be disestablished from NYM.

There will be no changes to staffing, services, or beds concurrent with approval of this application.

### 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

### Capability and Feasibility

There are no project costs or working capital requirements associated with this application.

BFA Attachment A is a summary of the 2014 through 2015 certified financial statements of New York Community Hospital of Brooklyn, Inc. As shown, New York Community Hospital of Brooklyn, Inc. maintained a positive working capital position and net asset position for 2014 and 2015, and experienced a net loss from operations of \$4,201,000 in 2015 due to third party adjustments and a lower CMI.

BFA Attachment B is a summary of the interim financial statements of New York Community Hospital of Brooklyn, Inc. as of March 31, 2016. As shown, New York Community Hospital of Brooklyn, Inc. maintained a positive working capital position and net asset position and experienced a net loss from operations of \$1,260,000 as of March 31, 2016. The applicant indicated that, as of June 30, 2016, NYCH has undertaken the following initiatives to improve operating results:

- Brought on new surgeons in Urology, Orthopedics and Pain Management to obtain an increase in Ambulatory Surgery volume;
- Expanded the Emergency Room, as volume has increased 16% over the past year;
- Worked to improve CMI through better documentation and coding;
- Reduced overtime without affecting patient care;
- Focused on decreasing insurance denials and better revenue cycle management;
- Reduced energy costs through energy saving projects; and
- Reduced 30-day readmissions in coordination with their DSRIP PPS partners.

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	2014 - 2015 Financial Summary of New York Community Hospital of Brooklyn, Inc.
BFA Attachment B	March 31, 2016 Financial Summary of New York Community Hospital of Brooklyn, Inc.
BFA Attachment C	Organizational Charts – Current and Future



Project # 162008-E

Lawrence Hospital Center d/b/a New York  
Presbyterian/Lawrence Hospital

**Program:** Hospital  
**Purpose:** Establishment

**County:** Westchester  
**Acknowledged:** July 7, 2016

## Executive Summary

### Description

Lawrence Hospital Center d/b/a New York Presbyterian/Lawrence Hospital (Hospital), a 288-bed, voluntary not-for-profit, acute care hospital located at 55 Palmer Avenue, Brownsville (Westchester County), requests approval to dis-establish NYP Community Services, Inc. (NYPCS) as their active parent/co-operator and requests approval to establish NYP Community Programs, Inc. (NYPCP), an existing not-for-profit corporation, as their new active parent/co-operator. NYPCS was approved as the Hospital's active parent under CON 132370. Upon approval of this project, the Hospital will change its legal name to New York Presbyterian/Lawrence Hospital (NYP/LH).

As active parent and co-operator, NYPCP will have the following rights, powers and authorities with respect to Lawrence Hospital Center:

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

- Approval of management or clinical services contracts of the Hospital;
- Adoption or approval of an amendment, repeal or other change to the organizational documents of the Hospital, including the adoption of any new By-Laws of the Hospital;
- Approval of settlements of administrative or other litigation or proceedings to which the Hospital is a party.

The applicant indicated that the purpose of this transaction is to establish a coordinated, highly integrated system with the objective of improving quality, increasing access and lowering the costs of health care in the communities served by NYP/LH. There will be no change in either authorized services or beds as a result of approval of this project. Also, there are no projected changes in the utilization, revenues or expenses of the Lawrence Hospital Center as a direct result of this project. The 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 the project. This project is an Establishment-only CON related to active parent formation. Payor rates in the future will be subject to customary and routine negotiation.

BFA Attachment A is the organizational chart of NYP Community Programs, Inc. pre- and post-closing.

OPCHSM Recommendation  
Contingent Approval

Need Summary

This change in active parent will have no impact on utilization, and no changes to beds or certified services at the hospital are proposed. The re-organization of this part of the New York Presbyterian hospital system will help to create a more integrated and effective network.

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 and no projected incremental change in staffing, operating expense or operating revenues 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 a photocopy of the executed Certificate of Amendment of the Certificate of Incorporation of NYP Community Programs, Inc., acceptable to the Department. [CSL]
2. Submission of a photocopy of the executed Amended and Restated By-Laws of NYP Community Programs, Inc., acceptable to the Department. [CSL]
3. Submission of a photocopy of the executed Certificate of Amendment of the Certificate of Incorporation of Lawrence Hospital Center, acceptable to the Department. [CSL]
4. Submission of a photocopy of the executed By-Laws of New York-Presbyterian/Lawrence Hospital, acceptable to the Department. [CSL]
5. Submission of a photocopy of the Certificate of Amendment of the Certificate of Incorporation of NYP Community Services, Inc., acceptable to the Department. [CSL]
6. Submission of a photocopy of the executed Amended and Restated Bylaws of NYP Community Services, Inc., 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

**October 6, 2016**

## Need Analysis

### Project Description

Lawrence Hospital d/b/a NewYork-Presbyterian/Lawrence Hospital (the Hospital) is a 288-bed facility located at 55 Palmer Avenue, Bronxville, 10708. As part of this application, the name of the Hospital will be legally changed to NewYork-Presbyterian/Lawrence Hospital. The current active parent, NYP Community Services, Inc., will be dis-established from the Hospital, and NYP Community Programs, Inc. will become the active parent.

This change in active parent will have no impact on utilization, and no changes to beds or certified services at the hospital are proposed. The re-organization of this part of the New York Presbyterian hospital system will help to create a more integrated and effective network with lower costs for both patients and the Hospital.

### Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Project Proposal

Lawrence Hospital Center d/b/a New York Presbyterian/Lawrence Hospital (Hospital), a 288-bed, voluntary not-for-profit, acute care hospital located at 55 Palmer Avenue, Brownsville (Westchester County), requests approval to dis-establish NYP Community Services, Inc. (NYPCS) as their active parent/co-operator and requests approval to establish NYP Community Programs, Inc. (NYPCP), an existing not-for-profit corporation, as their new active parent/co-operator. NYPCS was approved as the Hospital's active parent under CON 132370. Upon approval of this project, the Hospital will change its legal name to New York Presbyterian/Lawrence Hospital (NYP/LH).

The Hospital will remain a separate not-for-profit corporation licensed under Article 28 and maintaining its separate operating certificate following completion of the project. There will be no change in authorized services or beds as a result of the proposed change in governance structure. There are no anticipated changes in the Hospital's Board or staffing.

### Character and Competence

The board of NYP Community Programs, Inc. consists of:

Steven J. Corwin, M.D.
Kerry DeWitt
Kimlee Roldan-Sanchez
Winston Campbell Patterson, M.D.

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

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint

investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

Capability and Feasibility

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

BFA Attachment B is the 2014 and 2015 certified financial statements of New York Presbyterian Hospital. As shown, the hospital had an average positive working capital position and an average positive net asset position from 2014 through 2015. Also, the hospital achieved an average operating income of \$226,135,000 from 2014 through 2015.

BFA Attachment C is the 2014 and 2015 certified financial statements of Lawrence Hospital Center. As shown, the hospital had an average positive working capital position and an average positive net asset position from 2014 through 2015. Also, the entity incurred average operating losses of \$5,897,500 from 2014 through 2015. The applicant indicated that the reason for the losses were the result of volume decreases resulting from physician relationship changing and the costs associated with increases in nursing and patient care staff to enhance the standard of care at NYP/Lawrence, as well as employee severance payments as a result of a change in leadership. The hospital joined with New York Presbyterian Hospital on July 1, 2014, which established a coordinated and integrated system with the objective of improving quality and increasing access in the communities served by NYP/Lawrence. In order to achieve these goals, additional program and resource investment were required, which should result in enhanced quality, improved patient satisfaction, increased future volume and revenue growth for the Hospital.

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- 2014 and 2015 certified financial statements of New York Presbyterian Hospital
BFA Attachment C	Financial Summary- 2014 and 2015 certified financial statements of New York Presbyterian/Lawrence Hospital.



**Project # 162009-E  
New York Methodist Hospital**

**Program:** Hospital  
**Purpose:** Establishment

**County:** Kings  
**Acknowledged:** July 7, 2016

**Executive Summary**

**Description**

New York Methodist Hospital (NYM), a 591-bed, voluntary not-for-profit, Article 28 acute care hospital located at 506 Sixth Street, Brooklyn (Kings County), is seeking approval to dis-establish NYHB, Inc. as their active-parent/co-operator and is requesting approval to establish NYP Community Programs, Inc. (NYPCP), an existing not-for-profit corporation, as their sole member and active parent/co-operator. As part of this transaction, NYM will change its name to New York-Presbyterian/Brooklyn Methodist. The sole member and passive parent of NYPCP is The New York and Presbyterian Hospital (NYPH).

Under CON 121169, which obtained final approval effective January 11, 2013, NYHB, Inc. became the sole member and active parent of NYM and New York Community Hospital of Brooklyn, Inc. (NYCHB). Under concurrent review, CON 162007 requests to dis-established NYHB as the active parent of NYCHB.

Approval of this application will give NYPCP the ability, as sole corporate member of NYM, to exercise Article 28 active powers over the Hospital and to gain oversight with respect to the Hospital's day-to-day operations as stated in its certificate of incorporation and bylaws, and the active parent powers as described in 10 NYCRR 405.1(c) as follows:

- Appointment of the members of the Board of Trustees of the hospital;
- Appointment or dismissal of officers, managers and medical staff of the hospital;

- Approval of the operating and capital budgets and strategic and operating plans of the hospital;
- Adoption or approval of operating policies and procedures of the hospital;
- Approval of certificate of need applications filed by or on behalf of the hospital;
- Approval of any indebtedness of the hospital;
- Approval of management or clinical service contracts of the hospital;
- Adoption or approval of any amendment, repeal or other change to the organizational documents (including the Certificate of Incorporation and Bylaws) of the hospital, including the adoption of any new By-Laws of the hospital; and
- Approval of settlements of administrative or other litigation or proceedings to which the hospital is a party.

The applicant indicated that the purpose of the transaction is to establish a coordinated, highly integrated system with the objectives of improving quality, increasing access and lowering the costs of health care in the communities served by NYM. There are no costs associated with this project and no changes to staffing, services or beds as a result of the proposed change in governance structure. The hospital will remain a separate not-for-profit corporation licensed under Article 28 of the New York Public Health Law, maintaining its separate operating certificate following completion of the project. This project is an Establishment-only CON related to active parent formation.

OPCHSM Recommendation  
Contingent Approval

Need Summary

The change in active parent will have no immediate impact on utilization, approved services or beds.

Program Summary

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

Financial Summary

There is no capital cost and no projected incremental change in staffing, operating expense or operating revenues 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 a photocopy of the executed Certificate of Amendment of the Certificate of Incorporation of NYP Community Programs, Inc., acceptable to the Department. [CSL]
2. Submission of a photocopy of the executed Amended and Restated By-Laws of NYP Community Programs, Inc., acceptable to the Department. [CSL]
3. Submission of a photocopy of the executed Certificate of Amendment of the Certificate of Incorporation of The New York Methodist Hospital, acceptable to the Department. [CSL]
4. Submission of a photocopy of the executed New York Presbyterian/Brooklyn Methodist Bylaws, acceptable to the Department. [CSL]
5. Submission of a photocopy of the executed Certificate of Amendment of Certificate of Incorporation of NYHB, Inc., acceptable to the Department. [CSL]
6. Submission of a photocopy of the executed Amended and Restated Bylaws of NYHB, 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

**October 6, 2016**

## Need Analysis

### Background

NYP Community Programs, Inc. (NYPCP) is an existing, voluntary not-for-profit corporation at 525 East 68th Street Box 88, New York, NY 10065. NYPCP is currently the active parent and co-operator of two Hospitals in New York State, NewYork-Presbyterian/Hudson Valley Hospital and NewYork-Presbyterian/Queens. The sole member and passive parent of NYPCP is The New York and Presbyterian Hospital, aka NewYork-Presbyterian Hospital.

### Conclusion

This change in ownership will have no impact on utilization, and no changes to beds or certified services at New York Methodist Hospital are being proposed. The applicant believes the proposal will help to create a more integrated and effective network.

### Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Project Proposal

The current sole member and active parent of New York Methodist Hospital is NYHB, Inc. Upon approval, NYM will be disestablished from NYHB, Inc. and its active parent will become NYPCP (whose sole member and passive parent is The New York and Presbyterian Hospital). Upon approval NYM will change its legal name to New York-Presbyterian/Brooklyn Methodist.

The Hospital will remain a separate not-for-profit corporation licensed under Article 28 and maintaining its separate operating certificate following completion of the project. There will be no change in authorized services or beds as a result of the proposed change in governance structure. There are no anticipated changes in staffing with this project. As a result of this proposal, minimal changes shall be made to the Board of NYM (appointment of two new Trustees).

### Character and Competence

The board\* of NYP Community Programs, Inc. consists of:

Steven J. Corwin, M.D.
Kerry DeWitt
Kimlee Roldan-Sanchez
Winston Campbell Patterson, M.D.

*\*All board members were subject to Character and Competence Review*

The proposed members of the Board of NewYork-Presbyterian/Brooklyn Methodist are:

Trustee Name	Position Held
<b>**Brian Regan, PhD</b>	Trustee
<b>**Sharon Greenberger</b>	Trustee
Mark J. Mundy	President & CEO NYM, and Existing Trustee
John E. Carrington, D.Min.	Existing Trustee, NYM
Lawrence H. McGaughey, Esq.	Existing Trustee, NYM
James W. Perkins, Esq.	Existing Trustee, NYM
Robert H. Rodgers, Jr.	Existing Trustee, NYM
Hon. J. Kevin McKay	Existing Trustee, NYM
Charles O'Neil, Esq.	Existing Trustee, NYM

Trustee Name	Position Held
Anthony D. Schlesinger, Esq.	Existing Trustee, NYM
Fredric J. Hugue	Existing Trustee, NYM

*\*\*Mr. Regan and Ms. Greenberger are the only Trustees who were subject to Character and Competence Review.*

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

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

Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

Capability and Feasibility

There are no project costs or working capital requirements associated with this application.

BFA Attachment A is a summary of the 2015 consolidated financial statements of New York Methodist Hospital and their internal financial statements as of May 31, 2016. As shown, NYM maintained a positive working capital position and net asset position for 2015 and as of May 31, 2016, and had a net income from operations of \$80,297,000 in 2015 and \$31,743,000 as of May 31, 2016.

BFA Attachment B is a summary of the 2015 consolidated financial statements of New York and Presbyterian Hospital and their internal financial statements as of May 31, 2016. As shown, NYPH maintained a positive working capital position and net asset position for 2015 and as of May 31, 2016, and had a net income from operations of \$200,353,000 in 2015 and \$118,144,000 as of May 31, 2016.

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 2015 and as of May 31, 2016 Financial Summary of New York Methodist Hospital
- BFA Attachment B 2015 Financial Summary and as of May 31, 2016 internals of New York and Presbyterian Hospital
- BFA Attachment C Organizational Charts – Current and Future



**Project # 162036-E  
Bassett Healthcare Network**

**Program: Hospital  
Purpose: Establishment**

**County: Otsego  
Acknowledged: July 20, 2016**

**Executive Summary**

**Description**

Thurston Corporation d/b/a Bassett Healthcare Network (BHN), a New York not-for-profit (NFP) corporation, seeks approval to be established as the sole member and active parent co-operator of six Article 28 hospitals, an Article 28 Residential Health Care Facility (RHCF) and an Article 36 Certified Home Health Agency (CHHA). The facilities are as follows:

- Mary Imogene Bassett Hospital, a 180-bed, voluntary NFP, acute care hospital located at One Atwell Road, Cooperstown (Otsego County);
- Aurelia Osborn Fox Memorial Hospital, a 60-bed, voluntary NFP, acute care hospital located at One Norton Avenue, Oneonta (Otsego County);
- Bassett Hospital of Schoharie County d/b/a Cobleskill Regional Hospital, a 40-bed, voluntary NFP, acute care hospital located at 178 Grandview Drive, Cobleskill (Schoharie County);
- O'Connor Hospital, a 23-bed, voluntary NFP, critical access hospital located at 460 Andes Road, Delhi (Delaware County);
- Little Falls Hospital, a 25-bed, voluntary NFP, critical access hospital located at 140 Burwell Street, Little Falls (Herkimer County);
- Tri Town Regional Healthcare, a 4-bed, voluntary NFP, acute care hospital located at 43 Pearl Street West, Sidney (Delaware County);
- Valley Health Services, Inc., a 160-bed, voluntary NFP, RHCF located at 690 West German Street, Herkimer (Herkimer County); and

- At Home Care, Inc., a voluntary NFP, CHHA located at 25 Elm Street, Oneonta (Otsego County), that serves Chenango, Delaware, Herkimer, Otsego and Schoharie counties.

Thurston Corporation will change its name to Bassett Healthcare Network upon approval of this application. Currently, Thurston Corporation is the sole member of Mary Imogene Bassett Hospital, A.O. Fox Memorial Hospital and Bassett Regional Corporation. Bassett Regional Corporation, in turn, is the sole member of Cobleskill Regional Hospital, O'Connor Hospital, Valley Health Services, Inc., Little Falls Hospital and Tri Town Regional Hospital. A.O. Fox Memorial Hospital and Mary Imogene Bassett Hospital will remain the sole corporate members of At Home Care Inc. under the new structure. BFA Attachment A shows the current and future organizational charts of the governance models.

There are no other changes as a result of this application.

Approval of this application will give BHN oversight authority of the entities with respect to day-to-day operations, as stated in the certificate of incorporation and bylaws, and the ability to exercise Article 28 active powers over the Article 28 facilities as described in 10 NYCRR 405.1(c) as follows:

- Appointment and removal with or without cause of all persons that serve on the governing boards of the subsidiary corporations;

- Appointment of the chairperson of each governing board of the subsidiary corporation, with the approval of the governing board of each subsidiary corporation;
- Appointment of the president of each subsidiary corporation, with the approval of the governing board of each subsidiary corporation;
- Approval of any new mission statement or change to an existing mission statement of each subsidiary corporation;
- General oversight of the governance of all subsidiary corporations, including approval of all investment policies;
- Coordination of the policies and procedures among the subsidiary corporations;
- Approval of all operating and capital budgets of the subsidiary corporations;
- Approval of all capital expenditures that exceed budgeted capital expenditures by 5% or more or the reallocation of capital expenditures contained in an approved budget by 5% or more;
- Approval of all indebtedness of the subsidiary corporations other than vendor indebtedness not otherwise included in the subsidiary corporation's approved budget;
- Approval of all third-party payer agreements, including managed care contracts, for each subsidiary corporation;
- As determined by the Bassett Healthcare Network Chief Executive Officer, approval of all substantive clinical program changes of the subsidiary corporations;
- Approval of all mergers, consolidations, divisions, liquidations, dissolutions and conversions involving the subsidiary corporations;
- Approval of all certificate of need applications of the subsidiary corporations; and
- Approval for all amendments to the certificates of incorporation and bylaws of the subsidiary corporations.

The applicant indicated that this reorganization will facilitate the development of health services to one of the most rural and poorest areas of New York, and is designed to accomplish the following objectives shared by BHN and the subsidiary corporations:

- Permit the system to focus on strategic plans, system-wide policies, and system-wide resource allocations;
- Optimize and rationalize the operation of the system;
- Align budgets and financial planning consistent with the system's strategic plan;
- Centralize authority over key matters while permitting local authority as certain issues;
- Permit the application of common quality standards across the system;
- Facilitate the development of population based health initiatives and other innovations across the system; and
- Help attract high quality health care professionals to all parts of the system.

#### OPCHSM Recommendation Contingent Approval

#### Need Summary

There will not be any change in beds or services and there are no anticipated utilization changes as a result of this project.

#### Program Summary

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

#### Financial Summary

There are no capital costs or projected incremental changes in operating expense or operating revenues 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 documentation of approval by the Office of Mental Health, acceptable to the Department. [PMU]
2. Submission of a photocopy of the amended and executed bylaws of AO Fox Hospital, acceptable to the Department. [CSL]
3. Submission of a photocopy of the amended and executed bylaws of Cobleskill Regional Hospital, acceptable to the Department. [CSL]
4. Submission of a photocopy of the amended and executed bylaws of Valley Health Services, acceptable to the Department. [CSL]
5. Submission of a photocopy of the amended and executed bylaws of Little Falls Hospital, acceptable to the Department. [CSL]
6. Submission of a photocopy of the amended and executed bylaws of Tri-Town Regional Hospital, acceptable to the Department. [CSL]
7. Submission of a photocopy of the amended and executed Operating Agreement of First Community Care of Bassett, LLC, acceptable to the Department. [CSL]
8. Submission of a photocopy of the amended and executed bylaws of the Mary Imogene Bassett Hospital d/b/a Bassett Medical Center, acceptable to the Department. [CSL]
9. Submission of a photocopy of the amended and executed bylaws of O'Connor Hospital, acceptable to the Department. [CSL]
10. Submission of a photocopy of the amended and executed bylaws of At Home Care, Inc., acceptable to the Department. [CSL]
11. Submission of a photocopy of the amended and executed bylaws of First Community Care of Bassett, acceptable to the Department. [CSL]
12. Submission of a photocopy of the executed Certificate of Amendment of the Certificate of Incorporation of the Thurston Corporation d/b/a the Bassett Healthcare Network, 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

**October 6, 2016**

## Need Analysis

### Analysis

The Health System consolidation under an active parent co-operator structure should provide many benefits along with being in line with the DSRIP initiative of improved and coordinated care. The primary service area encompasses 5,600 square miles in all or part of eight counties in Central New York. The System will include six hospitals with 346 beds, 16,400 annual admissions and 841,000 annual outpatient visits; two nursing homes with 290 beds; home health care agencies with 62,500 visits per year; and 4,400 employees.

This reorganization will play a substantial role in facilitating the development of health services in one of the most rural, and poorest, areas of New York. Currently, the area is seeing a population that is aging and in decline.

### Conclusion

This project will allow the health system to focus on coordinated strategic plans, system-wide policies, and system-wide resource allocations, optimize and rationalize the operation of the system, align budgets and financial planning consistent with the system's strategic plan, permit the application of common quality standards across the system, facilitate the development of population based health initiatives and other innovations across the system, and help attract high quality health care professionals to all parts of the system.

### Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Program Proposal

Bassett Healthcare Network seeks approval to become the active parent/co-operator over the service providers and related entities in the "Bassett System."

Currently, Thurston Corporation (doing business as "Bassett Healthcare Network") is a New York not-for-profit corporation with several individuals as members. Thurston Corporation is a member with limited powers over the Mary Imogene Bassett Hospital in Cooperstown, A.O. Fox Memorial Hospital in Oneida, and Bassett Regional Corporation. Bassett Regional Corporation, in turn, is a member of several health care providers in the region.

Upon approval of this reorganization project, Thurston will change its name to Bassett Healthcare Network (BHN) and become the active parent over the following:

- The Mary Imogene Bassett Hospital d/b/a Bassett Medical Center
- Aurelia Osborn Fox Memorial Hospital
- Bassett Hospital of Schoharie County d/b/a Cobleskill Regional Hospital
- O'Connor Hospital
- Little Falls Hospital
- Tri Town Regional Healthcare d/b/a Tri-Town Regional Hospital
- Valley Health Services, Inc. (RHCF)
- At Home Care, Inc. (CHHA)

## Character and Competence

The Board of Trustees of Bassett Healthcare Network is:

<u>Name</u>	<u>Position</u>
Timothy A. Pedley, M.D.	Chairman
Kevin S. Moore	Vice-Chairman
Vance M. Brown, M.D.	Member
Barabara DiCocco	Member
Ralph H. Meyer	Member
Katherine G. Nickerson, M.D.	Member
Edward W. Stack	Member

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.

Mary Imogene Bassett Hospital was subject to two Departmental Stipulations and Orders. The first, issued on July 26, 2006 with a fine of \$2,000 was based on the investigation of an occurrence where a patient was admitted for a right myringotomy. Although a signed consent was for the right side only, a bilateral myringotomy was performed. The second, issued with a fine of \$42,000 on January 27, 2014, was based on the investigations of two complaints. The first involved the inappropriate discharge of a suicidal patient who was found dead and the second involved infections caused by retained foreign bodies following surgery.

## Recommendation

**From a programmatic perspective, approval is recommended.**

# Financial Analysis

## Capability and Feasibility

There are no project costs or working capital requirements associated with this application.

BFA Attachments B through I present a summary of the 2014-2015 certified financial statements and internal financial statements as of April 30, 2016, or as of June 30, 2016, of the eight Health Care providers of the reorganization. All providers maintained a positive working capital and net asset position in 2014-2015, with the exception A.O. Fox Memorial Hospital and Valley Health Services, Inc. A.O. Fox Memorial Hospital experienced a negative working capital position in 2015 due to declining utilization and high costs in maintaining a core set of physician specialty services. Valley Health Services, Inc. experienced a negative working capital position in 2014 due to a construction loan, which has since been converted into long term debt. The following facilities experienced net operating losses:

- A.O. Fox Memorial Hospital had a net operating loss in 2014 and 2015 of \$10,161,406 and \$6,464,528, respectively. The losses were due to the shift of patient care services from an inpatient focus to an outpatient setting, federal and state reimbursement cuts, the introduction of Medicare and Medicaid managed care, and the high costs of maintaining anesthesiologists, hospitalists, obstetricians and urologists for specialty services. The hospital experienced negative working capital and a net operating loss of \$17,822 as of April 30, 2016. A.O. Fox Memorial Hospital began receiving Vital Access Provider Assurance Program (VAPAP) funding in April 2015 with funding



through December 2015 totaling \$3,761,329. The hospital will be receiving Essential Health Care Provider Support Program (EHCPSP) funds and Vital Access Program (VAP) funds in 2016 to cover long term debt, vendor payables and equipment purchases, and Value Based Payment-Quality Improvement Program (VBP-QIP) funding to help with the transition to VBP.

- Valley Health Services, Inc. (VHS) experienced a net operating loss in 2015 of \$1,023,373 due to affiliated costs with Valley Residential Services (VRS). VHS is the current sole corporate member of VRS, which requires the two facilities to report their finances in a combined financial statement as shown on BFA Attachment G. VRS is comprised of Enriched Housing and an Assisted Living Program for those 62 years of age or older, and officially opened to the public in the spring of 2015. They experienced a slower than anticipated occupancy growth rate for both programs. The supplemental schedules to the 2015 audited financial statements breakdown each entity showing that VRS had an operating loss of \$1,200,228 and VHS a gain of \$176,855. VHS maintained a net operating income of \$401,068 as of April 30, 2016.
- Little Falls Hospital experienced net operating losses of \$23,197, \$1,113,434 and \$312,000 in 2014, 2015 and as of April 30, 2016, respectively, due to a decrease in outpatient surgeries and the onboarding of a Hospitalist Program. The increases in operating expenses are due to VAP initiatives for information technology cost increases in support of Electronic Health Records. Little Falls Hospital has been awarded a total of \$3,698,382 in VAP funding and has been paid \$1,436,691 through June 30, 2016.
- At Home Care, Inc. (AHC) experienced a net operating loss in 2015 and as of June 30, 2016, of \$53,754 and \$29,838, respectively, due to the losses from its affiliation as sole member of At Home Care Partners, Inc., which experienced a loss in revenues based on negotiations with managed care plans. To strengthen its financial position, AHC re-negotiated agreements with all payors in its region. They have also made efforts to significantly reduce their high costs and low reimbursement payments in Herkimer County. In addition, AHC will continue aggressive recruitment efforts to address workforce shortages, while remaining committed to maintaining active involvement in DSRIP activities.

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

Recommendation

**From a financial perspective, approval is recommended.**

<h2 style="margin: 0;">Attachments</h2>
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BFA Attachment A	Organizational Charts – Current and Proposed
BFA Attachment B	2014 – 2015, April 30, 2016 Financial Statements of The Mary Imogene Bassett Hospital
BFA Attachment C	2014 – 2015, April 30, 2016 Financial Statements of AO Fox Memorial Hospital
BFA Attachment D	2015 and as of June 30, 2016 Financial Statements of At Home Care, Inc.
BFA Attachment E	2014 – 2015, June 30, 2016 Financial Statements of Bassett Hospital of Schoharie County d/b/a Cobleskill Regional Hospital
BFA Attachment F	2014 – 2015, April 30, 2016 Financial Statements of The O’Connor Hospital
BFA Attachment G	2014 – 2015, April 30, 2016 Financial Statements of Valley Health Services, Inc.
BFA Attachment H	2014 – 2015, April 30, 2016 Financial Statements of Little Falls Hospital
BFA Attachment I	2014 – 2015, April 30, 2016 Financial Statements of Tri Town Regional Healthcare



**Project # 152377-B**  
**Northern Westchester Facility Project, LLC d/b/a Northern  
 Westchester Regional Surgery Center**

**Program:** Diagnostic and Treatment Center      **County:** Westchester  
**Purpose:** Establishment and Construction      **Acknowledged:** December 28, 2015

**Executive Summary**

**Description**

Northern Westchester Facility Project, LLC d/b/a Northern Westchester Regional Surgery Center (Northern Westchester), a New York limited liability company, requests approval to establish and construct a Multi-Specialty, Article 28 freestanding ambulatory surgery center (FASC) initially specializing in orthopedic and otolaryngology services. Northern Westchester will lease 15,660 square feet of space in a single story medical office building located at 2651 Strang Boulevard, Yorktown Heights (Westchester County). The FASC will include four Class C operating rooms, one exam room, five prep rooms, twelve recovery rooms and requisite support spaces as required by building guidelines and codes.

The proposed members of Northern Westchester Facility Project, LLC and their ownership percentages are as follows:

Gabriel Brown, MD	9.375%
Gregg Cavalier, MD	9.375%
Michael Bergstein, MD	9.375%
George Pazos, MD	9.375%
Barry Krosser, MD	9.375%
George Pianka, MD	9.375%
Deborah Reich, MD	9.375%
Scott Messenger, MD	9.375%
Mount Sinai Ambulatory Ventures, Inc.	20%
Merritt Healthcare Holdings Westchester, LLC	5%
Matthew Searles	45%
Richard Searles	20%
William Mulhall	35%

Mount Sinai Ambulatory Ventures, Inc. is a wholly owned subsidiary of the Mount Sinai Health System. Merritt Healthcare Holdings, LLC is a company that develops and manages ambulatory surgery centers and with whom the proposed ASC will also have an Administrative Service Agreement.

**OPCHSM Recommendation**

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

**Need Summary**

The number of projected procedures is 1,513 in Year 1, with Medicaid at 3.0 percent and charity care at 1.97 percent.

**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 cost of \$5,563,562 will be met with \$563,562 in members' equity and a \$5,000,000 bank loan at 6% interest for a ten-year term. VNB New York, LLC has provided a letter of interest. The projected budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$7,843,331	\$8,321,041
Expenses	<u>\$3,396,629</u>	<u>\$4,680,064</u>
Net Income	\$4,446,702	\$3,640,977

## 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 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 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 of a signed agreement with an outside, independent entity, acceptable to the Department, to provide annual reports to DOH following the completion of each full year of operation. Reports will be due within 60 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. Each report is for a full operational year and is not calendar year based. For example, if the Operating Certificate Effective Date is June 15, 2018, the first report is due to the Department no later than August 15, 2019. Reports must include:
  - a. Actual utilization including procedures;
  - b. Breakdown of visits by payor source;
  - c. Percentage of charity care provided by visits;
  - d. Number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
  - e. Number of emergency transfers to a hospital;
  - f. Number of nosocomial infections recorded;
  - g. A brief list of all efforts made to secure charity cases; and
  - h. A brief description of the progress of contract negotiations with Medicaid managed care plans. [RNR]
5. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
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 loan commitment, acceptable to the Department of Health. [BFA]
8. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
9. Submission of an executed disproportionate share affidavit, acceptable to the Department of Health. [BFA]
10. Submission of an executed and amended photocopy of the applicant's Operating Agreement, acceptable to the Department. [CSL]
11. Submission of the applicant's lease agreement, acceptable to the Department. [CSL]
12. Submission of an executed Administrative Services Agreement, acceptable to the Department. [CSL]

13. Submission of a photocopy of the applicant's executed Medical Director Agreement, acceptable to the Department. [CSL]
14. Submission of a photocopy of the executed Certificate of Incorporation for Mt. Sinai Ambulatory Ventures, Inc., acceptable to the Department. [CSL]
15. Submission of a photocopy of Mt. Sinai Ambulatory Venture Inc.'s executed Amended and Restated Bylaws, acceptable to the Department. [CSL]
16. Submission of a photocopy of Merrit Healthcare Holdings Westchester, LLC's executed Operating Agreement, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]
3. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
4. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
5. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
6. The clinical space must be used exclusively for the approved purpose. [HSP]
7. Construction must start on or before February 1, 2017 and construction must be completed by July 30, 2017, presuming the Department has issued a letter deeming all contingencies have been satisfied 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. [PMU]

Council Action Date

**October 6, 2016**

## Need Analysis

### Analysis

The service area consists of Westchester County. Westchester County has a total of seven free-standing ambulatory surgery centers: three single-specialty and four multi-specialty. The table below shows the number of patient visits at ambulatory surgery centers in Westchester County for 2014 and 2015, the table shows a year-to-year decrease of 3.3% in Westchester County.

ASC Type	Name	Patient Visits	
		2014	2015
Single	Eye Surgery Center of Westchester	4,883	4,453
Single	Hudson Valley Center for Digestive Health	2,769	2,805
Single	New York Endoscopy Center	1,744	1,743
Multi	Surgical Specialty Center of Westchester	2,571	2,481
Multi	The Ambulatory Surgery Center of Westchester	4,615	4,491
Multi	The Rye ASC	4,046	4,018
Multi	White Plains Ambulatory Surgery Center	938	855
<b>Total</b>		<b>21,554</b>	<b>20,846</b>

Source: SPARCS- 2016

The population of Westchester County in 2010 was 949,113, with 403,129 individuals (43.3%) age 45 and over. This is the primary population group utilizing ambulatory surgery services. Per the Cornell Program on Applied Demographics (PAD) projection data, this group is estimated to grow to 417,129 by 2025.

The number of projected procedures is 1,513 in Year 1 and 1,620 in Year 3. These projections are based on the current practices of the participating physicians. The table below shows the projected payor source utilization for Northern Westchester Regional Surgery Center for Years 1 and 3.

Projections	Year 1		Year 3	
	Volume	%	Volume	%
Commercial Ins	1,018	67.28%	1,092	67.41%
Medicare	371	24.52%	394	24.32%
Medicaid	45	2.97%	47	2.90%
Charity Care	28	1.86%	32	1.97%
Other	51	3.37%	55	3.40%
<b>Total</b>	<b>1,513</b>	<b>100.0%</b>	<b>1,620</b>	<b>100.0%</b>

The center plans to contact all eleven of the Medicaid Managed Care Plans available within Westchester County to obtain contacts for participation in their network. Upon approval of this project, the applicant plans to reach out to two Federally Qualified Health Centers (FQHCs), Hudson River Health Care, Inc. and Greenburgh Health Center, in order to provide services to the underinsured. The center also plans to leverage its relationship with Mt. Sinai to receive referrals for underinsured patients to the center.

### Conclusion

Approval of this project will provide increased access to orthopedic and otolaryngology ambulatory surgery services in a freestanding setting, for the communities of Westchester County.

### Recommendation

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

## Program Analysis

### Project Proposal

Northern Westchester Facility Project, LLC d/b/a Northern Westchester Regional Surgery Center seeks approval to establish and construct an Article 28 multi-specialty ambulatory surgery center (ASC) to be located at 2651 Strang Boulevard, Yorktown Heights. (Westchester County).

<b>Proposed Operator</b>	Northern Westchester Facility Project, LLC
<b>Doing Business As</b>	Northern Westchester Regional Surgery Center
<b>Site Address</b>	2651 Strang Boulevard Yorktown Heights, New York (Westchester County).
<b>Surgical Specialties</b>	Multi-Specialty, to include: Otolaryngology; and Orthopedic Surgery
<b>Operating Rooms</b>	4 (Class C)
<b>Procedure Rooms</b>	0
<b>Hours of Operation</b>	Monday through Friday from 8:00 am to 6:00 pm (Extended as necessary to accommodate patient needs)
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	18.0 FTEs / 18.0 FTEs
<b>Medical Director(s)</b>	George Pazos, MD
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Expected to be provided by Westchester County Medical Center 15.8 miles / 17 minutes
<b>On-call service</b>	Patients will be provided with surgeon contact information as well as the facility's after-hours number to contact a clinical staff person during hours when the facility is closed.

### Character and Competence

The members of Northern Westchester Facility Project, LLC and their membership interest are detailed in the chart below:

<u>Name</u>	<u>Percentage</u>
Gabriel Brown, MD	9.375%
Gregg Cavalier, MD	9.375%
Michael Bergstein, MD	9.375%
George Pazos, MD - <i>Medical Director</i>	9.375%
Barry Krosser, MD	9.375%
George Pianka, MD	9.375%
Deborah Reich, MD	9.375%
Scott Messenger, MD	9.375%
Mount Sinai Ambulatory Ventures, Inc.	20.0%
Donald Scanlon	
Jeremy Boal, MD	
Adam Henick	
Merritt Healthcare Holdings Westchester, LLC	5.0%
Matthew Searles (45%)	
Richard Searles (20%)	
William Mulhall (35%)	

Holding a 75% membership interest in the center are eight physicians, each of which is a practicing board-certified or board-eligible surgeon with a 9.375% interest. Holding a 20% membership interest is Mount Sinai Ambulatory Ventures, Inc., formerly known as Beth Israel Ambulatory Care Services Corp., a not-for-profit corporation whose Board of Trustees consists of officers of the Mount Sinai Health System. Holding the remaining 5% membership interest is Merritt Healthcare Holdings, LLC, a company that develops and manages ambulatory surgery centers and with whom the proposed ASC will have an Administrative Service Agreement.

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.

Dr. Boal disclosed an affiliation with North Shore-Long Island Jewish Health System (NS-LIJ) and the following:

In September 2008, Staten Island University Hospital (SIUH) entered into a settlement with the U.S. Attorney's Office, the Office of the Inspector General of the Department of Health and Human Services, and the Attorney General's Office of the State of New York and agreed to pay a monetary settlement of \$76.4M to the federal government and \$12.4M to the state and enter into a 5-year Corporate Integrity Agreement. The settlement covered payments related to stereotactic radiosurgery treatments; provision of detoxification services above licensed capacity; SIUH's graduate medical education program; and the provision of inpatient psychiatric services above licensed capacity.

In September 2010, North Shore-Long Island Jewish Health System settled claims without a finding or admission of fraud, liability or other wrongdoing relative to a qui tam lawsuit filed under the civil False Claims Act by a private whistleblower and investigated by the U.S. Attorney's Office. The \$2.95M settlement covered a 10-year period and primarily related to isolated errors in various cost reports rather than the allegations.

#### Integration with Community Resources

To ensure patients have access to primary care services, the proposed operator has maintained relationships with Mt. Kisco Medical Group, the Westchester Medical Group and Northern Westchester Hospital. The proposed Transfer and Affiliation Agreement will be expanded to include primary and other specialty services as needed. The Applicant intends on participating in community health events and local religious institutions to ensure the community is aware of the services offered and the relationship with the local hospital. The members of Northern Westchester Facility Project, LLC are committed to providing services for all persons in need of surgical care regardless of race, creed, sex, age, sexual orientation, ability to pay, payment source or any other personal characteristic. A policy will be developed to serve uninsured persons and persons without the ability to pay the entire charge, to include a developing a sliding fee scale.

The applicant intends on utilizing an Electronic Medical Record (EMR) System and, although not yet decided, they are currently reviewing multiple programs. The applicant will work with Mt. Sinai Health System in an effort to establish a mutual network relationship. Included in these efforts would be the Center's desire to integrate in the Regional Health Information Organization and/or Health Information Exchange.

#### Recommendation

**From a programmatic perspective, contingent approval is recommended.**

## Financial Analysis

### Total Project Cost and Financing

Total project cost is estimated at \$5,563,562, broken down as follows:

Renovation & Demolition	\$2,635,578
Design Contingency	\$131,779
Construction Contingency	\$131,779
Architect/Engineering Fees	\$210,846
Other Fees	\$204,000
Movable Equipment	\$2,062,506
Financing Costs	\$66,280
Interim Interest Expense	\$88,373
Application Fees	\$2,000
Additional Processing Fees	<u>\$30,421</u>
Total Project Cost	\$5,563,562

Project costs are based on a construction start date of February 1, 2017, and a six-month construction period.

Financing for this project will be as follows:

Members' Equity	\$563,562
Bank loan (10-year term, 6% interest)	<u>\$5,000,000</u>
Total	\$5,563,562

VNB New York, LLC has provided a letter of interest.

### Lease Agreement

The applicant submitted a draft lease agreement for the site to be occupied. The terms are summarized below:

Date:	TBD
Premises:	15,660 sq. ft. located at 2651 Strang Blvd, Yorktown Heights, NY 10598
Landlord:	GHP Office Realty
Lessee:	Northern Westchester Facility Project, LLC
Term:	15 years
Rental:	\$375,840 per year through year 4 with a 3% annual increase from year 5-15. (\$31,320 per month/\$24 per sq. ft.)
Provisions:	Triple net lease

The applicant submitted an affidavit stating the lease agreement is an arm's length arrangement. Letters from two NYS licensed realtors have been provided attesting to the reasonableness of the per square foot rental rate.



## Consulting and Administrative Services Agreement

The applicant submitted a draft Consulting and Administrative Services Agreement. The terms are summarized below:

Date:	TBD
Licensed Operator:	Northern Westchester Facility Project, LLC
Consultant:	Merritt Healthcare Holdings Westchester, LLC
Services Provided:	Consulting and administrative services including: securing third party financing, reviewing and modifying center policies and procedures, assisting the company with financial management, equipment and supply purchasing and management, human resource management, billing and collection management.
Term:	5 years with (1) additional 2 year renewal term
Fee:	\$315,000 for year 1 with an annual 1% increase.

While Merritt Healthcare Holdings Westchester, LLC 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 ASA provider as shown on BFA Attachment C, post-closing organization chart.

### Operating Budget

The applicant submitted an operating budget, in 2016 dollars, for Years One and Three, as summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Procedure</u>	<u>Total</u>	<u>Per Procedure</u>	<u>Total</u>
<u>Revenues</u>				
Medicaid	\$2,144.18	\$96,488	\$2,177.96	\$102,364
Medicare	\$2,889.72	\$1,072,085	\$2,886.74	\$1,137,377
Commercial	\$6,496.33	\$6,613,261	\$6,424.98	\$7,016,079
Other	\$2,764.02	\$140,965	\$2,719.09	\$149,550
Bad Debt		<u>(\$79,468)</u>		<u>(\$84,329)</u>
Total Revenue		\$7,843,331		\$8,321,041
<u>Expenses</u>				
Operating	\$1,835.05	\$2,776,428	\$2,067.24	\$3,348,931
Capital	<u>\$409.91</u>	<u>620,201</u>	<u>\$821.69</u>	<u>1,331,133</u>
Total Expense	\$2,244.96	\$3,396,629	\$2,888.93	\$4,680,064
Net Income		\$4,446,702		\$3,640,977
Total Procedures		1,513		1,620

Utilization by payor source for Years One and Three is as follows:

	<u>Year One</u>		<u>Year Three</u>	
<u>Payor:</u>	<u>Procedures</u>	<u>%</u>	<u>Procedures</u>	<u>%</u>
Commerical	1,018	67.28%	1,092	67.41%
Medicare	371	24.52%	394	24.32%
Medicaid	45	2.97%	47	2.90%
Charity Care	28	1.86%	32	1.97%
Private Pay/Other	51	<u>3.37%</u>	55	<u>3.40%</u>
Total	1,513	100.00%	1,620	100.00%

The following is noted with respect to the submitted budget:

- Revenue assumptions are based on the 2015 Medicare rate schedule as published by the Ambulatory Surgery Center Association, and the previous experience of the proposed operators via related entities and similar projects.

- Utilization projections are based on the current caseload of the individual physician members, all of whom are board-certified physicians. The applicant indicated that none of the projected procedures would come from any other hospital provider. 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 on the historical experience of similar ambulatory surgery centers in the proposed FASC's service area and the experience of the applicant in participating in other ambulatory surgery centers.
- The breakeven point is approximately 42.89% or 649 procedures in Year One and approximately 55.74% or 903 procedures in Year Three.

The budget appears reasonable.

#### Capability and Feasibility

The total project cost of \$5,563,592 will be satisfied from \$563,562 in members' equity with the \$5,000,000 balance being provided through a loan at the above stated terms. VNB New York, LLC has provided a letter of interest.

Working capital requirements are estimated at \$780,010 based on two months of third year expenses. The applicant will provide \$470,010 from the members' equity. The remaining \$310,000 will be satisfied through a five-year loan at 5% interest. VNB New York, LLC has provided a letter of interest for the working capital financing. BFA Attachments A is a summary of the proposed members' net worth, which shows available liquid resources to fund the equity requirements for the project. It is noted that the net worth statements for several of the physician members are over six months old. The Department's request for updated net worth statements and/or disproportionate share affidavits remains outstanding. Therefore, disproportionate share affidavits are required for confirmation that sufficient liquid resources are available to cover the project's equity requirements. The available liquid resources from Mount Sinai Ambulatory Ventures, Inc. are shown on their balance sheet as "Due from affiliated organizations." This presentation is due to the way Mount Sinai Beth Israel handles all cash transactions for their sub-entities. Specifically, all sub-entities have no cash accounts and Mount Sinai Beth Israel handles all cash transactions for the sub-entities. The offset to these transactions on the sub-entities' Financial Statements is in the du/to from affiliated organizations, which is \$8.5 million for Mount Sinai Ambulatory Ventures, Inc. as of December 31, 2015.

BFA Attachment B is the pro-forma balance sheet for Northern Westchester Facility Project, LLC, which shows the operation will start with \$1,033,572 in members' equity.

The submitted budget projects a net income of \$4,446,702 and \$3,640,977 during years one and three of operations, respectively. Medicare reimbursement was based on the 2015 Medicare rate schedule.

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.**

## Supplemental Information

### Surrounding Hospital Responses

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

**Facility:** Northern Westchester Hospital  
400 Main Street  
Mount Kisco, NY 10549

Northern Westchester submitted a letter of opposition but did not project any negative affect on the hospital.

**Facility:** Putnam Hospital Center  
670 Stoneleigh Avenue  
Carmel, NY 10512

Current OR Use (% of capacity)	Surgery Cases		Amb. Surg. Cases by Applicant Physicians	Reserved OR Time for Applicant Physicians
	<u>Ambulatory</u> Not Indicated	<u>Inpatient</u> Not Indicated		
47% Main site			357	Yes

Putnam Hospital opposes this application based on the financial impact on the hospital as well as the 70% utilization of their ORs and the belief that the duplication of services will serve to "cherry-pick" profitable procedures from the Hospital.

In 2014 Putnam Hospital had operating expenses of \$147,203,000 on revenue of \$158,586,000 for net income of \$11,383,000. In 2014, total assets were \$176,284,000 and total liabilities were \$86,633,000 for net assets of \$89,651,000 and a working capital position of \$61,296,000. In 2015, Putnam Hospital had operating expenses of \$152,093,000 on revenue of \$15,895 for a net income of \$6,802,000. In 2015, total assets were \$180,922 and total liabilities were \$84,691,000 for net assets of \$71,256,000 and a working capital position of \$71,256,000. Putnam Hospital reported that in 2013 it incurred bad debt and charity care of \$47.7 million and in 2014, bad debt and charity care were \$ 43.8 million.

**Facility:** New York Presbyterian/ Hudson Valley Hospital -- **No Response**  
1980 Crompond Road  
Corlandt, NY 10567

**Facility:** DOH also received a letter of opposition from **Phelps Hospital**, located approximately 17 miles from the proposed facility, in Sleep Hollow, New York.

Current OR Use (% of capacity)	Surgery Cases		Amb. Surg. Cases by Applicant Physicians	Reserved OR Time for Applicant Physicians
Not Indicated	<u>Ambulatory</u> Not Indicated	<u>Inpatient</u> Not Indicated	351 in 2014 234 in 2015	Not Indicated

Phelps Hospital opposes this application based on the financial impact on the hospital as well as the fact Phelps recently opened a new/expanded surgical suite that has capacity.

Supplemental Information from Applicant

**Need and Source of Cases:** The applicant states that the proposed ASC will provide ambulatory surgery services to patients of physicians on its medical staff who elect to use the ASC to perform their outpatient surgeries. Surgeries performed at the ASC would otherwise be performed at area hospitals or other ambulatory surgery centers. In addition, the applicant points out that the need for ambulatory surgery services is expected to increase as the population increases.

**Staff Recruitment and Retention:** Staff will be recruited via a hiring program but the applicant will not actively solicit staff at area Hospitals. The ASC plans to offer competitive salary and benefits. In addition, the Center will provide a close-knit work environment and flexible working hours.

**Office-Based Cases:** None of the proposed cases are currently being performed in an office-based setting.

DOH Comment

Putnam Hospital Center indicated the loss of surgical cases would result in a decline in operating revenue of \$1.1 million. However, the hospital did not provide any off-setting operating expense reductions and thus the net loss cannot be calculated. Additionally, while the hospital stated that approval of the Center will either change the hospital's net income, or will cause the disruption and elimination of community benefit services, it did not provide any specific information related to any impact on community-based services.

Phelps indicated that the participating physicians performed 234 cases, resulting in \$1 million in revenue in 2015. However, the hospital did not provide any off-setting operating expense reductions and thus the net loss cannot be calculated. Additionally, the hospital did not indicate the loss in revenue would result in any loss to community-based services.

Due to the lack of specificity, as well as no information related to the regulatory basis by which applications are evaluated, the Department finds no basis for reversal or modification of the recommendation for a five-year limited life approval of the proposed ASC based on public need, financial feasibility and owner/operator character and competence.

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## Attachments

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BFA Attachment A	Net Worth Statement of Proposed Members of Northern Westchester Facility Project, LLC d/b/a Northern Westchester Regional Surgery Center
BFA Attachment B	Pro-Forma balance sheet of Northern Westchester Facility Project, LLC d/b/a Northern Westchester Regional Surgery Center
BFA Attachment C	Post-Closing Organization Chart
BPNR Attachment	Map



**Project # 161415-E  
Carnegie Hill Endo, LLC**

**Program:** Diagnostic and Treatment Center    **County:** New York  
**Purpose:** Establishment    **Acknowledged:** June 10, 2016

**Executive Summary**

**Description**

Carnegie Hill Endo, LLC, an existing proprietary Article 28 Diagnostic and Treatment Center is requesting approval for indefinite life. The original application, CON 092188, was approved by the Public Health Council with a limited life of five years from the date the operating certificate was issued, March 2, 2012.

The facility, which is located at 1516 Lexington Avenue, New York (New York County), is certified as a single-specialty freestanding ambulatory surgical center (FASC) specializing in gastroenterology services utilizing five procedure rooms. The applicant is not proposing to add or change any services, or expand or renovate the facility per this application.

**OPCHSM Recommendation  
Approval**

**Need Summary**

Based on CON 092188, Carnegie Hill Endo, LLC projected 11,246 procedures in Year 1 (2013) and 12,399 procedures in Year 3 (2015). Medicaid procedures were projected at three

percent and charity care at two percent. Based on the Annual Reports submitted by the applicant, the total number of procedures was 13,593 in Year 1 (2013) and 14,090 in Year 3 (2015), with actual charity care in Year 3 (2015) at 2.3 percent and Medicaid at 2.1 percent.

**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 projected budget is as follows:

Revenues	\$15,573,782
Expenses	<u>7,430,547</u>
Net Income	\$ 8,143,235

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval**

Council Action Date

**October 6, 2016**

## Need Analysis

### Analysis

The primary service area is New York County.

In keeping with the directives and conditions of its limited life approval, the Center submitted Annual Reports prepared by a third party to the Department for 2012, 2013, 2014 and 2015. (In addition, the Center submitted an internal report depicting its volume by payer through May 2016.)

The table below provides information on projections and utilization for Year 1 (2013-1<sup>st</sup> full year) and Year 3 (2015) based on CON 092188.

<b>CON 092188- Procedures</b>	<b>Year 1</b>		<b>Year 3</b>	
	<b>Projected</b>	<b>Actual</b>	<b>Projected</b>	<b>Actual</b>
Carnegie Hill Endo				
<b>Total</b>	11,246	13,593	12,399	14,090

The table below provides Year 3 utilization, projections and actual, by payor, for CON 092188, and projections for Years 1 and 3 following approval.

<b>Payor</b>	<b>CON 092188 Projected Year 3 (2015)</b>	<b>Actual Year 3 (2015)</b>	<b>CON 161415 Projections Years 1 &amp; 3</b>
Medicaid FFS/MC	3.0%	2.1%	3.1%
Medicare FFS/MC	20.0%	22.4%	22.2%
Commercial FFS/MC	72.0%	71.7%	71.0%
Private Pay/Other	3.0%	1.5%	1.4%
Charity Care	2.0%	2.3%	2.3%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Source: Applicant's annual report

The center currently has Medicaid Managed Care contracts with the following health plans: Fidelis, Emblem Health – HIP, Health First Medicaid, MetroPlus Medicaid, United Health Care Medicaid and Wellcare Medicaid.

The center has ongoing outreach and collaboration with Federally Qualified Health Centers (FQHCs) and Community Health Centers. The center has become a New York State Cancer Services Provider as a Colonoscopy Screening Center and participates in a number of community outreach activities. The center has established referral agreements with more than 25 Community Health Centers including the following FQHCs: The William F. Ryan Community Health Network, the Charles B. Wang Community Health Center, Gouverneur Health, and Renaissance Health Care Network.

Carnegie Hill Endo, LLC, is committed to serving individuals needing care regardless of the source of payment or the ability to pay.

### Conclusion

It is expected that the Center's outreach efforts to the underinsured will result in additional growth in that part of their patient mix. Approval of the proposed project will provide for the continued access to gastroenterology ambulatory surgery services for the communities of New York County.

### Recommendation

**From a need perspective, approval is recommended.**



## Program Analysis

### Program Proposal

The Center is not proposing to add any services and there is no construction or capital cost associated with this project. Blair Lewis, M.D and Anthony Weiss, M.D. will continue to serve as Co-Medical Directors for the Center. Staffing is expected to increase by 0.55 FTEs and 1.70, respectively, in Years 1 and 3 upon approval. These incremental changes are based on the Center's historical annual volume increases which Carnegie Hill Endo expects to continue in the future.

### 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 complaint

### Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

### Operating Budget

The applicant has submitted their current year (2015) and the first and third years operating budget subsequent to approval, in 2016 dollars, as shown below:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
<u>Revenues</u>			
Medicaid MC	\$275,637	\$383,495	\$399,502
Medicaid FFS	43,522	85,152	88,706
Medicare MC	449,724	459,016	478,173
Medicare FFS	2,872,430	2,931,764	3,054,135
Commercial FFS	10,285,620	10,498,084	10,936,269
Private Pay	159,579	162,875	169,674
Other	<u>420,710</u>	<u>429,400</u>	<u>447,323</u>
Total Revenues	\$14,507,222	\$14,949,786	\$15,573,782
<u>Expenses</u>			
Operating	\$5,385,833	\$5,497,085	\$5,726,532
Capital	<u>1,704,015</u>	<u>1,704,015</u>	<u>1,704,015</u>
Total Expenses	\$7,089,848	\$7,201,100	\$7,430,547
Net Income	<u>\$7,417,374</u>	<u>\$7,748,686</u>	<u>\$8,143,235</u>

Utilization (Procedures)	14,090	14,521	15,125
Cost Per Procedure	\$503.18	\$495.91	\$491.28

Utilization by payor source related to the submitted operating budget, for the current year and post-approval, is as follows:

	<u>Current Year (2015)</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Procedures</u>	<u>%</u>	<u>Procedures</u>	<u>%</u>	<u>Procedures</u>	<u>%</u>
Medicaid MC	272	1.93%	380	2.61%	395	2.61%
Medicaid FFS	27	.19%	65	.44%	67	.44%
Medicare MC	430	3.05%	439	3.02%	457	3.02%
Medicare FFS	2,733	19.39%	2,789	19.20%	2,906	19.21%
Commercial FFS	10,100	71.68%	10,309	70.99%	10,739	71.00%
Private Pay	111	.78%	113	.77%	118	.78%
Other	95	.67%	97	.66%	101	.66%
Charity Care	<u>322</u>	<u>2.31%</u>	<u>329</u>	<u>2.31%</u>	<u>342</u>	<u>2.28%</u>
Total	14,090	100%	14,521	100%	15,125	100%

#### Capability and Feasibility

There are no project costs associated with this application.

The submitted budgets indicate a net income of \$7,748,686 and \$8,143,235 during the first and third years, respectively. Revenues are based on current reimbursement methodologies. The budgets are reasonable.

BFA Attachment B is the 2014 and 2015 certified financial statements of Carnegie Hill Endo, LLC. As shown on Attachment B, the facility had an average positive working capital position and an average positive members' equity position. Also, the facility achieved average income from operations of \$10,698,666 from 2014 through 2015.

BFA Attachment C provides the internal financial statements of Carnegie Hill Endo, LLC as of March 31, 2016. As shown, the entity had a positive working capital position and a positive net asset position through March 31, 2016. Also, the entity achieved a net income of \$2,928,657 through March 31, 2016.

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	Current and original ownership of Carnegie Hill Endo, LLC
BFA Attachment B	Financial Summary- 2014 and 2015 certified financial statements of Carnegie Hill Endoscopy
BFA Attachment C	Financial Summary- March 31, 2016 internal financial statements of Carnegie Hill Endoscopy



**Project # 161456-E  
Manhattan Endoscopy Center, LLC**

**Program:** Diagnostic and Treatment Center    **County:** New York  
**Purpose:** Establishment    **Acknowledged:** June 27, 2016

**Executive Summary**

**Description**

Manhattan Endoscopy Center, LLC, a proprietary Article 28 diagnostic and treatment center (D&TC) located at 535 5<sup>th</sup> Avenue, New York (New York County), is requesting indefinite life status. The D&TC is certified as a single-specialty freestanding ambulatory surgery center (FASC) specializing in gastroenterology services. The Center obtained Public Health Council approval with a five-year limited life under CON 101024 and began operations effective December 5, 2011.

There will be no change in services provided. Under CON 122011, the Center added one procedure room and performed minor renovations to the facility (finalized June 17, 2016). The Center is not proposing to further expand or renovate the facility.

**OPCHSM Recommendation  
Contingent Approval**

**Need Summary**

Based on CON 101024, Manhattan Endoscopy Center, LLC projected 14,412 procedures in Year 1 (2012-1<sup>st</sup> full year) and 15,890 procedures in Year 3 (2014). Medicaid procedures were projected at three percent and charity care was projected at two percent. Based on the Annual Reports submitted by the

applicant, the total number of procedures was 13,225 in Year 1 (2012) and 15,376 in Year 3 (2014). In Year 3, actual charity care was 2.17 percent and Medicaid was 3.49 percent. Upon approval of this project, Manhattan Endoscopy Center projects 16,672 procedures in Year 1 with Medicaid at 3.5 percent and charity care at 1.9 percent. There will be no changes in 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. The projected budget for the first year following approval is:

Revenues	\$22,938,708
<u>Expenses</u>	<u>10,100,634</u>
Net Income	\$12,838,074

## 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 Schedule 3 Legal Information section (and attachments), with appropriate current LLC documents and information acceptable to the Department. [CSL]

Council Action Date

**October 6, 2016**

# Need Analysis

## Background

Manhattan Endoscopy Center, LLC, an existing Article 28 Diagnostic and Treatment Center certified as a single-specialty ambulatory surgery center providing gastroenterology services, is requesting permission to convert to permanent life. The center was granted a five (5) year limited life approval under CON 101024 with an operating certificate dated December 5, 2011 to December 4, 2016. The center is located at 535 Fifth Avenue, New York, 10017, in New York County. The center was granted approval to add a seventh procedure room under CON 122011.

## Analysis

The primary service area is New York County.

Data submission by the applicant, as a contingency of CON 101024, has been completed.

The table below provides information on projections and utilization for Years 1 and 3 under CON 101024.

CON 101024 - Procedures Manhattan Endoscopy Center	Year 1		Year 3	
	Projected	Actual	Projected	Actual
Total	14,412	13,225	15,890	15,376

The table below provides Year 3 utilization, projections and actual, by payor, for CON 101024, actual data for 2015, and projections for Years 1 and 3 following approval of the subject CON.

Payor	CON 101024 Projected Year 3 (2014)	Actual Year 3 (2014)	Actual 2015	CON 161456 Projections Years 1 & 3
Commercial	72.0%	72.47%	78.20%	78.2%
Medicare	20.0%	21.11%	15.88%	15.9%
Medicaid	3.0%	3.49%	3.50%	3.5%
Private Pay/Other	3.0%	0.76%	0.49%	0.5%
Charity Care	2.0%	2.17%	1.93%	1.9%
Total	100%	100%	100%	100%

The center reports that for the first six months of 2016, their Medicaid utilization was 3.3% and charity care was 1.9%.

The center currently has Medicaid Managed Care contracts with the following health plans: Affinity, Emblem, Fidelis, Healthfirst, Metroplus, NYC Medicaid, UHC Community Plan and VNS Medicaid. The center has established referral agreements with the following Federally Qualified Health Centers (FQHCs): Gouverneur Health, the Bowery Mission and Settlement Health. The center is registered with the NYSDOH Cancer Services Program. Through its Compassionate Care Program, the center is seeking relationships with Mt. Sinai West and Mt. Sinai St. Luke's to provide free colonoscopy screenings to additional underinsured patients.

Manhattan Endoscopy Center, LLC is committed to serving individuals needing care regardless of the source of payment or the ability to pay.

## Conclusion

The Center has met the charity care and Medicaid projections. Approval of the proposed project will provide for the continued access to gastroenterology ambulatory surgery services for the communities of New York County.

## Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Program Proposal

Manhattan Endoscopy Center, LLC, an existing Article 28 Diagnostic and Treatment Center certified as a single-specialty (gastroenterology) freestanding ambulatory surgical center (ASC), located at 535 5th Avenue in Manhattan (New York County), seeks approval to convert to indefinite life following a five year conditional, limited life approval. The Center was established under CON 101024, and its operating certificate is due to expire on December 4, 2016.

The Center is not proposing to add any services and there is no construction or capital cost associated with this project. Staffing will remain at current levels and David Robbins, 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 complaint

### Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

### Operating Budget

The applicant has submitted an operating budget, in 2016 dollars, for the current year (2015) and the first and third years subsequent to receiving indefinite life operating certification, as summarized below:

	<u>Current Year</u>	<u>Year 1</u>	<u>Year 3</u>
<u>Revenues</u>			
Commercial	\$20,177,395	\$20,810,370	\$21,463,300
Medicare	1,547,278	1,595,939	1,646,131
Medicaid	363,955	376,046	388,498
Private Pay / Other	<u>\$151,586</u>	<u>\$156,353</u>	<u>\$161,271</u>
Total Revenues	\$22,240,214	\$22,938,708	\$23,659,200
<u>Expenses</u>			
Operating	\$8,864,375	\$9,070,267	\$9,276,159
Capital	<u>1,030,367</u>	<u>1,030,367</u>	<u>1,030,367</u>
Total Expenses:	\$9,894,742	\$10,100,634	\$10,306,526
Net Income	12,345,472	12,838,074	13,352,674
Utilization (Procedures)	16,164	16,672	17,197
Cost per Procedure	\$612.15	\$605.84	\$599.32

Revenue, expense and utilization assumptions for Years 1 and 3 are projected based upon the Center's current operations.

### Capability and Feasibility

There are no project costs associated with this application.

Manhattan Endoscopy Center, LLC projects an operating excess of \$12,838,074 and \$13,352,674 in year one and three, respectively. Revenues are based on current reimbursement rates. The budget appears reasonable

BFA Attachment B is Manhattan Endoscopy Center's 2014 and 2015 certified financial statements and their cash base internal financials statements as of June 30, 2016, which show the facility had a positive working capital position, positive equity and generated positive net income for the periods shown.

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	Manhattan Endoscopy Center, LLC, Membership
BFA Attachment B	2014 and 2015, Certified Financial Statements and June 30, 2016 Internal Financial Statements, Manhattan Endoscopy Center, LLC



**Project # 161243-B**  
**Cassena Care Dialysis at Morningside**

**Program:** Diagnostic and Treatment Center      **County:** Bronx  
**Purpose:** Establishment and Construction      **Acknowledged:** April 11, 2016

**Executive Summary**

**Description**

Morningside Dialysis Center, LLC d/b/a Cassena Care Dialysis at Morningside (the Center), a New York limited liability company, requests approval to establish and construct a 21-station Article 28 end stage renal dialysis (ESRD) center. The Center will be located in 14,336 square feet of designated space at Morningside House Nursing Home, a 314-bed residential health care facility (RHCF) located at 1000 Pelham Parkway, Bronx (Bronx County). The applicant will lease the space from Morningside Acquisition II, LLC, the RHCF's real property owner. The Center will be located in an existing building on the north-west portion of the property. The space is currently being used for storage, which will be relocated. There is a relationship between the applicant (Tenant) and Morningside Acquisition II, LLC (Landlord) in that the entities have identical membership.

The proposed members of the Center and their ownership percentages are as follows:

Morningside Dialysis Center, LLC d/b/a Cassena Care Dialysis at Morningside	
<u>Members</u>	<u>%</u>
Pasquale DeBenedictis	35%
Alex Solovey	35%
Solomon Rutenberg	20%
Joseph Carillo	10%

**OPCHSM Recommendation**  
Contingent Approval

**Need Summary**

There is currently an unmet need for 112 chronic dialysis stations in Bronx County. From 2010 to 2014, the population of the county increased by 3.8% compared to 1.9% for the state. 54.5% of the population is non-white.

**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 cost of \$5,882,092 will be paid by the landlord, Morningside Acquisition II, LLC as follows: \$588,209 in members' equity and bank loan for \$5,293,883 for a 5-year term with a 5-year option at borrower's discretion, at 6% interest and a 25-year amortization. Capital Funding, LLC has provided a letter of interest.

The projected budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,859,356	\$5,578,068
Expenses	<u>\$2,349,271</u>	<u>\$4,301,593</u>
Net Income	(\$489,915)	\$1,276,475



## 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 lease agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed construction loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of an executed consulting service 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 Consulting Agreement, acceptable to the Department. [HSP]
8. Submission of a photocopy of the applicant's executed Articles of Organization, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's amended and executed Operating Agreement, acceptable to the Department. [CSL]
10. Submission of photocopy of the applicant's amended and executed Consulting Agreement, acceptable to the Department. [CSL]
11. Submission of the applicant's amended and executed Lease Agreement, acceptable to the Department. [CSL]
12. Submission of a photocopy of the applicant's Medical Director Agreement, acceptable to the Department. [CSL]
13. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. 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 January 1, 2017 and construction must be completed by June 30, 2017, presuming the Department has issued a letter deeming all contingencies have been satisfied 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

**October 6, 2016**

## Need Analysis

### Analysis

The primary service area for this facility is Bronx County, which had a population of 1,438,159 in 2014. The population was 54.5% non-white and 11.2% were over the age of 65. These two demographics are the most at-risk for developing end stage renal disease. Comparisons between Bronx County and New York State are listed below.

	Bronx	State
Ages 65 and Over	11.2%	14.7%
Nonwhite	54.5%	29.6%

Source: U.S. Census Bureau 2015

### Methodology and Calculations

The Department's methodology developed to estimate capacity for chronic dialysis stations is based on 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 can treat fewer patients per year. Statewide, the majority of stations are free standing, as are the majority of applications for new stations. As such, when calculating the need for additional stations, the Department bases the projected need on establishing additional free standing stations.
- There are currently 468 free-standing chronic dialysis stations operating in Bronx County and 106 in pipeline for a total of 574.
- Based upon DOH methodology, the 468 existing free standing stations in Bronx County could treat a total of 2,106 patients annually. Including the additional 106 pipeline stations, the county could treat a total of 2,583 patients annually.

Bronx County Residents		Actual		Projected	
		2014		2019	
Need projected 5 years out from most current IPRO data available for Patients Treated in County		Total Patients Treated in County	Total County Residents in Treatment	Total Patients Treated in County <sup>1</sup>	Total County Residents in Treatment <sup>1</sup>
		2,984	3,086	3,460	3,373
Free-Standing Dialysis Stations		2014	2016	2019	
A	Stations Required to Treat <sup>2</sup>	664	686	769	750
B	Existing Stations	468	468	468	468
C	Stations In Pipeline	106	106	106	106
D	Stations Requested this CON	21	21	21	21
E	w/Approval of This CON (B+C+D)	595	595	595	595
F	Unmet Need With Approval (A-E)	69	91	174	155

<sup>1</sup>Based upon an estimated 3% accrued annual increase

<sup>2</sup>Based upon DOH methodology (total patients/4.5)

A three percent annual increase in demand is appropriate for these calculations due to the high minority population and the high population growth rate in the county. The above table indicates a clear need for additional dialysis stations in Bronx County. The applicant estimates that this facility will provide 6,552 treatments in Year 1 of operation and 19,656 in Year 3.

**Conclusion**

This project will increase the number of approved freestanding dialysis stations in Bronx County from 574 to 595. The additional stations will help to reduce the critical unmet need for dialysis services for residents in the County.

**Recommendation**

**From a need perspective, approval is recommended.**

<b>Program Analysis</b>
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**Project Proposal**

Morningside Dialysis Center, LLC d/b/a Cassena Care Dialysis at Morningside (Cassena), requests approval to establish and construct a new 21-station nursing home based chronic hemodialysis center within designated space at the Morningside Nursing and Rehabilitation Center, an existing 314-bed skilled nursing facility, located at 1000 Pelham Parkway South in the Bronx (Bronx County).

<b>Proposed Operator</b>	Morningside Dialysis Center, LLC
<b>Doing Business As</b>	Cassena Care Dialysis at Morningside
<b>Site Address</b>	1000 Pelham Parkway South Bronx, New York 10461 (Bronx County)
<b>Approved Services</b>	Chronic Renal Dialysis (21 Stations)
<b>Shifts/Hours/Schedule</b>	At least 12 hours per day, six days per week, with additional hours as indicated by demand.
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	12.0 FTEs / 24.7 FTEs
<b>Medical Director(s)</b>	Maya K. Rao, MD
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Expected to be provided by provided by New York Presbyterian – Columbia Hospital 6.9 miles / 22 minutes

**Character and Competence**

The proposed members of Morningside Dialysis Center, LLC will be:

<u>Name</u>	<u>Title</u>	<u>Percentage</u>
Pasquale DeBenedictis	Manager/Member	35.00%
Alex Solovey	Manager/Member	35.00%
Soloman Rutenberg	Manager/Member	20.00%
Joseph F. Carillo II	Member	10.00%

Each of the aforementioned individuals has experience operating health related facilities and associated programs, including nursing home based dialysis programs.

Disclosure information was submitted and reviewed for the proposed Medical Director. Maya Rao, MD is a New York State licensed physician and Board-certified in Internal Medicine and Nephrology. Currently, she is an Assistant Professor of Medicine in the Division of Nephrology at Columbia University Medical Center and Medical Director of Workmen’s Circle Dialysis 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.

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

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

*Additionally, Messrs. DeBenedictis, Solovey and Carillo disclosed membership interest in Barnwell Nursing and Rehabilitation Center. A review of Barnwell during their period of affiliation revealed 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.*

#### 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 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.

Members of the Applicant disclosed interest in the following facilities whose Star Ratings are provided below:

Facility Name	Address	Star Rating
Carillon Dialysis Center	830 Park Avenue Huntington, NY 11743	★ ★ ★ ● ●
East Neck Dialysis Center	134 Great East Neck Road West Babylon, NY 11704	Not Available*
Workmen's Circle Dialysis Center	3155 Grace Avenue Bronx, NY 10469	Not Applicable**

Data from Dialysis Facility Compare pulled on 8/30/16 <https://www.medicare.gov/dialysisfacilitycompare/#>

Star Rating Data Collection period is 1/1/2011 through 12/31/14.

\*The Facility wasn't open for the entire reporting period

\*\* Applicant's ownership interest began 8/1/15; Star Rating Data Collection period is 1/1/2011-12/31/14.

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 \$5,882,092 to be funded by the landlord, broken down as follows:

Renovation & Demolition	\$3,762,000
Design Contingency	\$300,960
Construction Contingency	\$300,960
Fixed Equipment	\$287,375
Architect/Engineering Fees	\$323,950
Other Fees	\$75,000
Movable Equipment	\$529,293
Financing & Interim Interest Expense	\$268,390
Application Fees	\$2,000
Additional Processing Fees	<u>\$32,164</u>
Total Project Cost	\$5,882,092

Project costs are based on a construction start date of January 1, 2017, with a 6-month construction period.

The landlord, Morningside Acquisition II, LLC, will contribute the equity and acquire the financing for this project. The total construction cost will be funded as follows:

Realty Members' Equity	\$588,209
Loan (5-year term plus 5-year option, 25-year amortization, 6.0% interest)	<u>\$5,293,883</u>
Total	\$5,882,092

Capital Funding, LLC has provided a letter of interest.

BFA Attachments A, the proposed members' net worth summaries, and BFA Attachment F, the consolidated financial of the RHCF's operating entity and realty entity, shows the landlord has sufficient resources to meet the equity requirements for the construction.

### Lease Rental Agreements

The applicant has submitted a draft lease agreement for the site to be occupied, summarized below:

Premises:	14,336 sq. ft. in an existing building on the north-west portion of the property located at 1000 Pelham Parkway South, Bronx, NY
Landlord:	Morningside Acquisition II, LLC
Lessee:	Morningside Dialysis Center, LLC
Term:	20 years from the commencement date
Rental:	\$588,209 per year (\$49,017 per month) with a 2% increase every subsequent year throughout the term of lease.
Provisions:	Tenant is responsible for taxes, insurance, utilities and maintenance.

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and the tenant.

#### Consulting Services Agreement

The applicant has submitted a draft consulting services agreement, summarized as follows:

Consultant:	Geri Pro Dialysis Consultants, LLC
Licensed Operator:	Morningside Dialysis Center, LLC
Services Provided:	Budget, Accounting & Financial Support, staff scheduling, negotiating contracts with suppliers for purchasing and making recommendations to operator, staffing & recruitment, assist in development of a utilization & quality assurance program, billing & collections.
Term:	5 years, Automatic renewal for 2 years unless 60 days prior notice, not to renew.
Compensation:	\$75,000 startup services fee (to be paid in 6 monthly payments of \$12,500), Administrative and management fee - \$6,000 per month from the 1st day of first month following DOH approval.

Although Geri Pro Dialysis Consultants, LLC will be performing the above services, the Licensed Operator retains ultimate authority, responsibility and control in all of the final decisions associated with the services.

#### Operating Budget

The applicant has submitted an operating budget, in 2016 dollars, for Years One and Three, as summarized below:

	<u>Year One</u>		<u>Year Three</u>	
<u>Revenues</u>	Per Proc.	Total	Per Proc.	Total
Medicaid-MC	\$269.78	\$141,366	\$269.78	\$424,098
Medicare MC	\$275.02	\$1,117,116	\$274.99	\$3,351,348
Commercial MC	\$324.93	\$638,820	\$324.99	\$1,916,460
All Other		<u>(\$37,946)</u>		<u>(\$113,838)</u>
Total Revenue		\$1,859,356		\$5,578,068
 <u>Expenses</u>				
Operating	\$254.93	\$1,670,279	\$183.20	\$3,601,054
Capital	<u>\$103.63</u>	<u>\$678,992</u>	<u>\$35.64</u>	<u>\$700,539</u>
Total	\$358.56	\$2,349,271	\$218.84	\$4,301,593
 Net Income		(\$489,915)		\$1,276,475
 Total Procedures		6,552		19,656
Cost per Procedure		\$358.56		\$218.84

Utilization by payor source for both Year One and Year Three is as follows:

Medicaid MC	8.0%
Medicare MC	62.0%
Commercial MC	<u>30.0%</u>
Total	100.0%

The following is noted with respect to the submitted budget:

- Revenue assumptions by payor are based on the experience of the proposed operators at the other nursing home based dialysis projects they operate. The rates have been computed based on historical experience and current payment rates by payor for dialysis procedures from similar dialysis providers located in proposed dialysis center's service area.
- Expense assumptions are based on the historical experience of similar services D&TCs in the proposed dialysis center's services area and based on the similar nursing home based dialysis projects undertaken by the proposed operator. Lease rental expense has been included.
- Utilization is projected from the existing nursing home based dialysis patients. There are currently six-eight patients being transported three days per week to other area dialysis facilities for treatments. Additionally, other nursing home based dialysis centers of the proposed operators are operating above capacity with four plus shifts per day. The applicant has provided a conservative Year One utilization projection to reflect start-up issues and ramp-up of dialysis center. The members of proposed dialysis center will provide the required equity to cover any first year operating loss as a result of operations.
- The breakeven utilization is approximately 61.69% or 15,158 procedures in Year Three.

The budget appears reasonable.

#### Capability and Feasibility

The total project cost of \$5,882,092 will be satisfied by the landlord with \$588,209 in equity and a bank loan for \$5,293,883 at the above stated terms. Capital Funding, LLC has provided a letter of interest.

Working capital requirements are estimated at \$716,932 based on two months of third year expenses. Working capital will be provided via \$358,466 from members' equity with the remaining \$358,466 to be satisfied through a three-year loan at 6% interest. Capital Funding, LLC has provided a letter of interest. Review of BFA Attachment B, summary of the members' personal net worth statements, shows sufficient liquid resources to meet the project's equity requirements for working capital.

BFA Attachment E is Morningside Acquisition I, LLC d/b/a Morningside Nursing and Rehabilitation Center's 2013-2014 certified and internal financial statement of as of April 30, 2016, which indicates the entity maintained positive working capital, positive net asset positions for the period, and generated net income of \$1,092,610 as of April 30, 2016. BFA Attachment F is the 2014 consolidated financial statement of Morningside Acquisition I, LLC (operator) and Morningside Acquisition II, LLC (Landlord), which shows the entities have maintained positive working capital, negative net asset position and generated net income of \$1,390,124. As shown above, the landlord, Morningside Acquisition II, LLC has sufficient liquid resources available to meet the project's equity requirements for the construction.

BFA Attachment C is the pro-forma balance sheet for Morningside Dialysis Center, LLC, which shows the operation will start with \$358,466 in members' equity.

The submitted budget projects a net income of (\$489,915) and \$1,276,475 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. Commercial reimbursement rates for dialysis services are based on the historical data from the similar dialysis providers located in the proposed center's service area. The Year One loss is due to the start-up of operation and will be covered by additional equity from the members. The budget appears reasonable.

BFA Attachments D is a financial summary of the proposed members' affiliated New York dialysis centers. As shown, the affiliated dialysis centers had an average positive working capital position, an average negative net assets position and average positive net income from the operation.

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

Recommendation

**From a financial perspective, contingent approval is recommended.**

## Attachments

BFA Attachment A	Net Worth Statement of Proposed Members of Morningside Dialysis Center, LLC
BFA Attachment B	Organization Chart
BFA Attachment C	Pro-Forma balance sheet of Morningside Dialysis Center, LLC
BFA Attachment D	2013-2015 Financial Summary of Affiliated-New York Dialysis Centers
BFA Attachment E	2014-2015, 2016 Internal Financial Summary of the RHCF, Morningside Acquisition I, LLC
BFA Attachment F	2014 Consolidated Financial for RHCF's Operation and Realty entities.





**Project # 152135-E**  
**Delmar Acquisition I LLC d/b/a Bethlehem Commons**  
**Nursing and Rehabilitation Center**

**Program:** Residential Health Care Facility  
**Purpose:** Establishment

**County:** Albany  
**Acknowledged:** September 1, 2015

**Executive Summary**

**Description**

Delmar Acquisition I, LLC, a Delaware limited liability company authorized to do business in New York State, requests approval to be established as the new operator of Bethlehem Commons Care Center, a 120-bed, not-for-profit, Article 28 Residential Health Care Facility (RHCF) located at 125 Rockefeller Road, Delmar (Albany County). Upon approval of this application, the facility will be named Bethlehem Commons Nursing and Rehabilitation Center. There will be no change in beds or services provided.

On June 10, 2015, Good Samaritan Lutheran Health Care Center, Inc. entered into an Asset Purchase Agreement (APA) with Delmar Acquisitions I, LLC for the sale and acquisition of the operating and real property interests of Bethlehem Commons Care Center for a purchase price of \$12,500,000. The APA also included the sale and acquisition of Kenwood Manor, a 67-bed adult home located in Delmar, for a purchase price of \$750,000, and Normanskill Terrace, a 39-bed independent living facility located in Delmar, for a purchase price of \$200,000, resulting in a total purchase price of \$13,450,000. The Lutheran Care Network, Inc. is the sole member of Good Samaritan Lutheran Health Care Center, Inc. BFA Attachment B shows an organizational chart of the programs and services sponsored by The Lutheran Care Network, Inc.

Good Samaritan Lutheran Health Care Center, Inc. has provided a letter stating that, due to the difficult operating climate for small independent

skilled nursing facilities, and their inability to refinance related mortgages for the above noted properties, they decided to sell the assets. A lengthy process was undertaken to select a qualified buyer that would agree to pricing terms deemed fair and reasonable for Good Samaritan. The proceeds of the sale will be used to pay off substantial liabilities in connection with the properties (mortgage debt and outstanding payables) and to continue their charitable mission and ministries, which may include future construction of a greenhouse model skilled nursing facility on the grounds of Coburg Village in Rexford, New York.

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

<u>Current Operator</u>	
Good Samaritan Lutheran Health Care Center, Inc.	100%
<u>Proposed Operator</u>	
Delmar Acquisitions, LLC	100%
<u>Members</u>	
Zipporah Farkas	45%
Joseph Schlanger	45%
Lizer Jozefovic	10%

Upon Public Health and Health Planning Council (PHHPC) approval of this application, Delmar Acquisition I, LLC will enter into an Assignment and Assumption Agreement with Delmar Realty I, LLC for assignment of the real property interest of the RHCF for a purchase price of \$10. There is a relationship between Delmar

Acquisition I, LLC and Delmar Realty I, LLC in that the entities have common ownership. The applicant will lease the premises from Delmar Realty I, LLC.

A separate application for the change in ownership of the adult home, Kenwood Manor, is currently under review by the Department of Health.

#### OPCHSM Recommendation Contingent Approval

#### Need Summary

Bethlehem Commons Care Center's occupancy was 96.9% in 2011, 95.8% in 2012 and 94.4% in 2013. Occupancy as of June 29, 2016 is 96.7%, with 4 vacant beds. The current operator did not submit a cost report in 2014 so no certified occupancy is provided, however, unaudited occupancy during this period is approximately 95.0%.

#### Program Summary

This application proposes to establish Delmar Acquisition I, LLC as the new operator of Bethlehem Commons Care Center. The facility will be operated as Bethlehem Commons Nursing and Rehabilitation Center.

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 for approval as set forth in Public Health Law §2801-a (3).

#### Financial Summary

There are no project costs associated with this application. The purchase price for the RHC operations and realty is \$12,500,000 to be funded with members' equity of \$1,250,000 and a bank loan for \$11,250,000 with interest at 6.5% plus 30-day LIBOR (0.48% as of July 13, 2016) and a 25-year term. The projected budget is as follows

	<u>Year One</u>
Revenues	\$12,269,500
Expenses	<u>10,505,800</u>
Net Income	\$1,763,700

## 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. [RNR]
4. Submission of an executed loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of an executed working capital loan commitment, 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 for the real property interest of the residential health care facility, acceptable to the Department of Health. [BFA]
8. Submission of a photocopy of the applicant's executed lease agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicants Authority to do Business in New York, acceptable to the Department. [CSL]
10. Submission of the applicants executed copy of the Purchase and Sales Agreement, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicants amended and executed Operating Agreement, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Within two years from the date of 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 as prescribed by the related contingency. Once the Medicaid patient admissions standard is reached, the facility shall not reduce its proportion of Medicaid patient admissions below the 75 percent standard unless and until the applicant, in writing, requests the approval of the Department to adjust the 75 percent standard and the Department's written approval is obtained. [RNR]
3. Submission of annual reports to the Department for at least two years demonstrating substantial progress with the implementation of the facility's Medicaid Access Plan as prescribed by the related contingency. Reports will be due within 30 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. For example, if the Operating Certificate Effective Date is June 15, 2017, the first report is due to the Department no later than July 15, 2018. The Department reserves the right to require continued reporting beyond the two year period. [RNR]

Council Action Date  
**October 6, 2016**

# Need Analysis

## Background

Delmar Acquisition I, LLC, seeks approval to become the established operator of Bethlehem Commons Care Center, a 120-bed Article 28 residential health care facility (RHCF), located at 125 Rockefeller Road, Delmar, 12054 in Albany County.

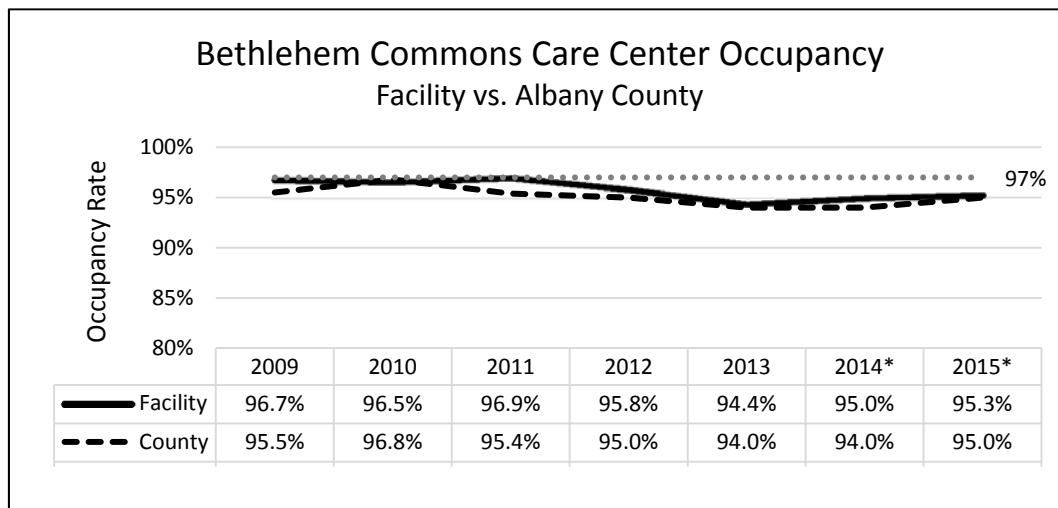
## Analysis

There is currently a need for 25 beds in Albany County based on the current need methodology:

### Albany County

2016 Projected Need	1,844
Current Beds	1,819
Beds Under Construction	0
Total Resources	1,819
Unmet Need	25

The overall occupancy for Albany County is 94.0% in 2013 as indicated in the chart below:



\*unaudited; based on weekly census

Occupancy as of June 29, 2016 is 96.7%, with 4 vacant beds. The current operator did not submit a cost report in 2014 so no certified occupancy is provided. However, according to weekly census reports, occupancy during this period is approximately 95.0%.

## Access

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

Bethlehem Commons Care Center's Medicaid admissions for 2012 and 2013 are 4.5% and 3.5%, respectively. This facility did not exceed Albany County's 75% Medicaid admission threshold rates in 2012 and 2013 of 10.7% and 11.3%, respectively; the facility will be required to follow the contingency plan and the condition as noted below. Since the current operator did not submit a cost report for 2014, no certified Medicaid admissions are noted.

**Conclusion**

Approval of this application will maintain a needed resource for the residents it serves.

**Recommendation**

**From a need perspective, contingent approval is recommended.**

<b>Program Analysis</b>
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**Facility Information**

	Existing	Proposed
Facility Name	Bethlehem Commons Care Center	Bethlehem Commons Nursing and Rehabilitation Center
Address	125 Rockefeller Road Delmar, NY. 12054	Same
RHCF Capacity	120	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Not for Profit Corporation	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	Good Samaritan Lutheran Health Care Center, Inc.	Delmar Acquisition I, LLC  <u>Members:</u> Joseph Schlanger      45% Zipporah Farkas        45% Lizer Jozefovic         10%

**Character and Competence - Background**

**Facilities Reviewed**

Nursing Homes

Middletown Park Rehabilitation and Health Care Center (29%)	03/10 to present
Putnam Nursing and Rehabilitation Center (42%)	07/14 to present
Salem Hills Rehab and Health Care (70.10%)	06/06 to present
Sky View Rehabilitation and Health Care Center (25.5%)	10/13 to present
Waterview Hills Rehabilitation and Health Care Center (70.10%)	06/06 to present
Bay View Nursing and Rehabilitation Center (FL) (15%)	06/15 to present
Krystal Bay Nursing and Rehabilitation Center (FL) (12.5%)	05/13 to present
West Broward Rehabilitation and Health Care (FL) (17.50%)	06/10 to present
Lackawanna Health and Rehab Center (PA) (10%)	11/11 to present
Warren Haven Nursing Home (NJ) (32.5%)	09/15 to present

Assisted Living Facility

Residence at Bayview (FL) (15%)	06/15 to present
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LHCSA

Epic HomeCare, LLC (pending) (50%)
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### Individual Background Review

**Lizer Jozefovic** lists his employment as managing partner of Epic Healthcare Management LLC, (Epic) an administrative and back office service company for Skyview Rehabilitation and Healthcare, Waterview Hills Rehabilitation and Healthcare, Salem Hills Rehabilitation and Healthcare, Middletown Park Rehabilitation and Health Care and Putnam Nursing and Rehabilitation Center. There are no written agreements between Epic and the aforementioned nursing homes. Staff has reviewed the operating agreement for Epic. Mr. Jozefovic holds expired nursing home administrator licenses from New York and New Jersey, and a Bachelor of Arts from Yeshiva Gedola of Los Angeles. Mr. Jozefovic discloses the following health facility ownership interests:

#### Nursing Homes

Middletown Park Rehabilitation and Health Care Center (29%)	03/10 to present
Putnam Nursing and Rehabilitation Center (42%)	07/14 to present
Salem Hills Rehab and Health Care (70.10%)	10/05 to present
Sky View Rehabilitation and Health Care Center (25.5%)	10/13 to present
Waterview Hills Rehabilitation and Health Care Center (70.10%)	10/05 to present
Bay Vue Nursing and Rehabilitation Center (FL) (15%)	06/15 to present
Krystal Bay Nursing and Rehabilitation Center (FL) (12.5%)	05/13 to present
West Broward Rehabilitation and Health Care (FL) (17.50%)	06/10 to present
Lackawanna Health and Rehab Center (PA) (10%)	11/11 to present

#### Assisted Living Facility

Residence at Bayview (FL) (15%)	06/15 to present
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#### LHCSA

Epic HomeCare, LLC (pending) (50%)	
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**Zipporah Farkas** indicates no employment history. Ms. Farkas has a high school diploma from Bais Yaakov of Spring Valley and discloses no health facility ownership interests.

**Joseph Schlanger** lists his current employment as the Executive Director at the Warren Haven Nursing Home in Warren County, New Jersey. Mr. Schlanger holds a BHL degree from Israel Torah Research Institute. Mr Schlanger discloses the following health facility ownership interest:

Warren Haven Nursing Home (NJ) (32.5%)	09/15 to present
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The three individuals are also owners of Cedar Manor Holdings, a proposed 50% member of Cedar Manor Acquisition I LLC (Cedar Manor). Cedar Manor was approved by the PHHPC in August 2016 (161185) to become the established operator of Cedar Manor Nursing and Rehabilitation Center.

### Character and Competence – Analysis

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

A review of operations of Middletown Park Rehabilitation and Health Care Center, North Westchester Restorative Therapy and Nursing Center, Putnam Nursing and Rehabilitation Center, Salem Hills Rehabilitation and Nursing Center, Seagate Rehabilitation and Nursing Center, Sky View Rehabilitation and Health Care Center, Waterview Hills Rehabilitation and Health Care Center, Bay Vue Nursing and Rehabilitation Center (FL), Krystal Bay Nursing and Rehabilitation Center (FL), West Broward Rehabilitation and Health Care (FL), Warren Haven Nursing Home (NJ), Lakeview Rehabilitation and Care Center (NJ) and Lackawanna Health and Rehab Center (PA) for the time periods identified above reveals that there were no enforcements.

A review of operations for Warren Haven Nursing Home in New Jersey for the periods identified above did not disclose enforcement actions against the facility.

A review of Residence at Bay View (FL) for the time period identified above reveals that there were no legal actions/enforcements.

## Quality Review

Provider Name	Overall	Health Inspection	MDS Quality Measures
Bethlehem Commons Care Center	*	*	****
Middletown Park Rehabilitation & HCC	*****	*****	*****
Putnam Nursing And Rehabilitation Center	*	***	*
Salem Hills Rehabilitation And Nursing Center	*****	*****	*****
Sky View Rehabilitation & Health Care Center LLC	***	****	****
Waterview Hills Rehabilitation And Nursing Center	****	****	****
Bay Vue Nursing and Rehabilitation Center	****	***	*****
Krystal Bay Nursing And Rehabilitation	*****	****	*****
West Broward Rehabilitation And Healthcare	*****	****	*****
Lackawanna Health And Rehab Center	*	*	**
Warren Haven Rehab And Nursing Center	**	***	**

Above ratings are based on CMS Provider Rating dated 5/1/2016

## Project Review

No changes to the physical environment are proposed in this application. The applicant states that it will not enter into any consulting and services agreements. However, the applicant will be entering into a Medical Billing Service Agreement with LTC consulting Services, LLC, a New Jersey limited liability company. LTC consulting services will be responsible for billing, accounts receivables, accounts payable, and general bookkeeping. The applicant will also contract with Central Care Solutions, also from New Jersey. Central Care solutions will assume operation of the entire dietary department.

Additionally, the applicant states that it intends to raise the case mix index by providing more therapy services which will benefit residents by improving their functional status. The Applicant has also identified a number of residents whose MDS scores do not accurately reflect the level of care that is already being provided to these residents, and getting a more accurate score for these residents will also increase the case mix.

## Conclusion

The individual background review indicates the applicants have met the standard for approval 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 submitted an executed Asset Purchase Agreement, to be effectuated upon PHHPC approval, for the purchase of the operating and realty interests associated with the RHCF, adult home and independent living facility. The terms are summarized below:

Date:	June 10, 2015
Seller:	Good Samaritan Lutheran Health Care Center, Inc. (RHCF operator), Kenwood Manor, Inc. (adult home operator), and Good Samaritan Senior Housing Development Fund Company, Inc. (senior housing facility operator)
Buyer:	Delmar Acquisition I, LLC
Assets Acquired:	The assets used in the operation of the Facilities including: Equipment/Furnishings, Assumed Contracts, Permits, Intellectual Property, Business Records, Resident Records and Agreements, Inventory, Proprietary Material, Warranty Rights and Claims, Computer Software, Security Deposits and Prepayments, Numbers and Domain Names, Goodwill, All Other Personal Property, and Real Property
Excluded Assets:	Cash, Intercompany Receivables, Corporate Books of Seller, Seller Plans and Sellers' funds and accounts of all Seller Plans and other employee retirement, deferred compensation, health, welfare, or benefit plans, Credits owed to Seller from contributions to the Pension Fund, all Tax Refunds for periods prior to closing, all insurance policies and benefits prior to closing, SOS Software System, SmartLinx Solutions Software, computer hardware licensed/owned by Seller, all Intellectual Property and intangible rights in "The Lutheran Care Network" or "Good Samaritan Village", bank accounts, rate appeals pending for services prior to close, accounts receivable for period prior to close,
Assumption of Liabilities:	Accrued salaries, paid time off, severance pay, and obligation to contribute to the Pension Fund for 5-years
Purchase Price:	\$13,450,000 apportioned as follows: <ul style="list-style-type: none"> <li>• RHCF: \$12,500,000 (Land \$950,000, Building \$8,550,000, Goodwill \$3,000,000);</li> <li>• Kenwood Manor: \$750,000 (Land \$75,000, Building \$675,000); and</li> <li>• Senior Housing: \$200,000 (Land \$20,000, Building \$180,000)</li> </ul>
Payment of Purchase Price:	\$1,000,000 paid/held in escrow, plus \$525,000 additional equity at Closing \$11,925,000 due at Closing.

The applicant's financing plan is as follows:

Equity	\$1,525,000
Bank Loan - RHCF (6.5% plus 30-day LIBOR interest, 25-year term)	\$11,250,000
Bank Loan - Adult Home (6.5% plus 30-day LIBOR interest, 25-year term)	<u>\$,675,000</u>
Total	\$13,450,000

The total purchase price is apportioned between the RHCF, adult home and senior housing facilities as follows:

	<u>Equity</u>	<u>Bank Loan</u>
Bethlehem Commons Care Center (RHCF)	\$1,250,000	\$11,250,000
Kenwood Manor and Normanskill Terrace facilities	<u>275,000</u>	<u>675,000</u>
Total	\$1,525,000	\$11,925,000

Disproportionate share affidavits have been provided by Ms. Farkas and Mr. Schlanger attesting to cover the equity contributions of any member who does not have adequate liquid assets to cover his or her share of the purchase price. Meridian Capital Group, LLC has provided letters of interest for the RHCF and Adult Home financings at the stated terms. Through an Assignment and Assumption Agreement to be effectuated upon PHHPC approval, all rights, title, obligations and interests in the real property of the RHCF under the APA will be transferred to the realty company.

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

#### Assignment of Purchase and Sale Agreement

The applicant has submitted a draft Assignment of Purchase and Sale Agreement for the RHCf realty interests, as summarized below:

Assignor:	Delmar Acquisition I, LLC
Assignee:	Delmar Realty I, LLC
Assignment:	All rights, title, obligations and interest under the APA dated June 10, 2015, pertaining to the Real Property of the RHCf located at 125 Rockefeller Road, Delmar, NY.
Price:	\$10

#### Lease Agreement

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

Premises:	120-bed RHCf at 125 Rockefeller Road, Delmar, NY
Landlord:	Delmar Realty I LLC
Lessee:	Delmar Acquisition I LLC
Term:	30 years
Rental:	\$927,600 per annum (fixed and payable in monthly installments).
Provisions:	Tenant responsible for utilities, property taxes, water/sewer, insurance (Triple Net).

The lease is a non-arm's length agreement. The applicant has submitted an affidavit attesting that there is a relationship between landlord and tenant in that the entities have identical ownership.

#### Operating Budget

The applicant has provided the current year (2015) and the operating budget, in 2016 dollars, for the first year after the change in ownership summarized as follows:

<u>Revenues</u>	<u>Current Year</u>		<u>Year One</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Medicaid	\$184.90	\$5,267,897	\$227.77	\$6,580,300
Medicare	\$395.54	2,360,211	\$450.42	2,679,100
Commercial	\$346.38	129,201	\$346.35	294,400
Private Pay/Other	\$369.38	<u>2,683,895</u>	\$369.37	<u>2,715,700</u>
Total Revenue		\$10,441,204		\$12,669,500
 <u>Expenses</u>				
Operating	\$244.33	\$10,157,785	\$220.60	\$9,372,600
Capital	<u>\$16.63</u>	<u>691,521</u>	<u>\$26.67</u>	<u>1,133,200</u>
Total	\$261.98	\$10,849,306	\$246.67	\$10,505,800
Net Income (Loss)		(\$408,102)		\$1,763,700
Total Patient Days		41,574		42,486
Occupancy %		94.84%		97.00%

The following is noted with respect to the submitted budget:

- The revenue assumptions are based on the previous experience of the applicant operating other skilled nursing facilities in New Jersey, Pennsylvania, and Wisconsin. The applicant intends to increase the Case Mix Index from 0.82 to 1.11 by providing more therapy services aimed at improving the functional status of the residents. The applicant has identified a number of current residents whose MDS scores do not accurately reflect the level of care they are receiving. The applicant plans to increase patient days through the creation of various programs and services to make the RHCf more attractive to potential future residents.
- Expense assumptions are based on the previous experience of the applicant operating other skilled nursing facilities in New Jersey, Pennsylvania, and Wisconsin. Administrative efficiencies will be implemented to reduce costs. Staffing levels will be reduced by 15.7 FTEs, which will reduce costs by \$1,162,430 (\$852,312 Salaries and 310,118 in Employee Benefits). Professional fees paid to The Lutheran Care Network, Inc. will be eliminated, reducing cost by \$543,725, as the applicant will be able to perform these services directly, and an in-house dietary department will be replaced with a contracted service to provide for all the dietary needs.
- Utilization by payor source for the current year and first year is as follows:

	<u>Current Year</u>	<u>Year One</u>
Medicaid	68.58%	68.0%
Medicare	14.36%	14.0%
Commercial	0.90%	2.0%
Private Pay/Other	16.16%	16.0%

- Breakeven occupancy for year one is 85.91% or 37,630 patient days.

The projected budget appears reasonable.

#### Capability and Feasibility

There are no project costs associate with this application.

The purchase price for the RHCf is \$12,500,000 and will be met via \$1,250,000 from member's equity and a bank loan of \$11,250,000 with interest at 6.5% plus 30-day LIBOR (0.48% as of July 13, 2016) and a 25-year term. The purchase price for Kenwood Manor, Inc. and Good Samaritan Senior Housing Development Fund Company is \$950,000 and will met via \$275,000 member's equity and a bank loan of \$675,000 at an interest rate of 6.5% plus 30-day LIBOR for a 25-year term. Meridian Capital Group, LLC has provided letters of interest for the RHCf and Adult Home financings at the stated terms.

Working capital requirements are approximately at \$1,750,000 based on two months of the first year expenses. The applicant will finance \$875,000 at an interest rate of 5% for a five-year term and the remaining \$875,000 will be provided from members' equity. Meridian Capital Group, LLC has provided a letter of interest at the stated terms.

BFA Attachment A is the personal net worth statement of the proposed operators, which indicates the availability of sufficient resources overall to fund the equity contribution for the purchase price and working capital requirement. However, liquid resources may not be available from all members proportionate to their proposed ownership interest. Ms. Farkas and Mr. Schlanger have provided disproportionate share affidavits attesting to cover the equity contributions of any member who does not have adequate liquid assets to cover his or her share of the purchase price or working capital equity requirements.

BFA Attachment C is the pro forma balance sheet as of the first day of operation, which indicates a positive net asset position of \$1,335,000. Assets include \$100,000 in intangible assets, which is not a liquid resource nor is it recognized for Medicaid reimbursement. If intangible assets are excluded, the total net assets would become a \$1,235,000.

The submitted budget indicates a net income of \$1,763,700, and \$1,790,000 for the first and third year, respectively, subsequent to the change in operator. The budget appears reasonable.

The following is a comparison of 2015 historical and projected revenues and expenses for Year One and Year Three of the RHCF:

	<u>Annual 2015</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$10,441,204	\$12,269,500	\$12,296,700
Expenses	<u>10,849,306</u>	<u>10,505,800</u>	<u>10,506,700</u>
Net Operating Income	(\$408,102)	\$1,763,700	\$1,790,000
Incremental Net Income		<u>\$2,171,802</u>	<u>\$ 2,198,102</u>

The increase in projected income comes from a decrease in total expenses based on administrative efficiencies under new management, and an increase in revenue based on an increase in patient days along with an increase in the Case Mix Index. The most significant decrease will be from Salaries and Employee Benefits tied to the change in staffing pattern, for a total reduction of \$1,162,430.

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 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 a financial summary of Good Samaritan Health Care Center, Inc. for the 2013 through 2015 audited period. As shown, the entity had an average negative working capital position and an average negative net asset position from 2013 through 2015. Also, the facility had an average operating loss of \$327,616 for the period shown. The main reason for the operating loss and negative net asset position has been the decline in private pay patients, which has a higher reimbursement rate compared to Medicaid and Medicare.

BFA Attachment E is a Financial Summary of Lizer Jozefovic's affiliated nursing homes. The affiliated RHCFs show an average positive net asset and an average positive net income position for the period shown, with the exception of a net loss for Putnam Nursing Home and average negative working capital positions for the following:

- Skyview Rehab & Health Center's negative working capital is the result of receiving an inter-company loan that is considered a current obligation, and experiencing a loss in 2013. The facility generated net income of \$587,819 in 2014 and \$207,952 through August 31, 2015.
- Waterview Hills Rehabilitation and Salem Hills Rehabilitation had a negative working capital position for the period. Both facilities and the realty entity are owned by Lizer Jozefovic and located on same property and campus. The consolidated financial statement of all three entities for 2015 shows a positive working capital position.
- Middletown Park Rehabilitation had a negative working capital due to a mortgage (bridge loan to HUD financing) on the facility for \$20 million, which is treated as a current liability on the financial statement. The facility has received approval for a HUD financing to be closed by August 2016, at which time the greater portion of the loan will be classified as long term.
- Putnam Nursing & Rehab's negative working capital is due to the facility's poor condition. The current operator purchased the facility in July 2014, and plans for major renovations that will likely make the facility profitable and improve the working capital position.

Recommendation

**From a financial perspective, contingent approval is recommended.**

## Attachments

BFA Attachment A	Personal Net Worth Summary of Proposed Members
BFA Attachment B	The Lutheran Care Network Organizational Chart
BFA Attachment C	Pro-Forma Balance Sheet
BFA Attachment D	2013-2015 Financial Summary – Good Samaritan Health Care Center, Inc.
BFA Attachment E	Lizer Jozefovic's Affiliated RHCF Ownership Interest and Financial Summary



Project # 161156-E
Renaissance Rehabilitation and Nursing Care Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Dutchess
Acknowledged: March 21, 2016

Executive Summary

Description

Renaissance Healthcare Group, LLC, a New York limited liability company, requests approval to be established as the new operator of Renaissance Rehabilitation and Nursing Care Center, a 120-bed, proprietary, Article 28 Residential Health Care Facility (RHCF) located at 4975 Albany Post Road, Staatsburg (Dutchess County). Hyde Park Nursing Home, Inc. is the current operator of the facility. Upon approval of this application, the facility will continue to use the Renaissance Rehabilitation and Nursing Care Center name. There will be no change in beds or services provided.

On February 24, 2015 (and effective May 1, 2015), Hyde Park Nursing Home, Inc. entered into an Operations Transfer Agreement (OTA) with Renaissance Healthcare Group, LLC for the sale and acquisition of the RHCF operating interests for \$1,800,000. The transaction closing is pending PHHPC approval. The nursing home's real property is owned by R & B Renaissance Realty, LLC, an entity owned equally by Hyde Park Nursing Home, Inc. majority members, Raphael Yenowitz and Barbara Hurwitz. Concurrently on February 24, 2015 (and effective May 1, 2015), R & B Renaissance Realty, LLC and Hyde Parke Nursing Home, Inc. entered into a 30-year lease agreement for the RHCF premises. Upon closing of this application, Hyde Park Nursing Home, Inc. will enter into a Lease Assignment and Assumption Agreement with Renaissance Healthcare Group, LLC for site control of the facility.

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

Table with 2 columns: Member Name and Percentage. Includes Current Operator Hyde Park Nursing Home, Inc. and Members Raphael Yenowitz (45.5%), Barbara Hurwitz (45.5%), Jack Koschitzki (9.0%).

Table with 2 columns: Member Name and Percentage. Includes Proposed Operator Renaissance Healthcare Group, LLC and Members Fifth Avenue Renaissance, LLC (60%), Pincus Rand (37%), Charles Rand (21%), Lawrance Rand (21%), Arie Rand (21%), JFK Acquisition, LLC (40%), Jack Koschitzki (51%), Faige Koschitzki (49%).

OPCHSM Recommendation
Contingent Approval

Need Summary
There will be no changes to beds or services at this facility. Renaissance Rehabilitation and Nursing Care Center's current occupancy, as of July 27, 2016 is 99.2%, with 1 vacant bed.

### Program Summary

No negative information has been received concerning the character and competence of the proposed applicant identified as shareholders. 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

Renaissance Healthcare Group, LLC will acquire the RHC's operations for \$1,800,000. This amount has already been paid by Pincus Rand, a proposed member. There are no project costs associated with this application. The projected budget is as follows:

	<u>Year One</u>
Revenues	\$11,064,340
Expenses	<u>9,865,800</u>
Gain/(Loss)	\$1,198,540

## 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. [RNR]
4. Submission of an executed lease assignment and assumption agreement, acceptable to the Department of Health. [BFA]
5. Submission of a photocopy of a signed Certificate of Amendment of Articles of Organization for the applicant, which is acceptable to the Department. [CSL]
6. Submission of a photocopy of a signed Certificate of Assumed Name, which is acceptable to the Department. [CSL]
7. Submission of a photocopy of a signed revised Operating Agreement for JFK Acquisition LLC, which is 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]
2. Within two years from the date of 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 as prescribed by the related contingency. Once the Medicaid patient admissions standard is reached, the facility shall not reduce its proportion of Medicaid patient admissions below the 75 percent standard unless and until the applicant, in writing, requests the approval of the Department to adjust the 75 percent standard and the Department's written approval is obtained. (RNR)
3. Submission of annual reports to the Department for at least two years demonstrating substantial progress with the implementation of the facility's Medicaid Access Plan as prescribed by the related contingency. Reports will be due within 30 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. For example, if the Operating Certificate Effective Date is June 15, 2017, the first report is due to the Department no later than July 15, 2018. The Department reserves the right to require continued reporting beyond the two year period. (RNR)

Council Action Date

**October 6, 2016**

# Need Analysis

## Background

Renaissance Healthcare Group, LLC, seeks approval to become the established operator of Renaissance Rehabilitation and Nursing Care Center, a 120-bed Article 28 residential health care facility (RHCF), located at 4975 Albany Post Road, Staatsburg, 12580, in Dutchess County.

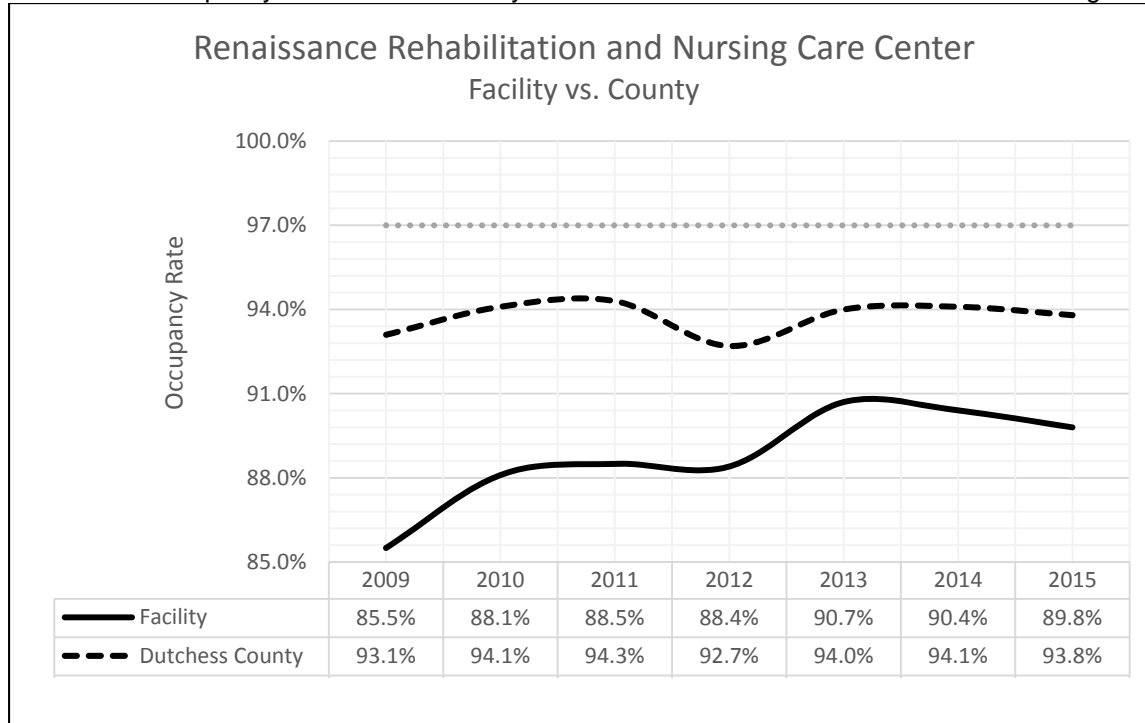
## Analysis

There is currently a surplus of 23 beds in Dutchess County as indicated in the following table:

### RHCF Need – Dutchess County

2016 Projected Need	1,903
Current Beds	1,926
Beds Under Construction	0
Total Resources	1,926
Unmet Need	-23

The overall occupancy for Dutchess County was 93.3% for 2015 as indicated in the following chart:



Renaissance Rehabilitation and Nursing Care Center’s occupancy was 88.4% in 2012, 90.7% in 2013, 90.4% in 2014, and 89.7% in 2015. According to the applicant, the reason for the low occupancy was because the current owner did not maintain the desire to keep census at an optimum planning level due to a potential sale, coupled with not maintaining relations with referral sources.

One of the proposed members became a minority member of the current operator in May 2015. The applicant indicates it was able to increase occupancy by investing a tremendous amount of time and money marketing the facility. The applicant met with many of the area physicians and hospitals, invited them to tour the facility, hosted a community event every other month, and purchased advertising on billboards throughout Dutchess County. As a result, the facility received many new referrals and raised awareness of the facility’s services and its ability to serve as a community resource. Due to these concerted efforts, the facility has been able to maintain a greater than 98% occupancy rate for the entirety of 2016 to date.

The facility is also one of four RHCs currently working with Vassar Brothers Medical Center to provide short term rehabilitation to individuals who have had a trans-aortic valve replacement and in need of sub-acute rehab. The program commenced in December, 2015 and as of March, 2015 the facility has provided services to seven individuals.

**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.

Renaissance Rehabilitation and Nursing Care Center’s Medicaid admissions of 64.8% in 2013 and 64.2% in 2014 exceeded Dutchess County’s 75% rates in 2013 and 2014 of 19.5% and 20.2%, respectively.

**Conclusion**

Contingent approval is being recommended to maintain a needed resource to meet the needs of the residents of Dutchess County.

**Recommendation**

**From a need perspective, contingent approval is recommended.**

**Program Analysis**

**Facility Information**

	Existing	Proposed
Facility Name	Renaissance Rehabilitation and Nursing Center	Same
Address	4975 Albany Post Road Staatsburg, NY 12580	Same
RHCF Capacity	120	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Business Corporation	Same
Class of Operator	Proprietary	Same
Operator	Hyde Park Nursing Home Inc.  Ralph Yenowitz            45.5% Barbara Hurwitz           45.5% Jack Koschitzki            9.0%	Renaissance Healthcare Group, LLC  Fifth Avenue Renaissance, LLC 60% Pincus Rand            37% Charles Rand           21% Lawrence Rand        21% Arie Rand                21% JFK Acquisition, LLC        40% Jack Koschitzki        51% Faige Koschitzki       49%

## Character and Competence - Background

### Facilities Reviewed

#### Nursing Homes

Renaissance Rehabilitation and Nursing Center [9%]	05/2015 to present
County Manor Rehabilitation and Health Care Center (NJ)	10/2001 to present

#### Assisted Living

Spring Hills Morristown (NJ)	06/2006 to 12/2010
Spring Hills Somerset (NJ)	06/2006 to 12/2010
Spring Hills Singing Woods (OH)	06/2006 to 12/2010
Spring Hills Middletown (OH)	06/2006 to 12/2010
Spring Hills Mount Vernon (VA)	06/2006 to 12/2010

### Individual Background Review

**Pincus Rand** reports employment as President of Y&S Handbags, Inc, importer since 1983. Mr. Pincus Rand discloses the following health facility ownership interests:

County Manor Rehabilitation and Health Care Center (NJ) [25%]	10/2001 to present
Spring Hills Morristown (NJ)	02/2003 to 12/2010
Spring Hills Somerset (NJ)	02/2003 to 12/2010
Spring Hills Singing Woods (OH)	02/2003 to 12/2010
Spring Hills Middletown (OH)	02/2003 to 12/2010
Spring Hills Mount Vernon (VA)	02/2003 to 12/2010

**Charles Rand** reports employment as VP Sales and Operations of Y&S Handbags, Inc. since 1993. Mr. Charles Rand reports the following health facility ownership interests:

Spring Hills Morristown (NJ)	02/2003 to 12/2010
Spring Hills Somerset (NJ)	02/2003 to 12/2010
Spring Hills Singing Woods (OH)	02/2003 to 12/2010
Spring Hills Middletown (OH)	02/2003 to 12/2010
Spring Hills Mount Vernon (VA)	02/2003 to 12/2010

**Lawrence Rand** reports employment as VP Sales of Y&S Handbags, Inc. since 1983. Mr. Lawrence Rand reports the following health facility ownership interests:

Spring Hills Morristown	02/2003 to 12/2010
Spring Hills Somerset	02/2003 to 12/2010
Spring Hills Singing Woods	02/2003 to 12/2010
Spring Hills Middletown	02/2003 to 12/2010
Spring Hills Mount Vernon	02/2003 to 12/2010

**Arie Rand** reports employment as VP Sales and Operations of Y&S Handbags, Inc. since 2002. Mr. Arie Rand discloses no health facility ownership interests.

**Jack Koschitzki** lists employment as Administration/ Regional Director/ Program Manager at Renaissance Rehabilitation and Nursing Care Center, the subject facility since May 2015. He also discloses employment as Administration/ Regional Director/Project Manager at Palm Gardens Nursing Center since June 2006. Mr. Koschitzki discloses the following health facility ownership interest:

Renaissance Rehabilitation and Nursing Center [9%]	05/2015 to present
--	--------------------

**Faige Koschitzki** reports employment as Marketing Coordinator at Renaissance Rehabilitation and Nursing Care Center, since April 2015. She is concurrently employed in Marketing and Sales at Fortune Wigs located in Brooklyn, NY, since 2012. Ms. Koschitzki discloses no health facility ownership interests.

## Character and Competence - Analysis

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

A review of operations for Renaissance Rehabilitation and Nursing Center for the period identified above revealed that there were no enforcements.

A review of schedule 2D submitted by the State of New Jersey, an affidavit submitted by the applicant and the New Jersey Department of Health website revealed that there were no enforcements for County Manor Rehabilitation and Health Care Center.

An affidavit submitted by the applicant for Spring Hills Morristown (NJ), Spring Hills Somerset (NJ), Spring Hills Singing Woods (OH), Spring Hills of Middletown (OH), and Spring Hills Mount Vernon (VA) revealed that there were no enforcement actions during the period of the applicant's prior ownership.

Quality Review

Provider Name	Overall	Health Inspection	MDS Quality Measures
Renaissance Rehabilitation And Nursing Care Center	*	***	*
County Manor Rehabilitation & HCC	*****	***	*****

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 for approval as set forth in Public Health Law §2801-a(3).

Recommendation

**From a programmatic perspective, approval is recommended.**

**Financial Analysis**

Operations Transfer Agreement

The applicant has submitted an executed OTA to acquire the RHCF's operating interests, which will become effective upon Public Health and Health Planning Council approval. The terms are summarized below:

Date:	February 24, 2015 (effective date May 1, 2015)
Seller:	Hyde Park Nursing Home, Inc.
Purchaser:	Renaissance Healthcare Group LLC
Assets Transferred:	Right, title and interest in business assets clear of liens including: inventory, patient records, phone numbers, domain names and addresses, Medicaid and Medicare provider numbers, assignable licenses and permits, furniture and equipment, assumed contracts, intellectual property rights, trade name, computer software and resident funds.
Excluded Assets:	Sellers' cash, deposits, account receivables, prepayments, refunds, Universal Settlement
Assumed Liabilities:	Liabilities and obligations arising with respect to the operation of the Facility on and after the Closing Date;
Purchase Price:	\$1,800,000
Payment of the Purchase Price:	\$1,734,323 was paid one day prior to effective date (4/30/15). The remaining \$67,677 was due at Closing, but was subsequently paid by Pincus Rand as well.

The \$1,800,000 purchase price for the operations has been fully paid by proposed member Pincus Rand (described as his initial Capital Contribution). This initial Capital Contribution is to be repaid to Pincus

Rand over time by fellow proposed members (terms not provided) after the change in ownership is finalized.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. The applicant had no Medicaid liabilities as of August 16, 2016.

#### Lease Agreement

The applicant submitted an executed lease agreement. The terms are summarized below:

Date:	February 24, 2015 with a May 1, 2015 commence date
Premises:	120-bed RHCF located at 4975 Albany Post Road, Staatsburg (Dutchess County), New York 12580
Owner/Landlord:	R & B Renaissance Realty, LLC
Lessee:	Hyde Park Nursing Home, Inc.
Term:	30 years from May 1, 2015 Commencement Date
Rent:	\$600,000 Years 1-4; \$650,000 Years 5-9; \$680,000 Years 10-14; \$710,000 Years 15-19; \$735,000 Years 20-24; and \$775,000 Years 25-30
Provisions:	Triple Net, plus

The lease provides an option to purchase the real property after the expiration of the 15<sup>th</sup> year following the commencement date.

#### Lease Assignment and Assumption Agreement

The applicant has submitted a draft Assignment and Assumption Agreement for the RHCF site, the terms as summarized below:

Landlord:	R & B Renaissance Realty, LLC
Lessee:	Hyde Park Nursing Home, Inc.
Assignor:	Hyde Park Nursing Home, Inc
Assignee:	Renaissance Healthcare Group, LLC
Lease Assigned:	Lease associated with the premise located at 4975 Albany Post Road, Staatsburg (Dutchess County), New York 12580
Lease Terms:	No change

The applicant has provided an affidavit attesting that the lease arrangement between the proposed operator and landlord is an arm's length agreement.

#### Operating Budget

The applicant has provided an operating budget, in 2016 dollars, for the first year after the change in ownership, summarized below:

	<u>Current Year</u>		<u>First Year</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
<u>Revenues</u>				
Medicaid	\$195.03	\$6,359,397	\$177.89	\$5,363,206
Medicare	535.94	2,162,528	465.04	\$4,406,300
Private Pay/Other	<u>249.81</u>	<u>668,289</u>	<u>375.01</u>	<u>1,294,834</u>
Total	\$233.81	\$9,190,214	\$256.89	\$11,064,340
<u>Expenses</u>				
Operating	\$208.05	\$8,177,695	\$207.69	\$8,945,300
Capital	<u>25.89</u>	<u>1,017,583</u>	<u>21.37</u>	<u>920,500</u>
Total Expenses	\$233.94	\$9,195,278	\$229.06	\$9,865,800

Net Income (Loss)	(\$5,064)	\$1,198,540
Patient Days	39,307	43,070
Utilization %	89.74%	98.33%

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

- The current year reflects the facility's 2015 revenues and expenses.
- Medicaid revenue is based on the facility's current 2016 Medicaid Regional Pricing rate. The current year Medicare rate is the actual daily rate experienced by the facility during 2015. The Medicare rate forecasted for the first and third year overall decreased due to added volume going to manage care. Private pay rates reflect increases implemented by the facility during 2015.
- Expenses and staffing assumptions were based on the current year expenses and then adjusted for inflation of approximately 3%.
- The facility's projected utilization for Year One and Three is 98.33%. Utilization for the past four years has averaged around 89.79%. However, occupancy has improved during 2016 and the current occupancy was 99.2% as of July 27, 2016. The current members have enhanced the facility's outreach and marketing programs by:
  - Meeting with area physicians and hospitals and inviting them to tour the facility;
  - Hosting community events every other month, to raise awareness of the facility's services and ability to serve as a community resource;
  - Informing the public of the different features available at the RHCF through advertising;
  - Implementing of a cardiac rehabilitation program for patients from Vassar Brothers hospital;
  - Enhancing provider relationships and improving collaboration with local health plans, hospital discharge planners, assisted living facilities, and other local health care providers.
  - Working with the local DSRIP Performing Provider System and manage care providers.
- Utilization by payer source for the first year after the change in ownership is summarized below:

	Current Year-2015		1 <sup>st</sup> Quarter 2016		Year One	
	Visits	%	Visits	%	Visits	%
Medicaid	32,607	82.95%	7,677	71.47%	30,149	70.0%
Medicare	4,035	10.27%	1,692	15.75%	9,475	22.0%
Private/Other	<u>2,665</u>	<u>6.78%</u>	<u>1,373</u>	<u>12.78%</u>	<u>3,446</u>	<u>8.0%</u>
Total	39,307	100.0%	10,742	100.0%	43,070	100.0%

- The breakeven utilization is projected at 89.2% for the first year.

#### Capability and Feasibility

Renaissance Healthcare Group, LLC will acquire the RHCF's operations for \$1,800,000. This amount has already funded by Pincus Rand, a proposed member. There are no project costs associated with this application.

The working capital requirement is estimated at \$1,644,300 based on two months of first year expenses. The entire working capital will be funded from Rand family members' liquid resources. BFA Attachment A is the proposed operating members' net worth summaries, which reveals sufficient resources to meet the equity requirement. Since liquid resources may not be available in proportion to the proposed ownership interest, Pincus Rand has provided an affidavit stating he is willing to contribute resources disproportionate to his membership interest (covering the purchase price and working capital).

The submitted budget projects a \$1,198,540 net income in both the first and third years. Revenues are estimated to increase by approximately \$1,874,126 primarily from a realignment between Medicaid and Medicare along with a \$626,545 increase related to the increased private payer rate. Overall expenses are expected to increase by \$670,522, coming from a \$767,605 increase in operating expenses and a \$97,083 reduction in capital expenses. The change in expenses are as follows: \$389,428 in wages and benefits; \$488,914 in therapy and pharmacy; with a net reduction of \$207,820 (coming primary from depreciation and administrative services). The budget was created taking into consideration the changes in utilization.

DOH staff note that, through August 31, 2016, utilization was approximately 97.24%, which supports the project budget projection of 98.33%. BFA Attachment E is a budget sensitivity analysis using the

applicant's payer mix for the three months of 2016 (March 31, 2016 internals). If payor mix were to remain constant at current 2016 levels and based on the budgeted first year reimbursement rates, net profits would decline by \$369,644 going from \$1,198,540 to \$828,896. For comparison, the internal financial summary for the three months ending March 31, 2016, showed net earnings of \$263,380. The budget appears reasonable.

BFA Attachment D is Renaissance Healthcare Group, LLC pro forma balance sheet, which shows the entity will start off with \$3,600,000 in equity. Equity includes \$1,000,000 in goodwill which is not a liquid resource nor is it recognized for Medicaid reimbursement. If goodwill is eliminated, then total net assets are a positive \$2,600,000.

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 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. Dutchess County has transitioned to Medicaid Managed Care for new enrollees.

BFA Attachment C is Hyde Park Nursing Home, Inc, 2013 - 2015 certified financial statements and their internals as of March 31, 2016. For the periods shown, the RHCF had negative working capital, positive net assets and generated an average surplus of \$261,990.

Based on the preceding, 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	Renaissance Healthcare Group, LLC, Proposed Members Net Worth
BFA Attachment B	R & B Renaissance Realty, LLC, Current owners of the Real Property
BFA Attachment C	Financial Summary, Hyde Park Nursing Home, Inc. 2014 and 2015 certified financial statement and March 31, 2016 internal financial summary
BFA Attachment D	Pro Forma Balance Sheet
BFA Attachment E	Budget Sensitivity Analysis



162141  
The Bethel Methodist Home  
(Westchester County)

**TO BE DISTRIBUTED UNDER SEPARATE COVER**



**Project # 161393-E  
HCR/HCR Home Care**

**Program:** Certified Home Health Agency  
**Purpose:** Establishment

**County:** Clinton  
**Acknowledged:** June 8, 2016

**Executive Summary**

**Description**

L. Woerner, Inc. d/b/a HCR/HCR Home Care (L. Woerner), an Article 36 proprietary business corporation with offices at 85 Metro Park, Rochester, owns and operates seven certified home health agencies (CHHAs) and five long term home health care programs (LTHHCPs) serving several counties throughout upstate New York. L. Woerner is requesting approval to acquire and merge its Hudson Falls CHHA and LTHHCP operations located at 124 Main Street, Hudson Falls (Washington County), into its Plattsburgh CHHA and LTHHCP operations located at 176 U.S. Oval, Suite 3, Plattsburgh, and to add Washington County and Personal Care service to Plattsburgh's operating certificate. The merger is being done to achieve operating economies of scale.

The merger of the two North Country Region L. Woerner operations will add Hudson Falls as a branch office and Washington County as an additional practice location of HCR Plattsburgh. This will bring the number of counties served by the Plattsburgh CHHA to seven (Clinton, Essex, Franklin, Hamilton, Saint Lawrence, Warren and Washington) and the number of counties served by the Plattsburgh LTHHCP to two (Clinton and Washington). Upon approval by the Public Health and Health Planning Council (PHHPC), the Hudson Falls CHHA/LTHHCP operating certificate and provider numbers will terminate and the provider will officially close. L. Woerner intends to maintain the Hudson Falls office location as a branch office under Plattsburgh, due to the geographic expanse of the Southern Adirondack region served by the Hudson Falls operation.

The proposal involves certifying Personal Care service on HCR Plattsburgh's CHHA operating certificate, which is the only service provided by the Hudson Falls CHHA that the Plattsburgh CHHA is not currently certified to provide. The Plattsburgh LTHHCP will continue to provide the thirteen required services to both Clinton and Washington County patients.

The Department notes that the Centers for Medicaid and Medicaid Services did not extend the State's 2010 LTHHCP waiver authorization beyond May 27, 2016. As part of the State's Medicaid Redesign Team Initiative, mandatory enrollment of LTHHCP participants into Mainstream Managed Care (MMC) or Managed Long Term Care (MLTC) began in 2013 and it is anticipated that all LTHHCP participants will be transitioned to MMC, MLTC or other waiver programs over time. Under state and federal statute and regulations, LTHHCPs continue have the same status as state and federally qualified CHHAs, and may continue to directly admit and serve patients under their LTHHCP/CHHA authorizations.

Concurrently under review, L. Woerner, Inc. is seeking to merge its HCR Delhi CHHA and LTHHCP program with HCR Cobleskill (CON 161394), and to merge HCR Homer CHHA and LTHHCP with HCR East Syracuse (CON 161397). The applicant's corporate resolution states the corporation would like to consolidate its CHHA operating certificates from seven to four, and its LTHHCP operating certificates from five to four, to increase efficiencies within the corporation.

BFA Attachments A and B are, respectively, the entity's organizational charts before and after approval of the transaction.

OPCHSM Recommendation  
Contingent Approval

Need Summary

The HCR Plattsburg CHHA is licensed to operate in Clinton, Essex, Franklin, Hamilton, Saint Lawrence and Warren Counties. The HCR Hudson Valley CHHA is certified to operate in Washington County. This proposal to merge HCR Hudson Valley into HCR Plattsburg would involve certifying "Personal Services" and adding Washington County to the operating certificate of the HCR Plattsburgh CHHA. Upon approval of this project, the Hudson Valley CHHA would close and the Plattsburgh CHHA would continue to provide the services currently provided by the Hudson Valley CHHA. Similarly, the Hudson Valley LTHHCP would close and the Plattsburgh LTHHCP would assume responsibility for those services. The Plattsburgh LTHHCP is currently certified to serve 100 patients in Clinton County. This project would add a 60 patient capacity in Washington County.

Program Summary

A review of the personal qualifying information indicates there is nothing in the background of the stockholders, trustees, board members, and officers to adversely affect their positions with L. Woerner, Inc., d/b/a HCR / HCR Home Care. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

Financial Summary

There are no project costs associated with this application and no acquisition price for HCR Hudson Falls.

Budget:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$11,114,619	\$11,670,124
Expenses	<u>10,914,277</u>	<u>11,374,840</u>
Gain/(Loss)	\$200,342	\$295,284

Enterprise Budget:

	<u>Year One</u>
Revenues	\$52,350,000
Expenses	<u>51,597,639</u>
Gain/(Loss)	\$752,361

## 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 an executed and completed facility lease agreement demonstrating site control, acceptable to the Department. [CSL]
2. Submission of a photocopy of the applicant's executed, amended and completed by-laws, which is acceptable to the Department. [CSL]
3. Submission of a photocopy of transfer documents showing the acquisition of HCR CHHA and LTHHCP in Hudson Falls by the applicant, 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. Approval conditioned upon proper notice being given to all employees participating in the employee stock ownership plan (ESOP) of the potential for an audit risk due to the lack of a legal separation between the CHHA and the LHCSA as it relates to payment structures. [CHA]
3. Approval conditioned upon no employee, or any other individual or entity, owning/controlling 10% or more of the corporation's stock without first obtaining Department of Health and/or Public Health and Health Planning Council approval, as appropriate. [CHA]

Council Action Date

**October 6, 2016**

## Need Analysis

### Analysis

The services currently offered by the HCR Plattsburgh CHHA are listed below. This proposal would add the "Personal Care" service, which is the only service provided by the HCR Hudson Valley CHHA for which the HCR Plattsburgh CHHA is not certified.

- Baseline Services – CHHA
- Home Health Aide
- Medical Social Services
- Medical Supplies Equipment and Appliances
- Nursing
- Nutritional
- Therapy – Occupational
- Therapy – Physical
- Therapy – Respiratory
- Therapy – Speech Language Pathology

Both the Plattsburgh LTHHCP and the Hudson Falls LTHHCP are certified to provide the following services. Upon approval, the 60 patient capacity of the Hudson Falls LTHHCP will be absorbed into the Plattsburgh LTHHCP

- Audiology
- Baseline Services - LTHHCP
- Home Health Aide
- Homemaker
- Housekeeper
- Medical Social Services
- Medical Supplies Equipment and Appliances
- Nursing
- Nutritional
- Personal Care
- Therapy - Occupational
- Therapy - Physical
- Therapy - Respiratory
- Therapy - Speech Language Pathology

### Conclusion

This proposal to incorporate HCR Plattsburgh into HCR Hudson Falls will allow L. Woerner to realize operational and cost efficiencies while continuing to serve the patients in its care. Upon approval there will be no service changes or disruptions in care because all certifications and counties served will be retained.

### Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Program Description

L. Woerner, Inc. d/b/a HCR / HCR Home Care currently operates seven Article 36 CHHAs and five Article 36 LTHHCPs in New York State as follows:

1. HCR / HCR Home Care now in Oneonta (formerly in Cobleskill) – CHHA serving Schoharie and Otsego Counties.
2. HCR / HCR Home Care in Delhi – CHHA and LTHHCP serving Delaware County only.
3. HCR / HCR Home Care in East Syracuse (formerly Canastota) – CHHA serving Madison, Cayuga, Jefferson, Onondaga, and Oswego Counties, and LTHHCP serving Madison County only.
4. HCR / HCR Home Care in Homer – CHHA serving Cortland County only.
5. HCR / HCR Home Care in Hudson Falls – CHHA and LTHHCP serving Washington County only.
6. HCR / HCR Home Care in Plattsburgh – CHHA serving Clinton, Essex, Franklin, Hamilton, St. Lawrence, and Warren Counties, and LTHHCP serving Clinton County only.
7. HCR / HCR Home Care in Rochester (with an additional branch office practice location in Batavia) – CHHA serving Monroe, Genesee, Orleans, Livingston, Ontario, and Wayne Counties, and LTHHCP serving Genesee County only.

L. Woerner, Inc. d/b/a HCR / HCR Home Care also currently operates two Article 36 LHCSAs in New York State as follows:

1. HCR / HCR Home Care in Rochester – serving Livingston, Monroe, Ontario, Orleans, and Wayne Counties.
2. HCR / HCR Home Care in Batavia – serving Genesee, Monroe, Orleans, and Wyoming Counties.

This CON requests approval for HCR Plattsburgh to acquire, by merger, HCR Hudson Falls. HCR Plattsburgh CHHA current serves Clinton, Essex, Franklin, Hamilton, St. Lawrence, and Warren Counties, and HCR Plattsburgh LTHHCP serves Clinton County only. HCR Hudson Falls CHHA and LTHHCP currently serve Washington County only. Approval will result in all county approvals and authorized services assigned to HCR Hudson Falls CHHA and LTHHCP being transferred to HCR Plattsburgh CHHA and LTHHCP, thereby closing the HCR Hudson Falls CHHA and LTHHCP. The current practice location office in Hudson Falls will ultimately become a CMS-approved branch office additional practice location for the HCR Plattsburgh.

### Background

Per previously approved CON #061088-E, each employee participating in the L. Woerner, Inc. Employee Stock Ownership Plan (ESOP) does not actually take ownership of the stock itself, but instead has a separate stock account in the trust to hold his/her allocation of stock. Employees participating in the ESOP may not sell, transfer, assign, pledge, or encumber the shares of stock allocated to their stock account. Dividends will be allocated among, and credited to, each participant's stock accounts on the basis of the number of shares held by the participant's account. The duties and powers of the ESOP Trustee (or Trustees) are outlined in the Employee Stock Ownership Trust Agreement under the ESOP. The Trustee (or Trustees) has/have the power to: manage and control the assets, including the stock, held in the trust; sell, exchange, transfer, or grant options for any property held in the trust; and vote all allocated and unallocated shares of stock. Employees participating in the ESOP instruct the Trustee(s) in the manner to vote the shares of stock allocated to their stock account only in the event of corporate merger, consolidation, recapitalization, reclassification, liquidation, dissolution, or sale of substantially all assets of the company or similar transaction, which must be approved by the shareholders of L. Woerner, Inc., pursuant to applicable New York State law. The Employee Stock Ownership Trust Agreement permits a Trustee to be removed by the Board of Directors, or to resign his/her position as Trustee, at any time. Any Successor Trustee(s) must receive prior approval of the New York State Department of Health and/or Public Health and Health Planning Council. Upon appointment, any and all Successor Trustees will be granted the same power, rights, and duties as the previous Trustee. Additional Trustees may be appointed in the future (upon prior approval of the Department of Health and/or Public Health and Health Planning Council), and will have the same rights, powers, and duties of the Trustee as granted by the Employee Stock Ownership Trust Agreement. The applicant had confirmed, and has restated such confirmation for this current project proposal, that no stockholder shall control 10% or more of the stock, of L. Woerner, Inc., without first obtaining Department of Health and/or Public Health and Health Planning Council approval, as appropriate.

CON project # 061088-E also noted that L. Woerner, Inc. operates both a CHHA and LHCSA out of a single corporation. The Department has discouraged this type of arrangement because of the different regulatory requirements and payment structures applicable to CHHAs and LHCSAs. L. Woerner, Inc. wished to retain its current corporate arrangement, thus placing the agency at potential risk for future audit liabilities due to there being two different payment structures for the same service within a single corporation. Therefore, the Department required the agency to provide written notification, approved by the Department, to all participants in the ESOP of the possible loss in dividends resulting from the audit risk posed by the corporate structure. The applicant had confirmed, and has restated such confirmation for this current project proposal, that the agency continues to provide such written notification, as previously approved by the Department, to all participants in the ESOP of the possible loss in dividends resulting from the audit risk posed by the corporate structure.

The corporation L. Woerner, Inc. is currently authorized 4,000,000 shares of stock, with 2,333,432 shares of stock currently issued and outstanding, and the remaining 1,666,568 shares of stock currently held in Treasury as non-issued shares.

Of the 2,333,432 shares of stock currently issued, the stockholders and stock distribution are as follows:

<b>Stockholder</b>	<b>Shares</b>	<b>%</b>
<b>Employee Stock Ownership Plan Trust</b>	1,618,693	69.37
<b>Don H. Kollmorgen</b> Retired	232,124	9.95
<b>Louise Woerner</b> Chief Executive Officer	231,880	9.94
<b>Lawrence L. Peckham</b> Retired	223,235	9.56
<b>Nancy S. Peckham</b> Retired	25,000	1.07
<b>Clayton H. Osborne, MSW, LCSW-R</b> Retired	2,500	0.11

The previously approved Trustees of the Employee Stock Ownership Plan Trust remain as follows:

<b>Louise Woerner</b> Chief Executive Officer
<b>Duane E. Tolander, CPA (Iowa)</b> Partner / Managing Director, HDH Advisors, LLC, West Des Moines, Iowa (Financial Advisory Services / Professional Consulting / Corporate and Business Valuations / Litigation Support); Trustee, Bestcare, Inc. (LHCSA) Employee Stock Ownership Plan Trust

The previously approved Board of Directors of L. Woerner, Inc. remain as follows:

<b>Louise Woerner, Chairperson, Secretary, Treasurer (9.94% stockholder)</b>
<b>Don H. Kollmorgen (9.95% stockholder)</b>
<b>Lawrence L. Peckham (9.56% stockholder)</b>
<b>Joseph J. Castiglia, CPA</b>
<b>Clayton H. Osborne, MSW, LCSW-R (0.11% stockholder)</b>

Additional officers of L. Woerner, Inc., who are neither a stockholder, trustee, nor board member, are as follows:

<b>Mary Elizabeth Zicari, RN</b> President / Administrator, L. Woerner, Inc.
Affiliation: DePaul Adult Care Communities, Inc., Rochester (licensed ACFs/ALPs, in New York State, North Carolina, and South Carolina) – April 2009 to July 1, 2016
<b>Suzanne L. Turchetti</b> Assistant Corporate Secretary / Senior Executive Assistant, L. Woerner, Inc.

The Office of the Professions of the New York State Education Department indicates no issues with the RN license of Mary Elizabeth Zicari, the CPA license of Joseph Castiglia, or the LCSW license of Clayton Osborne. The Professional Licensing Bureau of the State of Iowa indicates no issues with the CPA license of Duane Tolander. In addition, a search of all of the above named stockholders, trustees, board members, officers, employers, and health care affiliations revealed no matches on either the New York State Medicaid Disqualified Provider List or the federal Office of the Inspector General's Provider Exclusion List.

The NYSDOH Division of Home and Community Based Services reviewed the compliance history of the CHHAs and the LHCSAs operated by L. Woerner, Inc., for the time period 2009 to present, and the LTHHCPs operated by L. Woerner, Inc., for the time period May 2010 (establishment of the first HCR / HCR Home Care LTHHCP) to present. The Division of Home and Community Based Services

also reviewed the compliance history of the LHCSAs operated by Bestcare, Inc., for the time period 2011 (when Mr. Tolander began serving as a Trustee of Bestcare's Employee Stock Ownership Plan Trust) to present. It has been determined that the L. Woerner, Inc. CHHAs, LTHHCPs, and LHCSAs, plus the affiliated Bestcare, Inc. LHCSAs, are all in substantial compliance with all applicable codes, rules, and regulations, with no enforcements or administrative actions imposed.

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The two remaining New York State ACFs and ALPs operated by DePaul Adult Care Communities, Inc., (Horizons Adult Home / Assisted Living Program, and Westwood Commons Adult Home) do not have any enforcement history to report. It has been determined that the five New York State ACFs and ALPs operated by DePaul Adult Care Communities, Inc., are now in substantial compliance with all applicable codes, rules, and regulations, with no additional enforcement or administrative actions imposed.

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Out of state compliance requests were sent to North Carolina for each of the twelve licensed ACFs/ALPs located in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc. for the time period 2009 to present. An out of state compliance request was also sent to South Carolina for the one licensed ACF/ALP located in South Carolina that is operated by the affiliated DePaul Adult Care Communities, Inc. for the time period 2009 to present.

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The North Carolina Department of Health and Human Services reports that the remaining eleven licensed ACFs/ALPs located in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc., have had no enforcement actions imposed since 2009.

Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

### Operating Budget

Summarized below is the applicant's North Country Region (HCR Plattsburgh and HCR Hudson Falls) current year operating results and first and third year budgets, in 2016 dollars:

	<u>Current (2015)</u>	<u>Year One</u>	<u>Year Three</u>
<u>CHHA Revenues</u>			
Medicaid	\$1,604,506	\$931,706	\$978,874
Medicare	6,087,584	7,452,549	7,829,834
Commercial	2,543,701	2,588,672	2,719,724
<u>LTHHCP Revenues</u>			
Medicaid	513,383	138,824	138,824
Medicare	<u>2,868</u>	<u>2,868</u>	<u>2,868</u>
Total Revenues	\$10,752,042	\$11,114,619	\$11,670,124
<u>Expenses</u>			
CHHA Operating	\$7,360,121	\$7,945,514	\$8,347,755
LTHHCP Operating	220,530	159,429	159,429
Capital	77,389	60,760	63,836
Overhead Allocated	<u>2,721,360</u>	<u>2,748,574</u>	<u>2,803,820</u>
Total Expenses	\$10,379,400	\$10,914,277	\$11,374,840
Net Income or (Loss)	<u>\$372,642</u>	<u>\$200,342</u>	<u>\$295,284</u>
Utilization-CCHA visits	67,434	71,775	75,408
Utilization-LTHHCP visit	9,369	4,933	4,933

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

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>CHHA</u>	<u>LTHHCP</u>	<u>CHHA</u>	<u>LTHHCP</u>	<u>CHHA</u>	<u>LTHHCP</u>
Medicaid	11.69%	94.88%	8.77%	95.89%	8.77%	95.89%
Medicare	52.65%	1.74%	57.84%	.73%	57.84%	.73%
Commercial	30.91%	0%	31.30%	0%	31.30%	0%
All Other	0%	.97%	0%	.97%	0%	.97%
Charity	<u>4.76%</u>	<u>2.41%</u>	<u>2.09%</u>	<u>2.41%</u>	<u>2.09%</u>	<u>2.41%</u>
Total	100%	100%	100%	100%	100%	100%

The applicant's charity care policy is to assess the individual based on income, expenses, assets, and other pertinent information to determine eligibility for no charge or reduced charge. The applicant will provide no less than 2% of charity care per fiscal year.

CHHA revenue and utilization projections are as follows:

- Medicaid revenues are based on an average episodic payment of \$2,747 after taking into consideration an estimated blended wage index of .93 and adjusting for the average case mix of .80 (which includes low utilization payment amount (LUPA)). The applicant expects to have 339 episodes in the first year. Utilization is estimated to grow by 2.5%.
- Medicare revenues are based on an average episodic payment of \$2,250 after taking into consideration an estimated blended wage index of .81 and adjusting for the average case mix of .90. The applicant expects to have 3,480 episodes in the first year. Utilization is estimated to grow by 2.5%.
- Commercial payers are based upon experience. Utilization is estimated to grow by 2.5%.

LTHHCP revenue projections are based on prevailing reimbursement methodologies.

CHHA and LTHHCP expenses are based on historical experience adjusted for changes in projected volume and efficiencies related to consolidating the operations.

L. Woerner, Inc. d/b/a HCR/HCR Home Care's enterprise budget is as follows:

	<u>Year One</u>
Revenues	\$52,350,000
Expenses	<u>51,597,639</u>
Gain/(Loss)	\$752,361

Overall, the applicant expects to be profitable in the first year.

#### Capability and Feasibility

There are no project costs associated with this application and no acquisition price for consolidating the HCR Hudson Falls CHHA and LTHHCP into HCR Plattsburgh CHHA and LTHHCP.

L. Woerner, Inc. projects the North Country Region operation will have a net income of \$200,342 and \$295,284 in the first and third years, respectively. According to the Enterprise Budget, the organization expects to generate a surplus of \$752,361 in the first year post consolidation. Working capital will continue to be provided from ongoing operations. The budget appears to be reasonable.

BFA Attachments C is L. Woerner, Inc.'s 2013-2014 certified financial summary and 2015 internals, which shows negative working capital has improved each year. Per the applicant, the negative net assets position is the results of losses and costs associate with expanding operations, ESOP contributions, and paying its share of the Workers Compensation Trust Deficit. In 2015, Medicaid reduced reimbursement 36%, for approximately \$1 million, which contributed in part to the 2015 loss.

BFA Attachment D is L. Woerner, Inc.'s internal financial statement as of June 30, 2016, which shows the organization generated \$300,899 in net income during the first six months. The applicant stated that they are on the path to exceeding the Enterprise Budget, as shown above.

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

#### Recommendation

**From a financial perspective, approval is recommended.**

## Attachments

- BFA Attachment A Organization Chart – L. Woerner Inc. Pre-Transaction
- BFA Attachment B Organization Chart – L. Woerner Inc. Post-Transaction
- BFA Attachment C L. Woerner, Inc. 2013-2014 certified financial statement and 2015 internal financial statement
- BFA Attachment D L. Woerner Inc. June 30, 2016 internal financial statement



**Project # 161394-E  
HCR/HCR Home Care**

**Program:** Certified Home Health Agency  
**Purpose:** Establishment

**County:** Schoharie  
**Acknowledged:** June 8, 2016

**Executive Summary**

**Description**

L. Woerner, Inc. d/b/a HCR/HCR Home Care (L. Woerner), an Article 36 proprietary business corporation with offices at 85 Metro Park, Rochester, owns and operates seven certified home health agencies (CHHAs) and five long term home health care programs (LTHHCPs) serving several counties throughout upstate New York. L. Woerner requests approval to acquire and merge its HCR Delhi CHHA and LTHHCP into its HCR Oneonta operation (formerly HCR Cobleskill) and to add Delaware County and Audiology service to Oneonta's operating certificate. HCR Oneonta currently operates only CHHA program. The merger will relocate the Delhi LTHHCP, which is licensed to serve 50 patients in Delaware County, to be operated by HCR's Oneonta CHHA. The merger is being done to achieve operating economies of scale.

The merger of the two Catskill Region HCR operations will bring the number of counties served by the HCR Oneonta CHHA to three (Otsego, Schoharie, and Delaware). The proposal involves certifying Audiology service on HCR Oneonta's CHHA operating certificate, which is the only service provided by the Delhi CHHA that the Oneonta CHHA is not currently certified to provide. HCR Delhi LTHHCP will be transitioned to HCR Oneonta and will continue to provide the thirteen required services to the Delaware County patients. Upon approval by the Public Health and Health Planning Council (PHHPC), the HCR Delhi CHHA and LTHHCP operating certificate numbers will terminate and the provider will officially close.

The Department notes that the Centers for Medicaid and Medicaid Services did not extend the State's 2010 LTHHCP waiver authorization beyond May 27, 2016. As part of the State's Medicaid Redesign Team Initiative, mandatory enrollment of LTHHCP participants into Mainstream Managed Care (MMC) or Managed Long Term Care (MLTC) began in 2013 and it is anticipated that all LTHHCP participants will be transitioned to MMC, MLTC or other waiver programs over time. Under state and federal statute and regulations, LTHHCPs continue to have the same status as state and federally qualified CHHAs, and may continue to directly admit and serve patients under their LTHHCP/CHHA authorizations.

The applicant will terminate its HCR Delhi lease at 5 1/2 Main Street - Suite 4, Delhi and is planning to close its HCR Oneonta office located at 795 East Main Street - Suite 10 in Cobleskill, and moving to a new location at 297 Main Street, Oneonta.

Concurrently under review, L. Woerner, Inc. is seeking to merge its HCR Hudson Falls CHHA and LTHHCP program with HCR Plattsburgh (CON 161393), and to merge HCR Homer CHHA with HCR East Syracuse (CON 161397). The applicant's corporate resolution states the corporation would like to consolidate its CHHA operating certificates from seven to four, and its LTHHCP operating certificates from five to four, to increase efficiencies within the corporation.

BFA Attachments A and B are, respectively, the entity's organizational charts before and after approval of the transaction.

OPCHSM Recommendation  
Contingent Approval

Need Summary

The HCR Oneonta CHHA is licensed to operate in Otsego and Schoharie Counties. The HCR Delhi CHHA is certified to operate in Delaware County. This proposal to merge HCR Delhi into HCR Oneonta involves certifying Audiology services and adding Delaware County to the operating certificate of the HCR Oneonta CHHA. Upon approval of this project, the Delhi CHHA will close and the Oneonta CHHA will continue to provide the services currently provided by the Delhi CHHA. The Delhi LTHHCP will retain the certifications on its operating certificate, including a 50-patient capacity in Delaware County.

Program Summary

A review of the personal qualifying information indicates there is nothing in the background of the stockholders, trustees, board members, and officers to adversely affect their positions with L. Woerner, Inc. The applicant has the appropriate

character and competence under Article 36 of the Public Health Law.

Financial Summary

There are no project costs associated with this application and no acquisition price for HCR Delhi. The projected budget and enterprise budget are as follows:

Budget:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$3,181,284	\$3,336,668
Expenses	<u>3,189,474</u>	<u>3,322,158</u>
Gain/(Loss)	(\$8,190)	\$14,510

Enterprise Budget:

	<u>Year One</u>
Revenues	\$52,350,000
Expenses	<u>51,597,639</u>
Gain/(Loss)	\$752,361

## 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 an executed and completed facility lease agreement demonstrating site control, acceptable to the Department. [CSL]
2. Submission of a photocopy of the applicant's executed, amended and completed by-laws, which is acceptable to the Department. [CSL]
3. Submission of a photocopy of transfer documents showing the acquisition of HCR CHHA and LTHHCP in Delhi by the applicant, which is 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]
2. Approval conditioned upon proper notice being given to all employees participating in the employee stock ownership plan (ESOP) of the potential for an audit risk due to the lack of a legal separation between the CHHA and the LHCSA as it relates to payment structures. [CHA]
3. Approval conditioned upon no employee, or any other individual or entity, owning/controlling 10% or more of the corporation's stock without first obtaining Department of Health and/or Public Health and Health Planning Council approval, as appropriate. [CHA]

Council Action Date

**October 6, 2016**

## Need Analysis

### Analysis

The services currently offered by the HCR Oneonta CHHA are listed below. This proposal would add the Audiology service, which is the only service provided by the HCR Delhi CHHA for which the HCR Oneonta CHHA is not certified.

- Baseline Services – CHHA
- Home Health Aide
- Medical Social Services
- Medical Supplies Equipment and Appliances
- Nursing
- Nutritional
- Personal Care
- Therapy – Occupational
- Therapy – Physical
- Therapy – Respiratory
- Therapy – Speech Language Pathology

The Delhi LTHHCP is certified to provide the following services. No changes to services, capacity or counties served are being proposed for the LTHHCP.

- Audiology
- Baseline Services - LTHHCP
- Home Health Aide
- Homemaker
- Housekeeper
- Medical Social Services
- Medical Supplies Equipment and Appliances
- Nursing
- Nutritional
- Personal Care
- Therapy - Occupational
- Therapy - Physical
- Therapy - Respiratory
- Therapy - Speech Language Pathology

### Conclusion

This proposal to merge HCR Delhi into HCR Oneonta will allow L. Woerner to realize operational and cost efficiencies while continuing to serve the patients in its care. Upon approval there will be no service changes or disruptions in care because all certifications and counties served will be retained.

### Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Program Description

L. Woerner, Inc. d/b/a HCR / HCR Home Care currently operates seven Article 36 CHHAs and five Article 36 LTHHCPs in New York State as follows:

1. HCR / HCR Home Care now in Oneonta (formerly in Cobleskill) – CHHA serving Schoharie and Otsego Counties.
2. HCR / HCR Home Care in Delhi – CHHA and LTHHCP serving Delaware County only.
3. HCR / HCR Home Care in East Syracuse (formerly Canastota) – CHHA serving Madison, Cayuga, Jefferson, Onondaga, and Oswego Counties, and LTHHCP serving Madison County only.
4. HCR / HCR Home Care in Homer – CHHA serving Cortland County only.
5. HCR / HCR Home Care in Hudson Falls – CHHA and LTHHCP serving Washington County only.
6. HCR / HCR Home Care in Plattsburgh – CHHA serving Clinton, Essex, Franklin, Hamilton, St. Lawrence, and Warren Counties, and LTHHCP serving Clinton County only.
7. HCR / HCR Home Care in Rochester (with an additional branch office practice location in Batavia) – CHHA serving Monroe, Genesee, Orleans, Livingston, Ontario, and Wayne Counties, and LTHHCP serving Genesee County only.

L. Woerner, Inc. d/b/a HCR / HCR Home Care also currently operates two Article 36 LHCSAs in New York State as follows:

1. HCR / HCR Home Care in Rochester – serving Livingston, Monroe, Ontario, Orleans, and Wayne Counties.
2. HCR / HCR Home Care in Batavia – serving Genesee, Monroe, Orleans, and Wyoming Counties.

L. Woerner requests approval to acquire and merge its HCR Delhi CHHA and LTHHCP into its HCR Oneonta operation (formerly HCR Cobleskill) and to add Delaware County and Audiology service to Oneonta's operating certificate. This would ultimately close the HCR / HCR Home Care CHHA and LTHHCP in Delhi. The current practice location office in Delhi will also close. Since this CON application was received on June 8, 2016, the practice location in Cobleskill has relocated to Oneonta effective August 31, 2016, at which time the surviving HCR / HCR Home Care CHHA (and soon to be LTHHCP) in Cobleskill became known as HCR / HCR Home Care CHHA (and soon to be LTHHCP) in Oneonta.

### Background

Per previously approved CON #061088-E, each employee participating in the L. Woerner, Inc. Employee Stock Ownership Plan (ESOP) does not actually take ownership of the stock itself, but instead has a separate stock account in the trust to hold his/her allocation of stock. Employees participating in the ESOP may not sell, transfer, assign, pledge, or encumber the shares of stock allocated to their stock account. Dividends will be allocated among, and credited to, each participant's stock accounts on the basis of the number of shares held by the participant's account. The duties and powers of the ESOP Trustee (or Trustees) are outlined in the Employee Stock Ownership Trust Agreement under the ESOP. The Trustee (or Trustees) has/have the power to: manage and control the assets, including the stock, held in the trust; sell, exchange, transfer, or grant options for any property held in the trust; and vote all allocated and unallocated shares of stock. Employees participating in the ESOP instruct the Trustee(s) in the manner to vote the shares of stock allocated to their stock account only in the event of corporate merger, consolidation, recapitalization, reclassification, liquidation, dissolution, or sale of substantially all assets of the company or similar transaction, which must be approved by the shareholders of L. Woerner, Inc., pursuant to applicable New York State law. The Employee Stock Ownership Trust Agreement permits a Trustee to be removed by the Board of Directors, or to resign his/her position as Trustee, at any time. Any Successor Trustee(s) must receive prior approval of the New York State Department of Health and/or Public Health and Health Planning Council. Upon appointment, any and all Successor Trustees will be granted the same power, rights, and duties as the previous Trustee. Additional Trustees may be appointed in the future (upon prior approval of the Department of Health and/or Public Health and Health Planning Council), and will have the same rights, powers, and duties of the Trustee as granted by the Employee Stock Ownership Trust Agreement. The applicant had confirmed, and has restated such confirmation for this current project proposal, that no stockholder shall control 10% or more of the stock, of L. Woerner, Inc., without first obtaining Department of Health and/or Public Health and Health Planning Council approval, as appropriate.

CON project # 061088-E also noted that L. Woerner, Inc. operates both a CHHA and LHCSA out of a single corporation. The Department has discouraged this type of arrangement because of the different regulatory requirements and payment structures applicable to CHHAs and LHCSAs. L. Woerner, Inc. wished to retain its current corporate arrangement, thus placing the agency at potential risk for future audit liabilities due to there being two different payment structures for the same service within a single corporation. Therefore, the Department required the agency to provide written notification, approved by the Department, to all participants in the ESOP of the possible loss in dividends resulting from the audit risk posed by the corporate structure. The applicant had confirmed, and has restated such confirmation for this current project proposal, that the agency continues to provide such written notification, as previously approved by the Department, to all participants in the ESOP of the possible loss in dividends resulting from the audit risk posed by the corporate structure.

The corporation L. Woerner, Inc. is currently authorized 4,000,000 shares of stock, with 2,333,432 shares of stock currently issued and outstanding, and the remaining 1,666,568 shares of stock currently held in Treasury as non-issued shares.



Of the 2,333,432 shares of stock currently issued, the stockholders and stock distribution are as follows:

<b>Stockholder</b>	<b>Shares</b>	<b>%</b>
<b>Employee Stock Ownership Plan Trust</b>	1,618,693	69.37
<b>Don H. Kollmorgen</b> Retired	232,124	9.95
<b>Louise Woerner</b> Chief Executive Officer	231,880	9.94
<b>Lawrence L. Peckham</b> Retired	223,235	9.56
<b>Nancy S. Peckham</b> Retired	25,000	1.07
<b>Clayton H. Osborne, MSW, LCSW-R</b> Retired	2,500	0.11

The previously approved Trustees of the Employee Stock Ownership Plan Trust remain as follows:

<b>Louise Woerner</b> Chief Executive Officer
<b>Duane E. Tolander, CPA (Iowa)</b> Partner / Managing Director, HDH Advisors, LLC, West Des Moines, Iowa (Financial Advisory Services / Professional Consulting / Corporate and Business Valuations / Litigation Support); Trustee, Bestcare, Inc. (LHCSA) Employee Stock Ownership Plan Trust

The previously approved Board of Directors of L. Woerner, Inc. remain as follows:

<b>Louise Woerner, Chairperson, Secretary, Treasurer (9.94% stockholder)</b>
<b>Don H. Kollmorgen (9.95% stockholder)</b>
<b>Lawrence L. Peckham (9.56% stockholder)</b>
<b>Joseph J. Castiglia, CPA</b>
<b>Clayton H. Osborne, MSW, LCSW-R (0.11% stockholder)</b>

Additional officers of L. Woerner, Inc., who are neither a stockholder, trustee, nor board member, are as follows:

<b>Mary Elizabeth Zicari, RN</b> President / Administrator, L. Woerner, Inc.
Affiliation: DePaul Adult Care Communities, Inc., Rochester (licensed ACFs/ALPs, in New York State, North Carolina, and South Carolina) – April 2009 to July 1, 2016
<b>Suzanne L. Turchetti</b> Assistant Corporate Secretary / Senior Executive Assistant, L. Woerner, Inc.

The Office of the Professions of the New York State Education Department indicates no issues with the RN license of Mary Elizabeth Zicari, the CPA license of Joseph Castiglia, or the LCSW license of Clayton Osborne. The Professional Licensing Bureau of the State of Iowa indicates no issues with the CPA license of Duane Tolander. In addition, a search of all of the above named stockholders, trustees, board members, officers, employers, and health care affiliations revealed no matches on either the New York State Medicaid Disqualified Provider List or the federal Office of the Inspector General's Provider Exclusion List.

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The North Carolina Department of Health and Human Services reports that the remaining eleven licensed ACFs/ALPs located in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc., have had no enforcement actions imposed since 2009.

Recommendation

**From a programmatic perspective, approval is recommended.**

<h2>Financial Analysis</h2>
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Lease Agreement

An executed lease has been submitted for the new HCR Oneonta location. The terms are summarized below:

Date:	May 24, 2016
Premises:	2,000 sq. ft. located at 297 Main Street, Oneonta, NY 13820
Owner/Landlord:	Frank Basile
Lessee:	L. Woerner Inc., d/b/a HCR/HCR Home Care
Term:	3 years starting 8/1/2016 plus One 3-year renewal term at \$1,700 per month
Rent:	\$19,200 per year, including taxes (\$1,600 per month)
Provisions:	Utilities

The applicant has confirmed that the lease arrangement is an arm's length agreement.

Operating Budget

Summarized below is the applicant's Catskill Region (HCR-Cobleskill and HCR-Delhi) current year operating results and first and third year budgets, in 2016 dollars:

	<u>Current (2015)</u>	<u>Year One</u>	<u>Year Three</u>
<u>CHHA Revenues</u>			
Medicaid	\$666,115	\$439,176	\$461,409
Medicare	1,576,403	1,933,547	2,031,433
Commercial	657,428	696,590	731,855
<u>LTHHCP Revenues</u>			
Medicaid	149,620	111,971	111,971
Medicare	<u>0</u>	<u>0</u>	<u>0</u>
Total Revenues	\$3,049,566	\$3,181,284	\$3,336,668
 <u>Expenses</u>			
CHHA Operating	\$2,200,930	\$2,273,903	\$2,389,019
LTHHCP Operating	101,421	86,709	86,709
Capital	52,000	29,750	31,256
Overhead Allocated	<u>791,200</u>	<u>799,112</u>	<u>815,174</u>
Total Expenses	\$3,145,551	\$3,189,474	\$3,322,158
 Net Income or (Loss)	<u>(\$95,985)</u>	<u>(\$8,190)</u>	<u>\$14,510</u>

Utilization-CCHA visits	18,843	22,748	23,899
Utilization-LTHHCP visit	4,099	4,000	4,000

Utilization by payer source for the current, and anticipated for the first and third years as follows:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>CHHA</u>	<u>LTHHCP</u>	<u>CHHA</u>	<u>LTHHCP</u>	<u>CHHA</u>	<u>LTHHCP</u>
Medicaid	8.02%	96.61%	19.49%	96.63%	19.49%	96.63%
Medicare	54.17%	0%	46.11%	0%	46.10%	0%
Commercial	33.96%	0%	30.27%	0%	30.27%	0%
All Other	0%	.97%	0%	.94%	0%	.94%
Charity	<u>3.85%</u>	<u>2.42%</u>	<u>4.13%</u>	<u>2.43%</u>	<u>4.13%</u>	<u>2.43%</u>
Total	100%	100%	100%	100%	100%	100%

The applicant's charity care policy is to assess the individual based on income, expenses, assets, and other pertinent information to determine eligibility for no charge or reduced charge. The applicant will provide no less than 2% of charity care per fiscal year.

CHHA revenue and utilization projections are as follows:

- Medicaid revenues are based on an average episodic payment of \$2,825 after taking into consideration an estimated blended wage index of .96 and adjusting for the average case mix of .80 (which includes low utilization payment amount (LUPA). Although visits per episode of care for nursing, physical therapy, occupational therapy and home health aide services are expected to increase going forward, the applicant estimates that Medicaid revenues will decline as patients are moved from Medicaid FFS to Medicaid manage long term care (MLTC) programs, where the reimbursement rate is expected to be lower. The applicant expects to have 120 episodes in the first year.
- Medicare revenues are based on an average episodic payment of \$2,290 after taking into consideration an estimated blended wage index of .83 and adjusting for the average case mix of .90. The applicant expects to have 844 episodes in the first year. .
- Commercial payers are based upon experience.
- Overall utilization is estimated to grow by 2.5%.

LTHHCA rate and revenue projections are based on prevailing reimbursement methodologies.

CHHA and LTHHCP expenses are based on historical experience adjusted for changes in projected volume and efficiencies related to consolidating the operations.

L. Woerner, Inc. d/b/a HCR/HCR Home Care's enterprise budget is as follows:

	<u>Year One</u>
Revenues	\$52,350,000
Expenses	<u>51,597,639</u>
Gain/(Loss)	\$752,361

Overall, the applicant expects L. Woerner, Inc. to be profitable in the first year.

#### Capability and Feasibility

There are no project costs associated with this application and no acquisition price for consolidating HCR Delhi CHHA and LTHHCP into HCR Cobleskill.

L. Woerner, Inc., projects the Catskills Region will have a net loss of \$8,190 in the first year and net income of \$14,510 in the third year. According to the Enterprise Budget, the organization expects to generate a surplus of \$752,361 in the first year. Working capital will continue to be provided from ongoing operations. The budget appears to be reasonable.

BFA Attachments C is L. Woerner, Inc.'s 2013-2014 certified financial summary and 2015 internal, which shows negative working capital has improved each year. Per the applicant, the negative net assets position is the results of losses and costs associate with expending operations, ESOP contributions, and paying its share of the Workers Compensation Trust Deficit. In 2015, Medicaid reduced reimbursement 36%, for approximately \$1 million, which contributed in part to the 2015 loss.

BFA Attachment D is L. Woerner, Inc.'s internal financial statement as of June 30, 2016, which shows the organization generated \$300,899 in net income during the first six months. The applicant stated that they are on path to exceeding the Enterprise Budget, as shown above.

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

Recommendation

**From a financial perspective, approval is recommended.**

## Attachments

- BFA Attachment A Organization Chart – L. Woerner Inc. Pre-Transaction
- BFA Attachment B Organization Chart – L. Woerner Inc. Post-Transaction
- BFA Attachment C L. Woerner, Inc. 2013-2014 certified financial statement and 2015 internal financial statement
- BFA Attachment D L. Woerner Inc. June 30, 2016 internal financial statement



**Project # 161397-E  
HCR/HCR Home Care**

**Program:** Certified Home Health Agency  
**Purpose:** Establishment

**County:** Onondaga  
**Acknowledged:** June 8, 2016

**Executive Summary**

**Description**

L. Woerner, Inc. d/b/a HCR/HCR Home Care (L. Woerner), an Article 36 proprietary business corporation with offices at 85 Metro Park, Rochester, owns and operates seven certified home health agencies (CHHAs) and five long term home health care programs (LTHHCPs) serving several counties throughout upstate New York. L. Woerner requests approval to acquire and merge its HCR Homer CHHA located at 6 North West Street - Suite 5, Homer into its HCR East Syracuse CHHA located at 6007 Fair Lakes Road - Suite 200, East Syracuse, and to add Cortland County to East Syracuse's operating certificate. The HCR East Syracuse operation, referred to as the Central New York Region, also operates a LTHHCP that will not be affected by this application.

The merger will bring the number of counties served by HCR East Syracuse CHHA to six (Cayuga, Jefferson, Madison, Onondaga, Oswego, and Cortland). No services will be added, but Cortland County will now have Personal Care as a service offering as it is included on HCR East Syracuse CHHA's operating certificate. Upon approval by the Public Health and Health Planning Council (PHHPC), the HCR Homer CHHA operating certificate and provider numbers will terminate and the provider will officially close. The applicant will terminate its lease at the 6 North West Street - Suite 5 in Homer. The merger is being done to achieve operating economies of scale.

Concurrently under review, L. Woerner, Inc. is seeking to merge its HCR Hudson Falls CHHA and LTHHPC program with HCR Plattsburgh

(CON 161393), and merge HCR Delhi CHHA and LTHHCP with HCR Oneonta, formerly Cobleskill, (CON 161394). The applicant's corporate resolution states the corporation would like to consolidate its CHHA operating certificates from seven to four, and its LTHHCP operating certificates from five to four, to increase efficiencies within the corporation.

BFA Attachments A and B are, respectively, the entity's organizational charts before and after approval of the transaction.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

The HCR East Syracuse CHHA is licensed to operate in Cayuga, Jefferson, Madison, Onondaga, and Oswego Counties. The HCR Homer CHHA is certified to operate in Cortland County. This proposal to merge HCR Homer into HCR East Syracuse would involve adding Cortland County to the operating certificate of the HCR East Syracuse CHHA. Upon approval of this project, the Homer CHHA would close and the East Syracuse CHHA would continue to provide the services currently provided by the Homer CHHA.

**Program Summary**

A review of the personal qualifying information indicates there is nothing in the background of the stockholders, trustees, board members, and officers to adversely affect their positions with L. Woerner, Inc. The applicant has the appropriate

character and competence under Article 36 of the Public Health Law.

#### Financial Summary

There are no project costs associated with this application and no acquisition price for HCR Homer. The projected budget and enterprise budget are as follows:

#### Budget:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$9,265,962	\$9,733,196
Expenses	<u>10,651,592</u>	<u>11,095,829</u>
Gain/(Loss)	(\$1,385,630)	(\$1,362,633)

#### Enterprise Budget:

	<u>Year One</u>
Revenues	\$52,350,000
Expenses	<u>51,597,639</u>
Gain/(Loss)	\$752,361

## 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 an executed and completed facility lease agreement demonstrating site control, acceptable to the Department. [CSL]
2. Submission of a photocopy of the applicant's executed, amended and completed by-laws, which is acceptable to the Department. [CSL]
3. Submission of a photocopy of transfer documents showing the acquisition of HCR CHHA and LTHHCP in Homer by the applicant, which is 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]
2. Approval conditioned upon proper notice being given to all employees participating in the employee stock ownership plan (ESOP) of the potential for an audit risk due to the lack of a legal separation between the CHHA and the LHCSA as it relates to payment structures. [CHA]
3. Approval conditioned upon no employee, or any other individual or entity, owning/controlling 10% or more of the corporation's stock without first obtaining Department of Health and/or Public Health and Health Planning Council approval, as appropriate. [CHA]

Council Action Date

**October 6, 2016**



## Need Analysis

### Analysis

The services currently offered by the HCR East Syracuse CHHA are listed below. This proposal would not involve the certification of additional services, because the East Syracuse CHHA is certified to provide all the services that the Homer CHHA is certified to provide.

- Baseline Services - CHHA
- Home Health Aide
- Medical Social Services
- Medical Supplies Equipment and Appliances
- Nursing
- Nutritional
- Personal Care
- Therapy - Occupational
- Therapy - Physical
- Therapy - Speech Language Pathology

### Conclusion

This proposal to merge HCR Homer into HCR East Syracuse will allow L. Woerner to realize operational and cost efficiencies while continuing to serve the patients in its care. Upon approval there will be no service changes or disruptions in care because all certifications and counties served will be retained.

### Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Program Description

L. Woerner, Inc. d/b/a HCR / HCR Home Care currently operates seven Article 36 CHHAs and five Article 36 LTHHCPs in New York State as follows:

1. HCR / HCR Home Care now in Oneonta (formerly in Cobleskill) – CHHA serving Schoharie and Otsego Counties.
2. HCR / HCR Home Care in Delhi – CHHA and LTHHCP serving Delaware County only.
3. HCR / HCR Home Care in East Syracuse (formerly Canastota) – CHHA serving Madison, Cayuga, Jefferson, Onondaga, and Oswego Counties, and LTHHCP serving Madison County only.
4. HCR / HCR Home Care in Homer – CHHA serving Cortland County only.
5. HCR / HCR Home Care in Hudson Falls – CHHA and LTHHCP serving Washington County only.
6. HCR / HCR Home Care in Plattsburgh – CHHA serving Clinton, Essex, Franklin, Hamilton, St. Lawrence, and Warren Counties, and LTHHCP serving Clinton County only.
7. HCR / HCR Home Care in Rochester (with an additional branch office practice location in Batavia) – CHHA serving Monroe, Genesee, Orleans, Livingston, Ontario, and Wayne Counties, and LTHHCP serving Genesee County only.

L. Woerner, Inc. d/b/a HCR / HCR Home Care also currently operates two Article 36 LHCSAs in New York State as follows:

1. HCR / HCR Home Care in Rochester – serving Livingston, Monroe, Ontario, Orleans, and Wayne Counties.
2. HCR / HCR Home Care in Batavia – serving Genesee, Monroe, Orleans, and Wyoming Counties.

This CON requests approval for HCR / HCR CHHA in East Syracuse to acquire, by merger, HCR / HCR Home Care CHHA in Homer. HCR CHHA East Syracuse currently serves Cayuga, Jefferson, Onondaga, Oswego, and Madison Counties. HCR Homer currently serves only Cortland County. This would result in all county approvals and authorized services assigned to HCR / HCR Home Care CHHA in Homer being transferred to HCR / HCR Home Care CHHA in East Syracuse, ultimately closing the HCR / HCR Home Care CHHA in Homer. The current practice location office in Homer will also close.

#### Background

Per previously approved CON #061088-E, each employee participating in the L. Woerner, Inc. Employee Stock Ownership Plan (ESOP) does not actually take ownership of the stock itself, but instead has a separate stock account in the trust to hold his/her allocation of stock. Employees participating in the ESOP may not sell, transfer, assign, pledge, or encumber the shares of stock allocated to their stock account. Dividends will be allocated among, and credited to, each participant's stock accounts on the basis of the number of shares held by the participant's account. The duties and powers of the ESOP Trustee (or Trustees) are outlined in the Employee Stock Ownership Trust Agreement under the ESOP. The Trustee (or Trustees) has/have the power to: manage and control the assets, including the stock, held in the trust; sell, exchange, transfer, or grant options for any property held in the trust; and vote all allocated and unallocated shares of stock. Employees participating in the ESOP instruct the Trustee(s) in the manner to vote the shares of stock allocated to their stock account only in the event of corporate merger, consolidation, recapitalization, reclassification, liquidation, dissolution, or sale of substantially all assets of the company or similar transaction, which must be approved by the shareholders of L. Woerner, Inc., pursuant to applicable New York State law. The Employee Stock Ownership Trust Agreement permits a Trustee to be removed by the Board of Directors, or to resign his/her position as Trustee, at any time. Any Successor Trustee(s) must receive prior approval of the New York State Department of Health and/or Public Health and Health Planning Council. Upon appointment, any and all Successor Trustees will be granted the same power, rights, and duties as the previous Trustee. Additional Trustees may be appointed in the future (upon prior approval of the Department of Health and/or Public Health and Health Planning Council), and will have the same rights, powers, and duties of the Trustee as granted by the Employee Stock Ownership Trust Agreement. The applicant had confirmed, and has restated such confirmation for this current project proposal, that no stockholder shall control 10% or more of the stock, of L. Woerner, Inc., without first obtaining Department of Health and/or Public Health and Health Planning Council approval, as appropriate.

CON project # 061088-E also noted that L. Woerner, Inc. operates both a CHHA and LHCSA out of a single corporation. The Department has discouraged this type of arrangement because of the different regulatory requirements and payment structures applicable to CHHAs and LHCSAs. L. Woerner, Inc. wished to retain its current corporate arrangement, thus placing the agency at potential risk for future audit liabilities due to there being two different payment structures for the same service within a single corporation. Therefore, the Department required the agency to provide written notification, approved by the Department, to all participants in the ESOP of the possible loss in dividends resulting from the audit risk posed by the corporate structure. The applicant had confirmed, and has restated such confirmation for this current project proposal, that the agency continues to provide such written notification, as previously approved by the Department, to all participants in the ESOP of the possible loss in dividends resulting from the audit risk posed by the corporate structure.

The corporation L. Woerner, Inc. is currently authorized 4,000,000 shares of stock, with 2,333,432 shares of stock currently issued and outstanding, and the remaining 1,666,568 shares of stock currently held in Treasury as non-issued shares.

Of the 2,333,432 shares of stock currently issued, the stockholders and stock distribution are as follows:

<b>Stockholder</b>	<b>Shares</b>	<b>%</b>
<b>Employee Stock Ownership Plan Trust</b>	1,618,693	69.37
<b>Don H. Kollmorgen</b> Retired	232,124	9.95
<b>Louise Woerner</b> Chief Executive Officer	231,880	9.94
<b>Lawrence L. Peckham</b> Retired	223,235	9.56
<b>Nancy S. Peckham</b> Retired	25,000	1.07
<b>Clayton H. Osborne, MSW, LCSW-R</b> Retired	2,500	0.11

The previously approved Trustees of the Employee Stock Ownership Plan Trust remain as follows:

<b>Louise Woerner</b> Chief Executive Officer
<b>Duane E. Tolander, CPA (Iowa)</b> Partner / Managing Director, HDH Advisors, LLC, West Des Moines, Iowa (Financial Advisory Services / Professional Consulting / Corporate and Business Valuations / Litigation Support); Trustee, Bestcare, Inc. (LHCSA) Employee Stock Ownership Plan Trust

The previously approved Board of Directors of L. Woerner, Inc. remain as follows:

<b>Louise Woerner, Chairperson, Secretary, Treasurer (9.94% stockholder)</b>
<b>Don H. Kollmorgen (9.95% stockholder)</b>
<b>Lawrence L. Peckham (9.56% stockholder)</b>
<b>Joseph J. Castiglia, CPA</b>
<b>Clayton H. Osborne, MSW, LCSW-R (0.11% stockholder)</b>

Additional officers of L. Woerner, Inc., who are neither a stockholder, trustee, nor board member, are as follows:

<b>Mary Elizabeth Zicari, RN</b> President / Administrator, L. Woerner, Inc.
Affiliation: DePaul Adult Care Communities, Inc., Rochester (licensed ACFs/ALPs, in New York State, North Carolina, and South Carolina) – April 2009 to July 1, 2016
<b>Suzanne L. Turchetti</b> Assistant Corporate Secretary / Senior Executive Assistant, L. Woerner, Inc.

The Office of the Professions of the New York State Education Department indicates no issues with the RN license of Mary Elizabeth Zicari, the CPA license of Joseph Castiglia, or the LCSW license of Clayton Osborne. The Professional Licensing Bureau of the State of Iowa indicates no issues with the CPA license of Duane Tolander. In addition, a search of all of the above named stockholders, trustees, board members, officers, employers, and health care affiliations revealed no matches on either the New York State Medicaid Disqualified Provider List or the federal Office of the Inspector General's Provider Exclusion List.

The NYSDOH Division of Home and Community Based Services reviewed the compliance history of the CHHAs and the LHCSAs operated by L. Woerner, Inc., for the time period 2009 to present, and the LTHHCPs operated by L. Woerner, Inc., for the time period May 2010 (establishment of the first HCR / HCR Home Care LTHHCP) to present. The Division of Home and Community Based Services

also reviewed the compliance history of the LHCSAs operated by Bestcare, Inc., for the time period 2011 (when Mr. Tolander began serving as a Trustee of Bestcare's Employee Stock Ownership Plan Trust) to present. It has been determined that the L. Woerner, Inc. CHHAs, LTHHCPS, and LHCSAs, plus the affiliated Bestcare, Inc. LHCSAs, are all in substantial compliance with all applicable codes, rules, and regulations, with no enforcements or administrative actions imposed.

The NYSDOH Division of Adult Care Facilities and Assisted Living Surveillance reviewed the compliance history of the five ACFs and ALPs located in New York State operated by DePaul Adult Care Communities, Inc. for the time period 2009 to present.

An enforcement action was taken in November, 2012, against Glenwell Adult Home / Assisted Living Program in Cheektowaga, New York, based on a September 2011 inspection citing violations in the area of Endangerment. A \$25,000 civil penalty was imposed.

An enforcement action was taken in February, 2015, against Kenwell Adult Home / Assisted Living Program in Kenmore, New York, based on September 2012, January 2013, and August 2013 inspections citing violations in the area of Resident Services. A \$10,000 civil penalty was imposed.

An enforcement action was taken in October, 2011, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on a July 2011 inspection citing violations in the area of Endangerment in Supervision. A \$1000 civil penalty was imposed.

A second enforcement action was taken in November, 2012, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on a November 2011 inspection citing violations in the area of Endangerment. A \$4000 civil penalty was imposed.

A third enforcement action was taken in August, 2013, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on August 2011, and December 2011 inspections citing violations in the areas of Resident Services and Food Services. An \$1800 civil penalty was imposed.

The two remaining New York State ACFs and ALPs operated by DePaul Adult Care Communities, Inc., (Horizons Adult Home / Assisted Living Program, and Westwood Commons Adult Home) do not have any enforcement history to report. It has been determined that the five New York State ACFs and ALPs operated by DePaul Adult Care Communities, Inc., are now in substantial compliance with all applicable codes, rules, and regulations, with no additional enforcement or administrative actions imposed.

The New York State Office of Mental Health's Bureau of Inspection and Certification reviewed the compliance history of each of the affiliated mental health providers and residences located in New York State operated within the corporate structure of DePaul Community Services, Inc., an affiliate of DePaul Adult Care Communities, Inc., for the time period 2009 to present. It has been determined that the mental health providers and residences in New York State affiliated with DePaul Community Services, Inc., are all in substantial compliance with all applicable codes, rules, and regulations, with no enforcement sanctions or administrative action imposed, during that time period.

Out of state compliance requests were sent to North Carolina for each of the twelve licensed ACFs/ALPs located in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc. for the time period 2009 to present. An out of state compliance request was also sent to South Carolina for the one licensed ACF/ALP located in South Carolina that is operated by the affiliated DePaul Adult Care Communities, Inc. for the time period 2009 to present.

South Carolina has reported that the one licensed ACF/ALP located in South Carolina that is operated by the affiliated DePaul Adult Care Communities, Inc. has had no enforcement actions imposed within the previous twelve months (the only reporting period South Carolina provides) and is considered to be in good standing with the South Carolina Department of Health and Environmental Control.

North Carolina has reported that only one of the twelve licensed ACFs/ALPs in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc. has had an enforcement action since 2009.

An enforcement action was taken in February, 2010, against Greenbrier Adult Home / Assisted Living Program located in Fairmont, North Carolina, based on a January 2009 survey citing violations in the area of Medication Administration. A \$2,000 civil penalty was imposed.

The North Carolina Department of Health and Human Services reports that the remaining eleven licensed ACFs/ALPs located in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc., have had no enforcement actions imposed since 2009.

Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

### Operating Budget

Summarized below is the applicant's Central NY Region (HCR-East Syracuse and HCR-Homer) current year operating results and first and third year budgets, in 2016 dollars:

	<u>Current (2015)</u>	<u>Year One</u>	<u>Year Three</u>
<u>CHHA Revenues</u>			
Medicaid	\$1,014,346	\$557,465	\$585,687
Medicare	5,884,169	5,437,035	5,712,285
Commercial	3,337,224	3,234,800	3,398,562
<u>LTHHCP Revenues</u>			
Medicaid	9,060	36,662	36,662
Medicare	<u>0</u>	<u>0</u>	<u>0</u>
Total Revenues	\$10,244,799	\$9,265,962	\$9,733,196
<u>Expenses</u>			
CHHA Operating	\$7,461,814	\$7,539,185	\$7,920,857
LTHHCP Operating	87,189	38,602	38,602
Capital	28,790	25,625	26,922
Overhead Allocated	<u>3,018,000</u>	<u>3,048,180</u>	<u>3,109,448</u>
Total Expenses	\$10,595,793	\$10,651,592	\$11,095,829
Net Income or (Loss)	<u>(\$350,994)</u>	<u>(\$1,385,630)</u>	<u>(\$1,362,633)</u>
Utilization-CCHA visits	91,557	76,400	80,251
Utilization-LTHHCP visit	176	1,341	1,341

Utilization by payer source for the current, and anticipated for the first and third years as follows:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>CHHA</u>	<u>LTHHCP</u>	<u>CHHA</u>	<u>LTHHCP</u>	<u>CHHA</u>	<u>LTHHCP</u>
Medicaid	8.85%	96.59%	10.67%	96.64%	10.65%	96.64%
Medicare	47.07%	0%	42.40%	0%	42.41%	0%
Commercial	41.17%	0%	44.69%	0%	44.70%	0%
All Other	0%	1.14%	0%	.97%	0%	.97%
Charity	<u>2.91%</u>	<u>2.27%</u>	<u>2.24%</u>	<u>2.39%</u>	<u>2.24%</u>	<u>2.39%</u>
Total	100%	100%	100%	100%	100%	100%

The applicant's charity care policy is to assess the individual based on income, expenses, assets, and other pertinent information to determine eligibility for no charge or reduced charge. The applicant will provide no less than 2% of charity care per fiscal year.

CHHA revenue and utilization projections are as follows:

- Medicaid revenues are based on an average episodic payment of \$2,853 after taking into consideration an estimated blended wage index of .99 and adjusting for the average case mix of .80 (which includes low utilization payment amount (LUPA)). The applicant expects to have 195 episodes in the first year. The applicant estimates that Medicaid revenues will decline as patients are moved from Medicaid FFS to Medicaid manage long term care (MLTC) programs, where the reimbursement rate is expect to be lower.
- Medicare revenues are based on an average episodic payment of \$2,891 after taking into consideration an estimated blended wage index of .98 and adjusting for the .90 average case mix. The applicant expects to have 1,881 episodes in the first year.
- Commercial payers are based upon experience.

The HCR East Syracuse operation operates a LTHHCP that will not be affected by this application. LTHHCP rate and revenue projections are based on prevailing reimbursement methodologies.

Expenses are based on historical experience adjusted for changes in projected volume and efficiencies related to consolidating operations.

L. Woerner, Inc.'s enterprise budget is as follows:

	<u>Year One</u>
Revenues	\$52,350,000
Expenses	<u>51,597,639</u>
Gain/(Loss)	\$752,361

Overall, the applicant expects L. Woerner, Inc., to be profitable in the first year following the merger.

#### Capability and Feasibility

There are no project costs associated with this application nor any acquisition price for consolidating HCR Homer CHHA into HCR East Syracuse.

L. Woerner, Inc. projects the Central NY Region will have a net loss of \$1,385,630 and \$1,362,633 in the first and third years, respectively. According to the Enterprise Budget, the organization expects to generate a surplus of \$752,361 in the first year. Working capital will continue to be provided from ongoing operations. The budget appears to be reasonable.

BFA Attachments C is L. Woerner, Inc.'s 2013-2014 certified financial summary and 2015 internals, which shows negative working capital has improved each year. Per the applicant, the negative net assets position is the results of losses and costs associated with expanding operations, ESOP contributions, and paying its share of the Workers Compensation Trust Deficit. In 2015, Medicaid reduced reimbursement 36%, for approximately \$1 million, which contributed in part to 2015 loss.

BFA Attachment D is L. Woerner, Inc.'s internal financial statement as of June 30, 2016, which shows the organization generated \$300,899 in net income during the first six months. The applicant stated that they are on path to exceeding the Enterprise Budget, as shown above.

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 Organization Chart – L. Woerner Inc. Pre-Transaction
- BFA Attachment B Organization Chart – L. Woerner Inc. Post-Transaction
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Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: LifeWorx Care LLC  
Address: New York  
County: New York  
Structure: Limited Liability Company  
Application Number: 162118

Description of Project:

LifeWorx 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.

This application amends and supersedes application number 2545L submitted by LifeWorx, Inc. to establish a new Licensed Home Care Services Agency (LHCSA) that was contingently approved by the Public Health and Health Planning Council at the December 10, 2015 meeting.

The purpose of this application is to request approval to change the proposed operator of the LHCSA from LifeWorx, Inc. to LifeWorx Care LLC and to establish LifeWorx, Inc. as the sole member of LifeWorx Care LLC.

LifeWorx, Inc. 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. is comprised of the following individual:

Balkishan (Bal) Agrawal, PhD, President/CEO  
Managing Member/CEO, LifeWorx Care LLC  
President/CEO, LifeWorx, Inc.

Affiliations:

LifeWorx, Inc. – Homemaker Companion Agency (Connecticut, 2014 – Present)  
LifeWorx, Inc. – Health Care Service Firm (New Jersey, 2014 – Present)

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

The applicant proposes to serve the residents of the following counties from an office located at 145 East 62<sup>nd</sup> Street, New York, New York 10065:

New York	Kings	Queens
Bronx	Richmond	Westchester

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 facilities/agencies was performed as part of this review (unless otherwise noted):

LifeWorx, Inc. – Homemaker Companion Agency (Connecticut, 2014 – Present)  
LifeWorx, Inc. – Health Care Service Firm (New Jersey, 2014 – Present)



The State of New Jersey, Registration & Licensing Regulated Business/Charities NJ Division of Consumer Affairs, reported that the facility is active and they have not taken any enforcement or administrative actions against the agency during the time period of June 2014 to present.

The State of Connecticut, Department of Consumer Protection indicated that the agency is registered as a Homemaker-Company Agency. They reported that there have been no complaints filed against the agency and they have not taken any administrative actions against the agency during the time period of August 1, 2014 to 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: August 29, 2016

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Dragon Home Care, LLC  
Address: Brooklyn  
County: Kings  
Structure: Limited Liability Company  
Application Number: 2560-L

Description of Project:

Dragon Home Care, LLC, a limited liability company, requests approval for a change in ownership of a home care services agency under Article 36 of the Public Health Law.

Healthy Start Home Care Agency, LLC was approved as a home care services agency by the Public Health Council at its November 18, 2005 meeting and subsequently licensed as 1402L001 and 1402L002 effective October 22, 2013. At that time, the membership of Healthy Start Home Care Agency, LLC was Lina Zhitnik – 50% and Igor Zhitnik – 50%.

The site previously licensed as 1402L002 has subsequently closed and Dragon Home Care, LLC is acquiring the entire home care operations of Healthy Start Home Care Agency, LLC.

The membership of Dragon Home Care, LLC comprises the following individuals:

Wai Lun Chan, HHA – 33.33%  
Administrator, Asian Senior Day Care  
President/Volunteer, Asian Community United Society

Denny Chen FKA Leying Chen – 33.33%  
Licensed Real Estate Broker  
Broker, Ritz Realty NY Corp.  
Manager/Owner, Asian Senior Day Care Corp.

Mary Ho, HHA, PCA – 33.33%  
Retired

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

The New York State Home Care Registry indicates no issues with the certifications of the healthcare professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 6811 20<sup>th</sup> Avenue, Brooklyn, New York 11204:

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	Respiratory Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper
Medical Equipment, Supplies and Appliances		

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

Contingency

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

Recommendation: Contingent Approval  
Date: August 11, 2016

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Elite Services NY, Inc.  
Address: Spring Valley  
County: Rockland  
Structure: For-Profit Corporation  
Application Number: 2580-L

Description of Project:

Elite Services NY, Inc., a business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Broadway Health Care Staffing, Inc. was previously approved as a home care services agency by the Public Health Council at its September 15, 2006 meeting and subsequently licensed as 1417L001 effective April 10, 2008. At that time, Linda Broadway was the sole shareholder of Broadway Health Care Staffing, Inc.

The applicant has authorized 200 shares of stock which are owned as follows:

Chaim Lieberman – 100 Shares  
Administrator, Community Home Health Care  
President, Priority Home Care

Affiliations:

- Priority Home Care Services, Inc. (fiscal intermediary for Consumer Directed Personal Care Assistance Program) (2003 – present)
- Community Home Health Care (2003- present)
- Cudley's Home Care Services, Inc. (2005- present)
- All Pro Home & Health Care Services, Inc. (2012-Present)

100 shares of stock remain unissued.

The following individual is the sole member of the Board of Directors of Elite Services NY, Inc. d/b/a Simply the Best Home Care:

Chaim Lieberman – Chairman/President/Treasurer/Secretary  
(Previously Disclosed)

A search of the individual 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 was performed as part of this review (unless otherwise noted):

- Community Home Health Care
- Cudley's Home Care Services, Inc.
- All Pro Home & Health Care Services, Inc. (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.

The applicant proposes to serve the residents of the following counties from an office located at 1 Hillcrest Center, Suite 214, Spring Valley, New York 10977:

Bronx	Nassau	Putnam	Dutchess	Orange
Rockland	Sullivan	Ulster	Westchester	

The applicant proposes to provide the following health care services:

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

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

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: August 25, 2016

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Alere of New York, Inc.  
Address: Westbury  
County: New Rochelle  
Structure: For-Profit Corporation  
Application Number: 2600-L

Description of Project:

Alere of New York, 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.

Matria of New York, Inc. was previously approved as a home care services agency by the Public Health Council at its January 24, 1997 meeting and subsequently licensed as 9937L001 and 9937L002. Matria of New York, Inc. underwent a corporate name change to Alere of New York, Inc. effective July 27, 2011.

Alere of New York, Inc. is a subsidiary of Alere Women's and Children's Health, LLC which in turn is a subsidiary of Alere Health, LLC. Effective January 9, 2015, the parent organization for Alere Health, LLC which was Alere, Inc. sold 100% of its membership interest in Alere Health, LLC to OptumHealth Care Solutions, Inc.

As required by 10 NYCRR 765-1-14 (a)(1) and (2), OptumHealth Care Solutions, Inc. submitted an affidavit stating that they will not change the officers or directors of Alere of New York, Inc. and will not otherwise exercise control over the day-to-day operations of the Licensed Home Care Services Agencies pending the approval of this application by the Public Health and Health Planning Council.

Alere of New York, Inc. has authorized 500 shares of stock, which are owned as follows:

Alere Women's and Children's Health, LLC – 500 Shares

The Board of Directors of Alere of New York, Inc. is comprised of the following individuals:

Richard P. Long – Director Senior Vice President, Women's and Children's Health, Alere Health LLC	Karen M. Pinney, RN – Director National Ops VP, Alere
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Jeanne Shingleton, Esq. – Director  
Vice President, Senior Legal Counsel, Alere of  
New York, Inc.

Alere Women's and Children's Health, LLC is solely owned by Alere Health, LLC

Alere Health, LLC is solely owned by OptumHealth Care Solutions, Inc.

OptumHealth Care Solutions, Inc. has authorized 4,200,000 shares of common stock which are owned as follows:

OptumHealth Holdings, LLC – 84,000 Shares

4,116,000 shares remain unissued.

The Board of Directors of OptumHealth Care Solutions, Inc. comprises the following individuals:

Thomas M. Murray – Director  
Senior Vice President, UnitedHealth Group, Inc.

John M. Prince – Director  
OHCS; EVP, COO, CFO, Optum; COO, OHCS;CEO,  
OHFS, UnitedHealth Group, Inc.

Andrew C. Sekel, Ph.D. – Director  
CEO Specialty Network; SVP, Public Sector;  
CEO, Optum Health Behavioral Solutions,  
UnitedHealth Group, Inc.

OptumHealth Holdings, LLC is solely owned by UnitedHealth Group, Inc.

UnitedHealth Group, Inc. has authorized 3,010,000,000 shares of common stock and 10,000,000 shares of preferred stock. All 10,000,000 shares of preferred stock remain unissued. UnitedHealth Group, Inc. is a publically traded corporation. No single shareholder holds ten percent of more of the issued and outstanding shares of stock.

The Board of Directors of UnitedHealth Group, Inc. comprises the following individuals:

Stephen J. Hemsley – Director  
CEO; President; COO; SVP & VP,  
UnitedHealth Group Incorporated

Edson Bueno, M.D. – Director  
Chairman, President & Chief Executive Officer, Amil  
Assistencia Medica Interncional Ltda.  
Vice President, Federacao Nacional De Saude  
Suplementar

A search of the individuals and entities 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 registered nurse associated with this application.

The Regional Council of Medicine of the State of Rio De Janeiro indicates Edson Bueno has an active medical license however, the applicant has indicated that he is not currently practicing.

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The State Bar of George indicates that Jeanne Shingleton is an Active Member in Good Standing.

The applicant proposes to continue to serve the residents of the following counties from an office located at 900 Merchants Concourse, Suite 201, Westbury, New York 11590.

Suffolk	Nassau	Putnam	Dutchess	Orange
Rockland	Sullivan	Ulster	Westchester	Columbia

The applicant proposes to continue to serve the residents of the following counties from an office located at 1902 Whitestone Expressway, Suite 402, Whitestone, New York 11357.

Kings	Queens	New York	Bronx	Richmond
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The applicant proposes to continue to provide the following health care services:

Nursing	Nutrition
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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: August 2, 2016



Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Open Door NY Home Care Services, Inc.  
Address: Staten Island  
County: Richmond  
Structure: For-Profit Corporation  
Application Number: 151259-E

Description of Project:

Open Door NY Home Care 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.

Caring Moments Homecare, Inc. was previously approved by the Public Health and Health Planning Council at its June 7, 2012 meeting and subsequently licensed 1919L001 effective November 15, 2013. At that time Elsa Crick owned 180 shares of the issued stock and Bertram Crick owned 20 shares of the issued stock.

Caring Moments Homecare, Inc., has entered into a management agreement with Open Door NY Home Care Services, Inc. which was approved by the Department of Health on July 22, 2015.

The applicant has authorized 200 shares of stock, which will be owned as follows:

Boris Cherkalin – 100 Shares CEO, Caring Moments Homecare, Inc.	Leonid Korsunsky – 100 Shares CFO, Caring Moments Homecare, Inc.
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The Board of Directors of Open Door NY Home Care Services, Inc. comprises the following individuals:

Boris Cherkalin – Director (Previously Disclosed)	Leonid Korsunsky – Director (Previously Disclosed)
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A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 72 Gateway Drive, Staten Island, New York 10304:

Bronx	Kings	New York	Queens
Richmond	Nassau		

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Social Services
Occupational Therapy	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: August 13, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Elite Services NY, Inc. d/b/a Simply the Best Home Care  
Address: Johnstown  
County: Fulton  
Structure: For-Profit Corporation  
Application Number: 152024-E

Description of Project:

Elite Services NY, Inc. d/b/a Simply the Best Home Care, a business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Simply the Best Home Care, LLC was previously approved by the Public Health Council at its September 7, 2007 meeting and subsequently licensed 1562L001 effective August 4, 2008.

The applicant has authorized 200 shares of stock which are owned as follows:

Chaim Lieberman – 100 Shares  
Administrator, Community Home Health Care  
President, Priority Home Care

Affiliations:

- Priority Home Care Services, Inc. (fiscal intermediary for Consumer Directed Personal Care Assistance Program) (2003 – present)
- Community Home Health Care (2003- present)
- Cudley's Home Care Services, Inc. (2005- present)
- All Pro Home & Health Care Services, Inc. (2012-Present)

100 shares of stock remain unissued.

The following individual is the sole member of the Board of Directors of Elite Services NY, Inc. d/b/a Simply the Best Home Care:

Chaim Lieberman – Chairman/President/Treasurer/Secretary  
(Previously Disclosed)

A search of the individual 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 was performed as part of this review (unless otherwise noted):

- Community Home Health Care
- Cudley's Home Care Services, Inc.
- All Pro Home & Health Care Services, Inc. (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.

Simply the Best Home Care, LLC has entered into a management agreement with Elite Services NY, Inc. which was approved by the Department of Health on August 20, 2015.

The applicant proposes to serve the residents of the following counties from an office located at 2372 State Highway 30A, Johnstown, New York 12095:

Fulton	Hamilton	Montgomery	Saratoga
Schenectady	Schoharie	Warren	

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:                      August 25, 2016

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Core Care, LLC  
Address: Brooklyn  
County: Kings  
Structure: Limited Liability Company  
Application Number: 152124

Description of Project:

Core Care, 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.

Happy and Healthy at Home, LLC was previously approved by the Public Health Council at its September 24, 2010 meeting and subsequently licensed 1854L001.

Through an Asset Purchase Agreement the applicant will purchase the assets of Happy and Healthy at Home, LLC.

The members of Core Care, LLC comprise the following individuals:

Leslie Gollender, Member– 50%  
Director of Marketing/Patient Relations, Home  
Health Care Services of NY, Inc. d/b/a HCS

Agnes Shemia, SLP, Managing Member – 50%  
Administrator, Home Health Care Services of NY, Inc.  
d/b/a HCS

Affiliations:

- Home Health Care Services of NY, Inc. d/b/a HCS (2004 – Present)
- Girling Health Care New York (July 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 indicate no issues with the licensure of the health professional associated with this application.

A seven (7) year review of the operations of the following facilities was performed as part of this review (unless otherwise noted):

- Home Health Care Services of NY, Inc. d/b/a HCS
- Girling Health Care New York (July 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.

Home Health Care Services of NY, Inc. entered into a settlement agreement with the National Labor Relations Board in April 2016 which included a non-admissions clause indicating that the respondents do not admit that they have violated the National Labor Relations Act. The allegations were filed by 1199 SEIU United Healthcare Workers East and included an allegation that Home Health Care Services of NY, Inc. coerced employees to sign membership cards with Local 713 International Brotherhood of Trade Unions.

The applicant proposes to serve the residents of the following counties from an office located at 1122 Coney Island Avenue, Suite 201, Brooklyn, New York 11230:

Bronx  
Queens

Kings  
Richmond

Nassau

New York

The applicant proposes to provide the following health care services:

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

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

Contingency

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

Recommendation: Contingent Approval  
Date: June 28, 2016

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Responsible Homecare, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 161228

Description of Project:

Responsible Homecare, 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.

Responsible Care Staffing, 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 assigned license number 2014L001, effective September 27, 2013. At that time, the ownership of Responsible Care Staffing, Inc. consisted of Wilson Encarnacion (100 shares of stock) and Bernice Encarnacion (100 shares of stock).

Responsible Homecare, Inc. has authorized 200 shares of stock, which are owned as follows: Arnold Rabinovich owns 180 shares and Natalya Chornaya owns 20 shares.

The Board of Directors of Responsible Homecare, Inc. is comprised of the following individuals:

Arnold Rabinovich, President  
Owner/President, Gold At Bizar

Natalya Chornaya, RN, Vice President  
RN, Mount Sinai Beth Israel Heart

Affiliations:

NC Homecare Agency of NY, Inc. (NY LHCSA, 2012 – Present)  
Unihelp Homecare, Inc. d/b/a Interger Health (NY LHCSA, 2008 – 2009)

The Office of the Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

A 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 251 East 5<sup>th</sup> Street, Unit 135, Brooklyn, New York 11218:

Kings	Queens	New York
Bronx	Richmond	Nassau

The applicant proposes to provide the following health care services:

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

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

NC Homecare Agency of NY, Inc. (LHCSA, 2012 – Present)  
Unihelp Homecare, Inc. d/b/a Intergen Health (LHCSA, 2008 – 2009)

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: July 26, 2016

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Supreme Homecare Agency of NY Inc. d/b/a NU Home Care  
Address: Flushing  
County: Queens  
Structure: For-Profit Corporation  
Application Number: 161333

Description of Project:

Supreme Homecare Agency of NY Inc. d/b/a NU Home Care, a business corporation, requests approval for a change in stock ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Supreme Homecare Agency of NY Inc. was previously approved as a home care services agency by the Public Health and Health Planning Council at its October 2, 2014 meeting and subsequently licensed as 1935L001 effective October 7, 2015. At that time, the sole shareholder was Robert Izsak.

The purpose of this application is to request approval to transfer all 200 shares of stock from Robert Izsak to Youngsoon Lee and Jongjin Lee.

Supreme Homecare Agency of NY Inc. d/b/a NU Home Care has authorized 200 shares of stock, which will be owned as follows: Youngsoon Lee - 100 shares and Jongjin Lee - 100 shares.

The Board of Directors of Supreme Homecare Agency of NY Inc. d/b/a NU Home Care will be comprised of the following individuals:

Youngsoon Lee, RN, BSN, President  
Director of Patient Services, Supreme Homecare Agency of NY Inc.

Jongjin Lee, Vice President  
Owner, Itempool Academy

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

The Office of the Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 41-08 163<sup>rd</sup> Street, 2<sup>nd</sup> Floor, Flushing, New York 11358:

Queens	Kings	New York
Bronx	Richmond	Nassau

The applicant proposes to provide the following health care services:

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



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

Contingency

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

Recommendation: Contingent Approval  
Date: August 11, 2016

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Arista Home Care, LLC  
Address: Brooklyn  
County: Kings  
Structure: Limited Liability Company  
Application Number: 161347

Description of Project:

Arista Home Care, 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.

Direct Home Care Inc., a business corporation, was previously approved as a home care services agency by the Public Health and Health Planning Council at its August 4, 2011 meeting and subsequently licensed as 1580L001. At that time, the sole shareholder of Direct Home Care, Inc. was Yechiel Kaufman.

Direct Home Care Inc. has entered into a management agreement with Arista Home Care, LLC to manage the LHCSA. The management agreement was approved by the Department in August 2016.

The membership of Arista Home Care, LLC comprises the following individuals:

Robert Snyder – 50%  
COO, Aljud Management  
Operator, Amber Court of Westbury II (NY ACF)  
Operator, Amber Court of Elizabeth, LLC (NJ ALP)  
Operator, Amber Court at Home, LLC (NY CHHA)

Affiliations:

Amber Court of Elizabeth, LLC (NJ ALP, 2008 - Present)  
Amber Court at Home, LLC (NY CHHA, 2014 - Present)  
Amber Court of Westbury II (NY ACF, 2015 – Present)

Raphael Weiss – 50%  
NJ Certified Assisted Living Administrator  
CFO, Aljud Management  
Operator, Amber Court of Westbury II (NY ACF)  
Operator, Amber Court of Elizabeth, LLC (NJ ALP)  
Operator, Amber Court at Home, LLC (NY CHHA)

Affiliations:

Amber Court of Elizabeth, LLC (NJ ALP, 2008 - Present)  
Amber Court at Home, LLC (NY CHHA, 2014 - Present)  
Amber Court of Westbury II (NY ACF, 2015 – 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 2004 McDonald Avenue, Brooklyn, New York 11236:

Kings	Bronx	New York
Queens	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	

A seven (7) year review of the operations of the following facilities/agencies was performed as part of this review (unless otherwise noted):

Amber Court of Elizabeth (NJ ALP, May 2015 – May 2016)  
Amber Court at Home (NY CHHA, 2014 - Present)  
Amber Court of Westbury II (NY ACF, 2015 – Present)

The State of New Jersey, Department of Health, has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Adult Care Facilities and Assisted Living Surveillance has indicated that adult care facilities have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

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

Contingency

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

Recommendation: Contingent Approval  
Date: July 18, 2016

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Global Home Care, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 161349

Description of Project:

Global 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.

J & A Health Services, LLC was previously approved as a home care services agency by the Public Health Council at its September 7, 2007 meeting and subsequently assigned license number 1541L001 effective October 28, 2009. At that time, the members of J & A Health Services, LLC were James F. Bianco – 49.5%, Anatoly Spektor – 49.5% and Julia Leybman – 1%.

Global Home Care, Inc. and J & A Health Services, LLC entered into an asset purchase agreement executed on April 12, 2016.

Global Home Care, Inc. has authorized 200 shares of stock which are owned as follows: Irina Slivko owns 100 shares and Maks Kutsak owns 100 shares.

The Board of Directors of Global Home Care, Inc. is comprised of the following individuals:

Irina Slivko– President Pharmacy Manager, Global Health Pharmacy Corp.	Maks Kutsak – Secretary/Treasurer President, Instant Solution, Inc.
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A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 157 Amherst Street, Brooklyn, New York 11235:

Kings Bronx	Queens Richmond	New York Nassau
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The applicant proposes to provide the following health care services:

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

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

Contingency

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

Recommendation: Contingent Approval  
Date: August 9, 2016

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Elener Associates LLC d/b/a Riverdale Home Care Agency  
 Address: Bronx  
 County: Bronx  
 Structure: Limited Liability Company  
 Application Number: 161404

Description of Project:

Elener Associates LLC d/b/a Riverdale Home Care Agency, 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.

Riverdale Home Care Agency and Riverdale Ltd Hcsa d/b/a Riverdale Home Care Agency was previously approved as a home care services agency by the Public Health Council at its October 20, 1998 meeting and was subsequently licensed as 9972L001.

This LHCSA is associated with the Assisted Living Program operated by Riverdale Manor Home for Adults.

Elener Associates LLC d/b/a Riverdale Home Care Agency is comprised of the following members:

The W Management Group, LLC, Member – 52%	Amalia Elefant, Member – 4.32% Retired  Affiliations: <ul style="list-style-type: none"> <li>• Riverdale Home Care Agency</li> <li>• Riverdale Manor Home for Adults</li> </ul>
Jacob Elefant, Member – 9.6% Retired  Affiliations: <ul style="list-style-type: none"> <li>• Riverdale Home Care Agency</li> <li>• Riverdale Manor Home for Adults</li> </ul>	Rivka Dagim, Member – 9.6% Retired  Affiliations: <ul style="list-style-type: none"> <li>• Riverdale Home Care Agency</li> <li>• Riverdale Manor Home for Adults</li> </ul>
George T. Waldner, Member – 9.6% Retired  Affiliations: <ul style="list-style-type: none"> <li>• Riverdale Home Care Agency</li> <li>• Riverdale Manor Home for Adults</li> </ul>	Cathy Waldner, Member – 9.6% Retired
Edward Waldner, Member – 5.28% Senior Firmware Engineer, Adva Optical Networking	

The W Management Group, LLC is comprised of the following members:

Luzer Weiss, Managing Member – 99% Chaplain Services, NYS Department of Correctional Services	Sarah Weiss, Member – 1% Director of Human Resources, Blanch Kahu Health Center
--	--

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

A seven (7) year review of the operations of the following facilities was performed as part of this review:

- Riverdale Home Care Agency
- Riverdale Manor Home for Adults

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Adult Care Facilities and Assisted Living Surveillance has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Riverdale Home Care Agency & Riverdale LTD HCSA has entered into a management agreement with The W Management Group, LLC which was approved by the Department of Health on February 24, 2016.

The applicant proposes to serve the residents of the following counties from the office located at 6355 Broadway, Bronx New York 10471:

Bronx                      Kings                      New York                      Queens                      Richmond                      Westchester

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:                      July 7, 2016



## MEMORANDUM

**To:** Public Health and Health Planning Council

**From:** Richard J. Zahnleuter  
General Counsel 

**Date:** July 11, 2016

**Subject:** Proposed Certificate of Amendment of Certificate of Incorporation of Prospect Park Nursing Home, Inc: Name Change and Purposes Change

---

Prospect Park Nursing Home, Inc. sold its nursing facility in 2007 and no longer operates such a facility. The sale and purchase of the facility was approved by PHHPC. As a result, the applicant seeks to change its name and change its purposes to reflect that they no longer operate a nursing facility.

Attached is the proposed Certificate of Amendment of Certificate of Incorporation of Prospect Park Nursing Home, Inc., among other documents. This not-for-profit corporation seeks approval to file its Certificate of Amendment. Public Health and Health Planning Council approval for the changes made to said certificate is required by Not-for-Profit Corporation Law § 804(a).

There is no legal objection to the changes and the proposed Certificate of Amendment of Certificate of Incorporation is in legally acceptable form.

Attachments.

June 27, 2016

File Number: 16RZ 018940

**VIA FEDEX AND ELECTRONIC MAIL**

Colleen Leonard  
Executive Secretary, Public Health and Health  
Planning Council  
NYS Department of Health  
Corning Tower  
Rm 1805  
Empire State Plaza  
Albany, New York 12237  
PHHPC@health.ny.gov

Re: Request for Consent to Amend the Certificate of Incorporation of  
Prospect Park Nursing Home, Inc., d.b.a. Integral Guardianship Services

Dear Ms. Leonard:

We represent Prospect Park Nursing Home, d.b.a. Integral Guardianship Services, a New York not-for-profit corporation ("Integral"). Enclosed herewith for the review and approval of the New York State Department of Health is the proposed Certificate of Amendment of Integral's Certificate of Incorporation, pursuant to which, *inter alia*, Integral's name is being changed to "Integral Guardianship Services," and Integral's purposes are being amended to reflect the fact that Integral no longer operates a skilled nursing home and has not done so for several years. Integral's current Certificate of Incorporation and all prior amendments thereto is annexed hereto as Exhibit A. The proposed Certificate of Amendment of Integral's Certificate of Incorporation is annexed hereto as Exhibit B.

By way of background, Integral used to operate a 215-bed skilled nursing home facility at 1455 Coney Island Avenue, Brooklyn, New York. On March 16, 2007 (the "Effective Date"), the Corporation consummated the sale of substantially all of its operating assets and real property to Prospect Park Operating, LLC, d.b.a. Brooklyn Center for Rehabilitation and Residential Health Care (purchaser of operating assets) and Prospect Park Land, LLC (purchaser of the real property, and, together with the purchaser of operating assets, the "Buyers") (the sale of assets and land hereinafter collectively referred to as the "Transaction"). The Buyers submitted a



# SheppardMullin

1101 Avenue of the Americas  
11th Floor  
New York, New York 10020  
Tel: 212 512 2000  
Fax: 212 512 2001

Certificate of Need application ("CON Application") seeking authority to operate the subject nursing home, and the Department of Health approved Buyers' CON Application. A copy of the letter from the Public Health and Health Planning Council is annexed hereto as Exhibit C. The Transaction was consummated upon the approval of, and subject to certain terms and conditions imposed by, the New York State Supreme Court upon prior notice to the Attorney General in accordance with Sections 510 and 511 of the New York Not-for-Profit Corporation Law (the "NPCL"). A copy of the Court's Order is annexed hereto as Exhibit D for reference.

Since the Effective Date, Integral has not owned or operated a nursing home, and has no intent to do so in the future. Instead, Integral has been providing guardianship services to the elderly, disabled, ill, infirm, handicapped and convalescent persons with a particular focus on individuals who are indigent or of low income or modest means, including in particular by providing, supporting and/or otherwise facilitating (i) social work and social case management services, (ii) budgeting, bill payment and asset management services, (iii) housekeeping, (iv) nutritional counseling, (v) transportation assistance services, (vi) home safety and security assessment services, and (vii) other related guardianship services as may be deemed appropriate and/or necessary. In addition to its guardianship services, Integral was also responsible for ensuring satisfaction of the liabilities relating to the nursing home (as provided in the Court Order), and has been coordinating with the Attorney General's office with respect to carrying out the various requirements under the Court Order.<sup>1</sup>

Integral seeks to amend its Certificate of Incorporation to: (i) change its name from "Prospect Park Nursing Home" to "Integral Guardianship Services" to more accurately reflect its current activities, and (ii) delete its purposes relating to the operation of a nursing home and add purposes describing Integral's guardianship services as described in the preceding paragraph. Pursuant to Section 804(a) of the NPCL, "[a] certificate of amendment shall not be filed if the amendment adds, changes or eliminates a purpose, power or provision the inclusion of which in a certificate of incorporation requires consent or approval of a governmental body or officer or any other person or body, or if the amendment changes the name of a corporation whose certificate of incorporation had such consent or approval is no longer required or is endorsed on or annexed to the certificate of amendment." Accordingly, on behalf of Integral, we respectfully request the Department of Health's consent to the filing of the proposed Certificate of Amendment with the New York Department of State.

It should be noted that, although the Court Order contemplated that, in addition to providing guardianship services, Integral would also eventually operate as a licensed home care services agency ("LHCSA"), Integral is not operating as a LHCSA. In January 2008, the New York State Department of Health issued a moratorium on licensing home care agencies. By the time the moratorium was lifted in October 2010, Integral was immersed in the guardianship industry, and served as guardian for hundreds of individuals. Integral determined it lacked the resources necessary to enter into a new line of business in order to provide licensed home care services, and did not seek authorization and licensure to operate as a LHCSA. Accordingly, Integral has not to date, and does not currently intend, to operate as a LHCSA.

# SheppardMullin

Steven Leonard  
Division of Field Affairs  
New York State Department of Health  
100 Rockefeller Plaza  
10th Floor

We greatly appreciate your prompt consideration and attention to this matter. Please do not hesitate to contact me or Jay Cierzog at (212) 683-8465 if you need additional information.

Very truly yours,

Amanda Zablocki  
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMB01228018851  
Encl.

CERTIFICATE OF INCORPORATION  
OF  
PROSPECT PARK NURSING HOME, INC.



A290459

Under Section 402 of the Not-for-Profit Corporation Law

The undersigned, a natural person of at least the age of eighteen years, for the purpose of forming a corporation under Section 402 of the Not-for-Profit Corporation Law of the State of New York, does hereby certify as follows:

FIRST: The name of the Corporation is PROSPECT PARK NURSING HOME, INC.

SECOND: The purpose for which the Corporation is formed is to operate as a voluntary receiver of a residential health care facility pursuant to Section 2810(1) of the Public Health Law of the State of New York for a period of nineteen (19) months from the date of filing of this Certificate with the Secretary of State of the State of New York.

With respect to the foregoing purpose, however, the Corporation shall be subject to the following limitations and restrictions:

(a) The Corporation shall not be operated for pecuniary profit or financial gain and no part of the net earnings of the Corporation shall inure to the benefit of any director or individual having a personal and private interest in the activities of the Corporation, nor shall any of such net earnings be used otherwise than for charitable, religious, ~~or educational~~, humanitarian ~~or other~~ purposes, nor shall any part of the activities of the Corporation consist of carrying on propaganda, or otherwise attempting to influence legislation, or participating in, or intervening in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

(b) Upon the liquidation or dissolution of the Corporation or the winding up of its affairs, whether voluntary, involuntary or by operation of law, no director or individual shall be entitled to any distribution or division of its remaining property or the proceeds of the same, and the balance of all money and other property received by the Corporation from any source, including its operations, after the payment of all debts and obligations of

the Corporation of whatever kind and nature, shall be distributed, except as otherwise provided by law and subject to the approval of a Justice of the Supreme Court of the State of New York, to an organization or organizations (1) which would then qualify under Section 501(c)(3) (all Section references herein are to the Internal Revenue Code of 1954, as amended, and to corresponding provisions of any subsequent Federal tax laws) and (2) the general purposes of which are in harmony with the general purposes set forth in this Paragraph SECOND of this Certificate.

(c) The Corporation 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) or by an organization contributions to which are deductible under Section 170(c)(2).

(d) For any period in which the Corporation is a private foundation within the meaning of Section 509(a), the Corporation shall also be subject to the following additional limitations:

(1) The Corporation shall distribute such amounts 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.

(2) The Corporation shall not engage in any act of self-dealing which is subject to tax under Section 4941.

(3) The Corporation shall not retain any excess business holdings which are subject to tax under Section 4943.

(4) The Corporation shall not make any investments in such manner as to subject the Corporation to tax under Section 4944.

(e) The Corporation shall have and may exercise all powers necessary or convenient to effect, or which are conducive to the attainment of, any or all of the foregoing purposes, subject to such limitations as are provided by law.

THIRD: (a) The Corporation shall be a corporation as defined in Subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law. The Corporation is not formed for pecuniary profit or financial gain.

(b) The Corporation shall be a Type B

corporation under Section 201 of the Not-for-Profit Corporation Law.

FOURTH: The territory in which the Corporation's activities are principally to be conducted is the State of New York.

FIFTH: The principal office of the Corporation is to be located in the City of New York, County of Kings, State of New York.

SIXTH: The names and addresses of the initial Directors of the Corporation are as follows:

<u>Name</u>	<u>Address</u>
Leo Benjamin	2100 Limewood Avenue Fort Lee, New Jersey 07024
Robert Birnbaum	41 East 11th Street New York, New York 10003
Frank Heller	123-10 Ocean Promenade Bell Harbor, New York 11694
Abraham Kelman	31 Maple Street New York, New York 11225
Dr. Leon Olinger	66 Maple Street New York, New York 11225

SEVENTH: The Post Office address to which the Secretary of State shall mail a copy of any notice required

by law is:

c/o Prospect Park Jewish Center  
153 Ocean Avenue  
New York, New York 11226

EIGHTH: All approvals for or consents to the filing of this Certificate which are required by the Not-for-Profit Corporation Law or any statute of the State of New York shall be endorsed hereon or annexed hereto prior to delivery to the Department of State for filing.

NINTH: Annexed hereto is a waiver of the notice to the Attorney General of the State of New York required under Section 404(a) of the Not-for-Profit Corporation Law.

IN WITNESS WHEREOF, I have made, signed and acknowledged this Certificate of Incorporation this 26<sup>th</sup> day of JANUARY, 1976.

*Rabbi Abraham Kelman*  
Rabbi Abraham Kelman  
Incorporator  
31 Maple Street  
Brooklyn, New York 11225

STATE OF NEW YORK )  
COUNTY OF New York ) ss.:

On this 26<sup>th</sup> day of January, 1976, before me personally came Rabbi Abraham Kelman, to me known and known by me to be the same person described in and who executed the foregoing Certificate of Incorporation, and he thereupon duly acknowledged to me that he executed the same.

CELESTE A. SIMANI  
Notary Public, State of New York  
No. 34-3673800  
County of New York  
Commission Expires March 30, 1977

6 *Celeste A. Simani*  
Notary Public



CONSENT TO INCORPORATION  
BY COMMISSIONER OF HEALTH

I, Robert P. Whalen, M. D., Commissioner of Health  
of the State of New York, do this 27th day of January  
1976, pursuant to Article 28 of the Public Health Law,  
hereby certify that I consent to the filing of the foregoing  
Certificate of Incorporation of PROSPECT PARK NURSING HOME,  
INC., with the Secretary of State of the State of New York.

Dated: January 27, 1976

COMMISSIONER OF HEALTH

By: 

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CERTIFICATE OF INCORPORATION  
BY JUSTICE OF THE SUPREME COURT

The undersigned, a Justice of the Supreme Court of the State of New York, County of Kings, wherein is located the principal office of PROSPECT PARK NURSING HOME, INC., does hereby approve the foregoing Certificate of Incorporation of PROSPECT PARK NURSING HOME, INC., and consent to the filing thereof with the Secretary of State of the State of New York.

Dated: *January* 29, 1976

*[Handwritten signature]*

*[Handwritten signature]*  
JUSTICE OF THE SUPREME COURT  
OF THE STATE OF NEW YORK  
JACOB J. SCHWARTZWALD

8

WAIVER OF NOTICE OF APPLICATION

BY ATTORNEY-GENERAL

The notice of application required under Section 404(a) of the Not-for-Profit Corporation Law is hereby waived. (This is not to be deemed an approval on behalf of any Department or Agency of the State of New York, nor an authorization of activities otherwise limited by law.)

Dated: \_\_\_\_\_, 1976

LOUIS J. LEFKOWITZ  
Attorney General

By: \_\_\_\_\_  
Assistant Attorney-General

Notice of application waived  
(This is not to be deemed an  
approval on behalf of any  
Department or Agency of the  
State of New York, nor an  
authorization of activities  
otherwise limited by law.)

Dated: 1/28/76  
LOUIS J. LEFKOWITZ  
Attorney General

By: Daniel A. Furlong  
Assistant Attorney General

CERTIFICATE OF RESERVATION

*sw*

STATE OF NEW YORK

627  
DEPARTMENT OF STATE

I DO HEREBY CERTIFY TO THE

RESERVATION OF NAME  
(corporation name)

OF PROSPECT PARK NURSING HOME, INC. ON January 20, 1976  
(date filed)

TO BE FILMED AS MICROFILM FRAME NUMBER: 209594-1

THE ABOVE CORPORATE NAME HAS BEEN RESERVED FOR A PERIOD OF SIXTY DAYS FROM THE ABOVE DATE FOR THE USE OF

Alan H. Purness, Esq.

FOR

( NOT FOR PROFIT )

Creation of a domestic corporation

*William*  
Secretary of State

NAME AND ADDRESS OF FILER: Cardinalador Wickersham, Taft  
1 Wall Street  
New York, NY 10005

CHK.  M.O.  CASH

\$ 10.00

\$10.00 CERTIFICATE

TOTAL \$10.00

REFUND OF \$

TO FOLLOW

CERTIFICATE OF RESERVATION MUST ACCOMPANY CERTIFICATE OF INCORPORATION OR APPLICATION OF AUTHORITY WHEN PRESENTED FOR FILING.

R602-512 R

10

A290459

CERTIFICATE OF INCORPORATION  
OF  
PROSPECT PARK NURSING HOME, INC.

Under Section 402 of the Not-for-Profit Corporation Law

STATE OF NEW YORK  
DEPARTMENT OF STATE  
TAX \$ none  
FILING FEE \$ 50  
FILED JAN 30 1976

*Wendell Wilson*  
Secretary of State

*Pratt*  
*Hyman*

CADWALADER, WICKERSHAM & TAFT

One Wall Street  
New York, New York 10005

**DOCUMENT IS VERY LIGHT/DARK ON FILM  
AND THIS IS THE BEST POSSIBLE COPY THAT  
CAN BE MADE.**

CERTIFICATE OF AMENDMENT OF THE CERTIFICATE OF INCORPORATION  
OF

PROSPECT PARK NURSING HOME, INC.

XLI

Under Section 803 of the Not-for-Profit Corporation Law

IT IS HEREBY CERTIFIED THAT:

(1) The name of the corporation is  
PROSPECT PARK NURSING HOME, INC.

(2) The certificate of incorporation was filed  
with the Department of State on January 30th, 1976. The  
corporation was formed under Section 402 of the Not-for-Profit  
Corporation Law.

(3) The corporation is a corporation as defined  
in Subparagraph (a)(5) of Section 102 (definitions) of the  
Not-for-Profit Corporation Law. The corporation was not formed  
for pecuniary profit or financial gain and shall remain a  
Type B corporation under Section 201 of the Not-for-Profit  
Corporation Law.

(4) The post office address of the corporation is  
[REDACTED]

(5) The certificate of incorporation of this  
corporation is hereby amended to effect the following change:  
Designation of Secretary of State as Corporate  
Address: The Secretary of State is 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 process against the corporation served upon him is  
as follows:

A820687

Prospect Park Nursing Home, Inc.  
1455 Coney Island Ave  
Brooklyn, N.Y. 11230

Paragraph "SEVENTH" of the certificate of incorporation which sets forth the service of notice address is hereby deleted and replaced by a new paragraph "SEVENTH" as follows:

"SEVENTH" The post office address to which the Secretary of State shall mail a copy of any notice required by law is:



Prospect Park Nursing Home, Inc.  
1455 Coney Island Avenue  
Brooklyn, New York 11230

9. Corporate Purposes. Paragraph "SECOND" of the certificate of incorporation which sets forth the purposes of the corporation is hereby deleted and replaced by new paragraph "SECOND" as follows:

"SECOND: The purposes for which the corporation is formed are:

I. (a) To organize, plan, establish, construct, sponsor, erect, build, acquire, own, lease, alter, reconstruct, rehabilitate, repair, maintain, supervise, manage, conduct and operate nursing home and health related facilities for aging, ill, infirm, disabled, handicapped and convalescent persons, provided that prior to each such facility being constructed, leased, owned or operated the corporation shall obtain all approvals or consents required under Article 28 of the Public Health Law.

(b) To provide aged day-care, in-patient medical care, recreational facilities, counseling, and such other services on and off premises as may be useful in accepting and meeting the needs of aging persons of low-income or modest means.

(c) To act and operate as a voluntary receiver of residential health care and nursing home facilities pursuant to Section 2810 of the Public Health Law of the State of New York and all relevant laws and regulations pertaining thereto.

II. With respect to the foregoing purposes the corporation shall be subject to the following limitations and restrictions:

(a) The corporation shall not be operated for pecuniary profit or financial gain and no part of the net earnings of the corporation shall inure to the benefit of any director or individual having a personal and private interest in the

activities of the corporation, nor shall any of such net earnings be used otherwise than for charitable, religious, educational, humanitarian or scientific purposes, nor shall any part of the activities of the corporation consist of carrying on propaganda, or otherwise attempting to influence legislation, or participating in, or intervening in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

(b) Upon the liquidation or dissolution of the corporation or the winding up of its affairs, whether voluntary, involuntary or by operation of law, no director or individual shall be entitled to any distribution or division of its remaining property or the proceeds of the same, and the balance of all money and other property received by the corporation from any source, including its operations, after the payment of all debts and obligations of the corporation of whatever kind and nature, shall be distributed, except as otherwise provided by law and subject to the approval of a Justice of the Supreme Court of the State of New York, to an organization or organizations (1) which would then qualify under Section 501(c) (3) and (2) the general purposes of which are in harmony with the general purposes set forth in this Certificate.

NOTE: All Section references herein are to the Internal Revenue Code of 1954, as amended, and to corresponding provisions of any subsequent Federal tax laws.

(c) The corporation 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) or by an organization contributions to which are deductible under Section 170(c)(2).

(2) For any period in which the corporation is a private foundation within the meaning of Section 509(a), the corporation shall also be subject to the following additional limitations:

(1) The corporation shall distribute such amounts 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.

(2) The corporation shall not engage in any act of self-dealing which is subject to tax under Section 4941.

(3) The corporation shall not retain any excess business holdings which are subject to tax under Section 4943.

(4) The corporation shall not make any investments in such manner as to subject the corporation to tax under Section 4944.

III. To solicit contributions for the attainment and accomplishment of all of the foregoing purposes.

IV. The corporation shall have and may exercise all powers necessary or convenient to effect, or which are conducive to the attainment of, any or all of the foregoing purposes, subject to such limitations as are provided by law.

C. Corporate Duration. The certificate of incorporation is hereby amended to add a new paragraph

designated "FOURTH A." to be inserted between present Paragraphs FIFTH and SIXTH of the certificate of incorporation and to read as follows:

"FOURTH A.: The duration of the corporation shall be perpetual."

D. Members and Directors. Paragraph "SIXTH" of the certificate of incorporation which sets forth the names and addresses of the initial directors of the corporation is hereby deleted and replaced by new paragraph "SIXTH" as follows:

"SIXTH: The Corporation shall have two classes of members: Active and Honorary. The names and addresses of the initial active members of the corporation, who also constitute the present Board of Directors of the corporation are as follows:

<u>NAMES</u>	<u>ADDRESSES</u>
✓ LEO BENJAMIN	2100 Linwood Avenue Fort Lee, New Jersey 07024
✓ LEON OLINGER, M.D.	66 Maple Street Brooklyn, New York 11225
✗ FRANK HELLER	123-10 Ocean Promenade Arverne, New York 11692
✓ NATHAN FENSTER	1729 Ocean Avenue Brooklyn, New York 11230
• SAM KUNSTLER	440 B. 141 Street Belle Harbor, New York 11694
✗ SAM FREIDMAN	2100 Linwood Avenue Fort Lee, New Jersey 07024

RABBI ABRAHAM YITZAK.

1901 11st St Street  
Brooklyn, New York 11203

\* MAX GOLDBERG

1111 Brighton Avenue  
Brooklyn, New York 11230

† J. FRED ROTHCHILD

10-41 East 13th Street  
Brooklyn, New York 11231

\* BENJAMIN DICKER.

1130 Avenue Y  
Brooklyn, New York 11235

Members of each class shall be elected by majority vote of the active members of the corporation.

Directors of the corporation shall be elected or appointed as provided by the by-laws and the laws of the State of New York. Directors shall number not less than five (5) nor more than twenty-five (25).

Members and directors of the corporation shall be natural persons over the age of eighteen (18) years. Directors of the corporation need not be members.

(6) This amendment of the certificate of incorporation was authorized pursuant to Section 802(a)(1) of the Not-for-Profit Corporation Law by the affirmative unanimous vote of the members and directors present at a joint meeting of the corporation held September 9, 1981, being all of the members and directors of the corporation.

(7) (a) The certificate of incorporation as filed on January 30th, 1976, with the Department of State, contained the written consent of the Commissioner of Health, the written waiver of notice of application executed by the Attorney General

and the approval and consent of the Board of Health, the  
Justice of the Supreme Court of the State of New York for  
the County of Kings.

(b) Prior to the delivery of this certificate  
of amendment to the Department of State for filing, the  
approvals or consents of the Commissioner of Health, the  
Public Health Council and a Justice of the Supreme Court for  
the State of New York for the County of Kings will be endorsed  
upon or annexed to this certificate of amendment as well as a  
waiver of notice in writing by the Attorney General of the  
State of New York.

The consents attached to this certificate constitute  
all consents required by law.

IN WITNESS WHEREOF, the undersigned have made,  
subscribed, and acknowledged this Amendment to the Certificate  
of Incorporation, this 10th day of September, 1981, and  
affirm that the statements made herein are true under the  
penalties of perjury.

*Abraham Kelman*  
\_\_\_\_\_  
President

ABRAHAM KELMAN

*Leo Benjamin*  
\_\_\_\_\_  
Secretary

LEO BENJAMIN

STATE OF NEW YORK  
COUNTY OF [illegible]

On the [illegible] day of [illegible], 1991, before me personally came Rabbi Abraham Kelman and Leo Benjamin, each to me known and each being by me being duly sworn deposes and say that each resides respectively at 1891 East 7th Street, Brooklyn, New York 11223 and 2100 Linwood Avenue, Fort Lee, New Jersey 07024 and that Rabbi Abraham Kelman is the President of Prospect Park Nursing Home, Inc. and Leo Benjamin is the Secretary of said corporation, which is the corporation described in and which executed the foregoing instrument; that each knows the seal of said corporation and that the seal affixed to said instrument is such corporate seal, that it was so affixed by order of the Board of Directors of said corporation and that each signed his name thereto by like order.

*Paula [illegible]*

**Public Notary  
Notary Public, State of New York  
No. 14-02007  
Commission Expires [illegible]**

CONSENT TO AMENDMENT OF CERTIFICATE OF INCORPORATION  
OF PROSPECT PARK NURSING HOME, INC.  
BY COMMISSIONER OF HEALTH

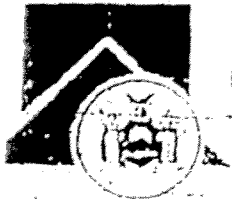
I, DAVID AXELROD, M.D., Commissioner of Health of  
the State of New York, do this 17th day of November, 1981,  
pursuant to Article 28 of the Public Health Law and Article 8  
of the Not-for-Profit Corporation Law, hereby certify that I  
consent to the filing of the foregoing Amendment of Certificate  
of Incorporation of PROSPECT PARK NURSING HOME, INC., dated  
September 10, 1981, with the Secretary of State of the  
State of New York.

DATED: November 17, 1981

  
DAVID AXELROD, M.D.  
Commissioner

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STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
ALBANY, N.Y.

# PUBLIC HEALTH COUNCIL

November 20, 1981

KNOW ALL MEN BY THESE PRESENTS:

After inquiry and investigation, and in accordance with action taken at a meeting of the Public Health Council held on the 20th day of November, 1981, I hereby certify that the application of Prospect Park Nursing Home, Inc. to operate Prospect Park Nursing Home (formerly Park Lane Nursing Home) is APPROVED.

The Certificate of Amendment of the Certificate of Incorporation of Prospect Park Nursing Home, Inc. is also APPROVED.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

*Shirley M. Parham*  
SHIRLEY H. PARHAM  
Secretary

Sent to: Thomas J. Ford, Esq.  
Hahn, Hahn and Ford  
Professional Building  
105 Hillside Avenue  
Westchester Park, New York 11596

cc: Prospect Park Nursing Home, Inc.  
1455 Coney Island Avenue  
Brooklyn, New York, 11230

COUNCIL

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JAMES A. ALLEN  
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COMMISSIONER OF HEALTH  
DAVID A. REED, M.D.  
STAFF SECRETARY

STATE OF NEW YORK  
DEPARTMENT OF SOCIAL SERVICES

NEW YORK STATE NURSING HOME, INC.

The notice of application required under Section 406 of the Not-for-Profit Corporation Law is hereby waived. (This is not to be deemed an approval on behalf of any Department or Agency of the State of New York, nor an authorization of activities otherwise limited by law.)

Dated: 10/16/1991

ROBERT ABRAMS  
Attorney General of the State of  
New York

By Patricia J. Garvey  
Assistant Attorney General

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APPROVAL BY THE COURT OF THE SUPREME COURT

AMENDMENT TO CERTIFICATE OF INCORPORATION

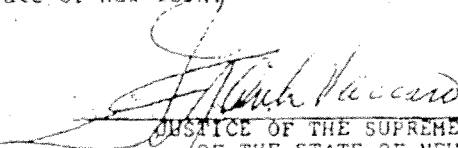
OF

PROSPECT PARK NURSING HOME, INC.

A NOT-FOR-PROFIT CORPORATION

The undersigned, a Justice of the Supreme Court of the State of New York, County of Kings, Second Judicial District, in which Judicial District is located the principal office of PROSPECT PARK NURSING HOME, INC., 1455 Coney Island Avenue, Brooklyn, New York 11230 does hereby approve the foregoing Amendment to the Certificate of Incorporation of PROSPECT PARK NURSING HOME, INC., and consent to the filing thereof with the Secretary of State of the State of New York.

DATED: NOV 20 1981, 1981

  
JUSTICE OF THE SUPREME COURT  
OF THE STATE OF NEW YORK

HON. FRANK VACCARO

13

STATE OF NEW YORK  
DEPARTMENT OF STATE

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**BILLED**

RECEIVED  
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DEPARTMENT OF MENDMENT  
ON THE  
GENERAL STATE OF INCORPORATION

GENERAL NURSING HOME, INC.



**CERTIFICATE OF AMENDMENT**  
**OF**  
**CERTIFICATE OF INCORPORATION**  
**OF**  
**PROSPECT PARK NURSING HOME, INC.**

**Under Section 803 of the Not-for-Profit Corporation Law**

The undersigned, Wendy Marcari, certifies that she is the Chairperson of Prospect Park Nursing Home, Inc. (the "Corporation"), a New York not-for-profit corporation, and does hereby further certify as follows:

1. The name of the Corporation is Prospect Park Nursing Home, Inc.
2. The Certificate of Incorporation of the Corporation was filed with the New York Secretary of State on January 30, 1976. A Certificate of Amendment of the Certificate of Incorporation of the Corporation was filed on December 3, 1981.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the New York State Not-for-Profit Corporation Law ("NPCL").
4. The Certificate of Incorporation of the Corporation is hereby amended to effect the following changes authorized under Section 803 of the NPCL:
  - A. Article FIRST, which sets forth the name of the Corporation, is hereby amended to change the name of the Corporation to Integral Guardianship Services, Inc. Accordingly, Article FIRST is amended to read in its entirety as follows:

"FIRST. The name of the Corporation is Integral Guardianship Services, Inc. (the 'Corporation')."
  - B. Article SECOND, which sets forth purposes of the Corporation, is hereby deleted and replaced in its entirety with a new Article SECOND that states that the Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL, and is a charitable corporation as defined in Section 201 of the NPCL. Accordingly, Article SECOND is hereby amended to read in its entirety as follows:

"SECOND. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL, and is a charitable corporation as defined in Section 201 of the NPCL."
  - C. Article THIRD, which states that the Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL, is not formed for pecuniary gain

or profit, and is a Type B corporation under Section 201 of the NPCL, is hereby deleted and replaced in its entirety with a new Article THIRD setting forth the purposes of the Corporation and related provisions. Accordingly, Article THIRD is hereby amended to read in its entirety as follows:

“THIRD. (A) The Corporation is organized, and shall be operated, exclusively for the charitable purposes of providing guardianship services to elderly, disabled, ill, infirm, handicapped and convalescent persons who are indigent or of low income or modest means, including, in particular, by:

- (i) providing, supporting and/or otherwise facilitating (i) social work and social case management services, (ii) budgeting, bill payment and asset management services, (iii) housekeeping, (iv) nutritional counseling, (v) transportation assistance services, (vi) home safety and security assessment services, and (vii) other related guardianship services as may be deemed appropriate and/or necessary; and
- (ii) 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 is organized, and shall be operated and shall engage in activities in furtherance of the purposes set forth in Paragraph (a) of this Article SECOND, exclusively for charitable purposes in the United States and abroad within the meaning of Section 170(c)(2)(B) and Section 501(c)(3) of the Code.

(C) The Corporation is not formed to engage in any activity or for any purpose requiring consent or approval of any state official, department, board, agency or other body. No consent or approval is required.

(D) The Corporation shall not operate for the purpose of carrying on a trade or business for profit.”

- D. Article FOURTH, which sets forth the territory in which the Corporation’s activities are principally conducted is hereby deleted and replaced in its entirety with a new Article FOURTH, which sets forth the powers of the Corporation. Accordingly, Article FOURTH is hereby amended to read in its entirety:

“FOURTH: In furtherance of its corporate purposes as set forth in Article THIRD hereof, the Corporation shall have all of the general rights, powers and authority enumerated in the NPCL, including, in particular (a) Section

202 of the NPCL, and (b) the power to solicit and receive grants, bequests and contributions for the purposes of the Corporation and the power to maintain a fund or funds of real or personal property in furtherance of the Corporation's purposes."

- E. Article FOURTH A., which states that the duration of the Corporation is perpetual, is hereby deleted.
- F. Article FIFTH, which sets forth the location of the principal office of the Corporation, is hereby renumbered as Article TENTH, and a new Article FIFTH is inserted, provides that no part of the Corporation's assets, net earnings, income or profits shall inure to the benefit of, or be distributable to, any director, officer or employee of the Corporation or any private person and which sets forth related provisions. Accordingly, Article FIFTH is hereby amended to read in its entirety:

"FIFTH: No part of the Corporation's assets, net earnings, income or profits shall inure to the benefit of, or be distributable to, any director, officer or employee of the Corporation or other private person; 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 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."

- G. Article SIXTH, which sets forth the initial members and designates two classes of members, is hereby deleted and replaced in its entirety with a new Article SIXTH, which provides that no substantial part of the Corporation's activities shall consist of attempting to influence legislation and that the Corporation shall not participate in any political campaign. Accordingly, Article SIXTH is hereby amended to read in its entirety:

"SIXTH: 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."

- H. Article SEVENTH, which sets forth the post office address to which the Secretary of State shall mail a copy of notice required by law is hereby deleted and replaced in its entirety with a new Article SEVENTH, which provides that the Corporation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity, that would invalidate its status as a corporation which is exempt from federal income taxation under Section 501(a) of the Code (as defined in Article 15) as an organization described in Section 501(c)(3) of the Code, or as a

corporation contributions to which are deductible under Sections 170(c)(2), 2055(a) or 2522(a) of the Code. Accordingly, Article SEVENTH is hereby amended to read in its entirety:

“SEVENTH: 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 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 (b) as a corporation contributions to which are deductible under Sections 170(c)(2), 2055(a) or 2522(a) of the Code.”

- I. Article EIGHTH, which provides for all approvals for or consents to the filing of the Certificate of Incorporation to be annexed thereto is hereby deleted and replaced in its entirety with a new Article EIGHTH, setting forth restrictions on the Corporation for any taxable year in which it is classified as a private foundation under Section 509(a) of the Code. Accordingly, Article EIGHTH is hereby amended to read in its entirety:

“EIGHTH: 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 not engage in any act of self-dealing which is subject to tax under Section 4941(d) of the Code;

(B) 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;

(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.”

- J. Article NINTH, which states that a waiver of the notice to the Attorney General of the State of New York is annexed to the Certificate of Incorporation, is hereby deleted and replaced in its entirety with a new Article NINTH, which sets forth limitations on the personal liability of directors and officers of the Corporation for damage resulting from any breach of any such director's or officer's duties to the Corporation. Accordingly, Article NINTH is hereby amended to read in its entirety:



"NINTH: No director or officer of the Corporation shall have any personal liability to the Corporation or its members for damage resulting from any breach of such director's or officer's duties as a director or officer of the Corporation; provided, however, that this Article 9 shall not eliminate or limit the liability of any director or officer: (a) if a judgment or other final adjudication adverse to such director or officer establishes that his or her acts or omissions (i) were in bad faith or involved intentional misconduct or a knowing violation of law or that such director or officer personally gained in fact a financial profit or other advantage to which he or she was not legally entitled, or (ii) violated Section 719 of the NPCL, unless the NPCL is amended or supplemented to so limit or eliminate such liability; or (b) to the extent that such personal liability is otherwise required by, or cannot otherwise be eliminated in accordance with, the NPCL."

- K. A new Article ELEVENTH is hereby added to set forth provisions regarding the indemnification by the Corporation of its directors, officers, employees, agents and representatives and authorizing the Corporation to purchase insurance to indemnify such persons and the Corporation. Accordingly, Article ELEVENTH is hereby amended to read in its entirety:

"ELEVENTH: (A) The Corporation shall, to the fullest extent permitted by the NPCL, indemnify any present or former director, officer, employee or agent of the Corporation or the personal representatives thereof, made or threatened to be made a party in any civil or criminal action or proceeding by reason of the fact that such director, officer, employee or agent, or his or her testator or intestate, is or was a director, officer, employee or agent of the Corporation or, at the request of the Corporation, served any other organization, entity or other enterprise in any capacity, to the full extent and in all such circumstances as shall be permitted under the NPCL, and all such indemnified costs and expenses incurred shall be advanced by the Corporation pending the final disposition of such action or proceeding.

(B) Such required indemnification shall be subject only to the exception that no indemnification may be made to or on behalf of any director, officer, employee or agent in the event and to the extent that a judgment or other final adjudication adverse to the director, officer, employee or agent establishes that such director's, officer's, employee's or agent's acts were committed in bad faith or involved intentional misconduct or a knowing violation of law or that such director, officer, employee or agent personally gained in fact a financial profit or other advantage to which he or she was not legally entitled (provided, however, that indemnification shall be made upon any successful appeal of any such adverse judgment or final adjudication).

(C) The Corporation shall have the power to purchase and maintain insurance to indemnify the Corporation, the directors, officers, employees and agents of the Corporation, and other persons otherwise entitled to indemnification, to the full extent and in such circumstances as is permitted under the NPCL.

(D) No indemnification shall be made under this Article 12 if such indemnification would be inconsistent with the provisions of the Corporation's Bylaws, a resolution of Corporation's member(s) or Board of Directors or other proper corporate action, or, the provisions of Sections 4941 through 4945 or Section 4958 of the Code, as any such of the foregoing may be in effect at the time of the accrual of the alleged cause of action asserted in the threatened or pending action or proceeding, which prohibits or otherwise limits such indemnification."

- L. A new Article TWELFTH is hereby added to set forth provisions regarding the distribution of the Corporation's assets upon the dissolution of the Corporation. Accordingly, Article TWELFTH is hereby amended to read in its entirety:

"TWELFTH: 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, in such proportions as the Board of Directors of the Corporation shall determine, to: (a) one or more other charitable and/or educational organizations that operate in furtherance of purposes which are substantially similar to the purposes of the Corporation and are then in existence and qualifying under Section 501(c)(3) of the Code; or (b) to the Federal, State and/or local governments for a public purpose related to the purposes of the Corporation."

- M. A new Article THIRTEENTH is hereby added to set forth the post-office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon the Secretary of State. Accordingly, Article THIRTEENTH is hereby amended to read in its entirety:

"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 the Secretary of State is Integral Guardianship Services, Inc., 1650 Coney Island Avenue, Brooklyn, New York, 11230."


- N. A new Article FOURTEENTH is hereby added to provide that references to the "Code" are to the Internal Revenue Code of 1986 as amended and any succeeding United States internal revenue laws. Accordingly, Article FOURTEENTH is hereby amended to read in its entirety:

"FOURTEENTH: All references herein to the Code are to the Internal Revenue Code of 1986, and shall be deemed to include both amendments thereto and corresponding statutory provisions of future United States internal revenue laws which supersede the Code or particular provisions thereof."

5. This Certificate of Amendment was authorized by the unanimous vote of the entire Board of Directors of the Corporation present at a duly constituted meeting of the Board of Directors.
6. 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 Corporation which is served upon the Secretary of State is: Integral Guardianship Services, Inc., 1650 Coney Island Avenue, Brooklyn, New York, 11230.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]**  
**[SIGNATURE PAGE TO FOLLOW.]**

IN WITNESS WHEREOF, this Certificate of Amendment has been executed this  
22 day of June, 2016.

  
By: Wendy Marcar  
Title: Chairperson

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
PROSPECT PARK NURSING HOME, INC.**

**Under Section 803 of the  
New York Not-For-Profit Corporation Law**

Filed By:

Jay Gerzog, Esq.  
Sheppard Mullin Richter & Hampton LLP  
30 Rockefeller Plaza  
New York, NY 10112-0015



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

December 28, 2006

Mr. Frank Cicero  
Consultant  
Cicero Consulting Associates VCC, Inc.  
701 Westchester Avenue, Suite 210W  
White Plains, New York 10604

Re: Application No. 061117-E Brooklyn Center for Rehabilitation and Residential Health Care (Kings County)

Dear Mr. Cicero:

I HEREBY CERTIFY THAT AFTER INQUIRY and investigation, the application of Brooklyn Center for Rehabilitation and Residential Health Care is APPROVED, the contingencies having now been fulfilled satisfactorily. This approval is conditioned upon the applicant's continued compliance with the Medicaid access condition, as included in the Public Health Council's approval of the project. The Public Health Council had considered this application and imposed the contingencies at its meeting of September 15, 2006.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third-party payor reimbursement guidelines.

To complete the requirements for certification approval, please contact the Metropolitan Area/Regional Office of the New York State Office of Health Systems Management, 90 Church Street, 14<sup>th</sup> Floor, New York, New York 10007 or (212) 417-5550, within 30 days of receipt of this letter.

Sincerely,

Donna W. Peterson  
Executive Secretary

/sb

At an IAS Term of the Supreme Court of the State of New York, held in and for the County of Kings, on the 21<sup>st</sup> day of March, 2007.

PRESENT:

HON.

HON. CAROLYN E. DEMAREST  
Justice Presiding

In the Matter of the Application of

PROSPECT PARK NURSING HOME, INC.  
(d/b/a Prospect Park Care Center and d/b/a Integral  
Guardianship Services)

For an Order Pursuant to Sections 510 and 511 of the  
New York Not-for-Profit Corporation Law Approving  
the Sale and Transfer of All or Substantially All  
of Petitioner's Assets and the Disposition of the Sale Proceeds

ORDER

Index No. 1252/07

Prospect Park Nursing Home, Inc. (the "Petitioner"), by its attorneys, Epstein, Becker & Green, P.C., having moved this Court for an Order pursuant to Sections 510 and 511 of the New York Not-for-Profit Corporation Law, granting Petitioner leave to (i) sell and transfer all or substantially all of the Petitioner's assets as described in the Petition herein and (ii) transfer substantially all of the net proceeds to be derived from the sale of Petitioner's assets to three (3) New York not-for-profit organizations for charitable purposes consistent with Petitioner's historical charitable healthcare and social service activities as described in the Petition herein.

NOW, upon reading and filing the Petitioner's Petition, duly verified on February 14, 2007, in support of the Petitioner's application, and (i) the New York State Department of

Health (the "DOH") having approved the proposed sale of the Petitioner's Assets (as described below) and (ii) the Attorney General of the State of New York having certified no objection to the entry of this Order, there being no other opposition thereto, and the Court having conducted due deliberations thereon, and it appearing to the satisfaction of the Court that that the consideration and the terms of the subject transactions are fair and reasonable to the Petitioners and that the Petitioner's not-for-profit charitable purposes will be promoted thereby,

NOW, upon motion of Epstein, Becker & Green, P.C., attorneys for the Petitioner, it is hereby:

ORDERED, that the Petitioner, Prospect Park Nursing Home, Inc., located at 1455 Coney Island Avenue, Brooklyn, New York 11230, is hereby authorized to: (a) sell substantially all of its tangible and intangible property and assets relating to the operations of the Petitioner's Nursing Home (i.e., the Petitioner's "Operating Assets" as more particularly described in the Petition) to Prospect Park Operating, LLC d/b a Brooklyn Center for Rehabilitation and Residential Health Care for the cash sum of \$9,100,000, subject to adjustment in accordance with, and otherwise pursuant to, the terms and conditions set forth in the Operating Assets Purchase Agreement annexed to the Petition, and (b) sell all of Petitioner's Real Property (as more particularly described in the Petition) to Prospect Park Land, LLC for the cash sum of \$7,500,000, subject to adjustment in accordance with, and otherwise pursuant to, the terms and conditions set forth in the Real Property Purchase Agreement annexed to the Petition (collectively, the "Proposed Sale"); and it is hereby

FURTHER ORDERED that the Petitioner is authorized, upon consummation of the Proposed Sale, to apply the proceeds to be derived from the sale of Petitioner's assets pursuant to the Proposed



Sale, together with collections to be realized by the Petitioner on its retained accounts receivable after consummation of the Proposed Sale, available cash balances, and the Petitioner's other retained assets including, in particular, the tangible and intangible assets relating to the charitable social case management and property management services conducted by the Petitioner under the name "Integral Guardianship Services" (i.e., "Current Social Service Program" as defined in the Petition), reduced by the portion of such sale proceeds, accounts receivable collections and cash balances to be used by Petitioner to satisfy its outstanding debts and liabilities, inclusive of the expenses incurred by Petitioner to accomplish the transactions contemplated by the Asset Purchase Agreements (as defined in Paragraph 5 of the Petition) and the related transactions (the aggregate amount of such assets after reduction for satisfaction of Petitioner's debts, liabilities and transaction costs hereinafter referred to as "Post-Sale Net Assets"), to the three (3) Successor Charities (as defined and more fully described in Paragraphs 4 and 18 of the Petition) for the Post-Sale Charitable Programs (as defined and more fully described in Paragraph 18 of the Petition) as follows:

(a) sixty percent (60%) of the Post-Sale Net Assets, including the Petitioner's Current Social Service Program, shall be transferred to Integral Social Services Agency, Inc. ("Integral"), a New York not-for-profit corporation, exclusively for the purpose of providing comprehensive health care and social services to the population of elderly, disabled, ill, infirm, handicapped and convalescent persons historically served by the Petitioner, a substantial percentage of whom are anticipated to be individuals who are indigent or of low income or modest means, in their own homes and community-based residential settings such as assisted living facilities;

(b) twenty percent (20%) of the Post-Sale Net Assets, shall be transferred to Prospect Park Senior Day Care Center, Inc. ("PPSDCC"), a New York not-for-profit corporation, exclusively for the purpose of operating a senior citizen social day care facility where senior citizens who live at home in

the Petitioner's service area can come and enjoy social, recreational and entertainment activities and receive the support that they require to assist them in their daily living activities, including, but not limited to, educational programs and lectures, book readings, craft programs, nutrition and movement programs, shopping day trips and other local outings, health and social welfare information and referral resources, social services, health screening (blood pressure, diabetes testing, etc), counseling, grocery shopping, and inter-generational activities; and

(c) twenty percent (20%) of the Post-Sale Net Assets shall be transferred to the Rabbi Abraham & Shirley Kelman Foundation, Inc. (the "Foundation"), a New York not-for-profit corporation and dedicated to making grants and contributions to other tax-exempt charitable, educational and scientific not-for-profit organizations that deliver and/or promote and support the delivery and improvement of medical, social care and related support services to aging, ill, infirm, disabled, handicapped and convalescent persons in non-institutional community and residential settings; and it is hereby

FURTHER ORDERED, that immediately following the closing of the Proposed Sale (the "Closing"), the sum of \$4,500,000 of the gross proceeds to be realized by Petitioner from the Proposed Sale ("Estimated Liability Set-Aside") shall be set aside by Petitioner to be used, together with Petitioner's projected cash balances as of the Closing and collections to be realized by Petitioner on its retained accounts receivable, for the purpose of satisfying the Petitioner's outstanding debts and liabilities projected as of the Closing (inclusive of the expenses incurred by Petitioner to accomplish the transactions contemplated by the Asset Purchase Agreements and the various transactions related thereto); and it is hereby

FURTHER ORDERED, that pending receipt by Integral of a written determination letter from the Internal Revenue Service ("IRS") confirming Integral's qualification for tax-exempt status

as a charitable organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), the Post-Sale Charitable Programs to be conducted by Integral as described in Paragraph 18(a) of the Petition, including Petitioner's Current Social Service Program, shall be conducted by Petitioner after the Closing, and that in order to fund the conduct of Integral's Post-Sale Charitable Programs by Petitioner, Petitioner shall have the immediate right to use: (a) fifty percent (50%) of the principal amount of the Post-Sale Net Assets allocable to Integral (as provided in clause (a) of the second ORDERED paragraph hereof) (i.e., fifty percent (50%) of Integral's sixty percent (60%) allocable share of the Post-Sale Net Assets; Integral's full sixty percent (60%) share shall hereinafter be referred to as "Integral's Full Share"), together with all investment income and appreciation realized thereon (such fifty percent (50%) portion of Integral's Full Share available for immediate use hereinafter referred to as the "Non-LIICSA Portion"), and (b) all investment income and net appreciation (to the extent permitted pursuant to NPCL Section 513(e)) on the principal balance of the remaining portion of Integral's Full Share (such remaining fifty percent (50%) portion of Integral's Full Share is hereinafter referred to as the "LIICSA Portion"); and it is hereby

FURTHER ORDERED, that the LIICSA Portion shall be held by Petitioner as a restricted endowment fund, the income and net appreciation (to the extent permitted pursuant to NPCL Section 513(e)) on which may be used by Petitioner currently for Integral's Post-Sale Charitable Programs, and the principal balance of which may not be used by Petitioner for any reason absent a further order from this Court, upon notice to the Attorney General, modifying such endowment restriction on the LIICSA Portion in the hands of Petitioner; and it is hereby

FURTHER ORDERED, that upon receipt by Integral of a written determination letter from the IRS confirming Integral's qualification for tax-exempt status as a charitable organization described in Section 501(c)(3) of the Code, Petitioner shall provide a copy of such IRS letter to the

Attorney General and Petitioner shall be fully authorized to transfer and assign to Integral the assets and operations of the Integral-related Post-Sale Charitable Programs (as described in Paragraph 18(a) of the Petition) then being conducted by Petitioner, including the then current balances of both the Non-LIICSA Portion and the LIICSA Portion of Integral's Full Share of Post-Sale Net Assets held by Petitioner, and that such Integral-related Post-Sale Charitable Programs shall thereafter be conducted by Integral; and it is hereby

FURTHER ORDERED that in the event that Integral is not able to obtain a written determination letter from the IRS confirming Integral's qualification for tax-exempt status as a charitable organization described in Section 501(c)(3) of the Code, then Petitioner shall be required to obtain an order of this Court, upon notice to the Attorney General, providing for appropriate use of Integral's Full Share; and it is hereby

FURTHER ORDERED that until such time as Integral becomes fully-licensed and authorized to operate as a LIICSA by the DOJ, Integral shall hold the LIICSA Portion as a restricted endowment fund, the income and net appreciation (to the extent permitted pursuant to NPCL Section 513(c)) on which may be used by Petitioner currently, together with the non-LIICSA Portion, for Integral's Post-Sale Charitable Programs; the principal balance of the LIICSA Portion may not be used by Integral for any reason absent a further order from this Court, upon notice to the Attorney General, modifying such endowment restriction on the LIICSA Portion in the hands of Petitioner; and it is hereby

FURTHER ORDERED that upon Integral becoming fully-licensed and authorized to operate as a LIICSA, Integral shall provide written notification of such LIICSA status to the Attorney General and shall upon receipt of written statement of no objection from the Attorney General, the entire principal amount of the LIICSA Portion shall become immediately available for use in

furtherance of Integral's Post-Sale Charitable Programs and shall no longer be subject to the foregoing endowment restriction; and it is hereby

FURTHER ORDERED that in the event that Integral is denied LHCSA licensure by the DOH or is otherwise not able to obtain authorization to operate as a LHCSA, then Petitioner or Integral, as the case may be, whichever entity is then in possession of the LHCSA Portion, shall be required to obtain an order of this Court, upon notice to the Attorney General, providing for appropriate use of the LHCSA Portion, in order for the foregoing endowment restriction on the LHCSA Portion to be modified or removed; and it is hereby

FURTHER ORDERED that the portion of the Post-Sale Net Assets to be distributed to PPSDCC and the Foundation as provided for in clauses (b) and (c) of the second ORDERED paragraph hereof, respectively (the "PPSDCC Share" and the "Foundation Share", respectively) shall each be held by Epstein, Becker & Green P.C., attorneys for Petitioner, in escrow until such time as PPSDCC, in the case of the PPSDCC Share, and the Foundation, in the case of the Foundation Share, receives a written determination letter from the IRS confirming such organization's qualification for tax-exempt status as a charitable organization described in Section 501(c)(3) of the Code; and it is hereby

FURTHER ORDERED that upon receipt of such written determination letter from the IRS, the Petitioner shall provide a copy thereof to the Attorney General and Epstein, Becker & Green P.C., and upon receipt of written statement of no objection from the Attorney General, Epstein, Becker & Green P.C. shall release the PPSDCC Share or the Foundation Share, as the case may be, to PPSDCC or the Foundation, respectively; and it is hereby

FURTHER ORDERED that in the event that PPSDCC or the Foundation are not able to obtain a written determination letter from the IRS confirming such organization's qualification for

tax-exempt status as a charitable organization described in Section 501(c)(3) of the Code, then Petitioner shall be required to obtain an order of this Court, upon notice to the Attorney General, providing for appropriate use of the PPSDCC Share or the Foundation Share, as the case may be; and it is hereby

FURTHER ORDERED that in the event that the Estimated Liability Set-Aside is not sufficient to fully satisfy Petitioner's debts and liabilities, the amount of such shortfall shall be payable on a pro rata basis out of: (i) the principal balances of the LHCSA Portion (i.e., thirty percent (30%)) and Non-LHSA Portion (i.e., thirty percent (30%)) of Integral's Full Share held by Petitioner or Integral, as the case may be, and (ii) the PPSDCC Share (twenty percent (20%)) and Foundation Share (twenty percent (20%)) held by Epstein, Becker & Green P.C., as escrow agent, or by PPSDCC or the Foundation, as the case may be; and it is hereby

FURTHER ORDERED that to the extent, if any, that the Estimated Liability Set-Aside is not fully used to satisfy Petitioner's debts and liabilities, the excess amount shall be distributed as follows: (i) thirty percent (30%) shall be distributed to Petitioner or Integral, whichever entity is then conducting the Integral Post-Sale Charitable Program, to become part of the Non-LHSA Portion; (ii) thirty percent (30%) shall be distributed to Petitioner or Integral, whichever entity is then conducting the Integral Post-Sale Charitable Program, to become part of the LHCSA Portion and subject to the endowment restriction if still in effect; (iii) twenty percent (20%) shall be distributed to Epstein, Becker & Green P.C. or PPSDCC, whichever is then in possession of the PPSDCC Share, for addition to the PPSDCC Share; and (iv) twenty percent (20%) shall be distributed to Epstein, Becker & Green P.C. or PPSDCC, whichever is then in possession of the Foundation Share, for addition to the Foundation Share; and it is hereby.

FURTHER ORDERED, that the Petitioner shall (i) provide the Attorney General of the State of New York with a copy of Order after it has been signed by the Court; and (ii) notify the Attorney General in writing upon (x) closing of the sale of the Assets and the transfer of the proceeds derived therefrom to the Successor Charities, (y) any abandonment of the sale of the Operating Assets and/or the Real Property, or (z) the failure to close the sale of the Operating Assets and/or the Real Property and distribute the proceeds derived therefrom within ninety (90) days after the date of this Order.

ENTER:

  
**HON. CAROLYN DEMAREST**

Justice of the Supreme Court of the State  
of New York, Second Judicial District

THE ATTORNEY GENERAL HAS RECEIVED THIS ORDER AND HAS PROVIDED NOTICE TO THE ATTORNEY GENERAL OF THE SECOND JUDICIAL DISTRICT OF STATUTORY NOTICE, AND CERTIFIED SERVICE OF ALL PAPERS SUBMITTED HEREON INCLUDING ALL ORDERS, JUDGMENTS AND ENDORSEMENTS OF THE COURT. SAID ENDORSEMENT IS CONDITIONED ON SUBMISSION OF THE MATTER TO THE COURT WITHIN 90 DAYS HEREAFTER.

 3/1/2007  
ASSISTANT ATTORNEY GENERAL