

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

AGENDA

October 6, 2016

Immediately following the Establishment and Project Review Committee which is scheduled to begin immediately following the Committee on Codes, Regulations and Legislation meeting (Scheduled to begin at 9:30 a.m.)

- *90 Church Street 4th Floor, Room 4A & 4B, New York City*
- *New York State Department of Health Offices at 584 Delaware Avenue, 3rd Floor Video Conference Room, Buffalo, NY 14202*

I. INTRODUCTION OF OBSERVERS

Jeffrey Kraut, Chair

II. APPROVAL OF MINUTES

August 4, 2016

III. ADOPTION OF THE REVISED 2017 PUBLIC HEALTH AND HEALTH PLANNING COUNCIL MEETING DATES

Revised 2017 Public Health and Health Planning Council Meeting Dates

IV. REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

A. Report of the Department of Health

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

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

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

C. Report of the Office of Public Health Activities

Brad Hutton, Deputy Commissioner, Office of Public Health

V. HEALTH POLICY/HEALTH SERVICES

Report on the Activities of the Committee on Public Health and the Committee on Health Planning

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

VI. REGULATION

Report of the Committee on Codes, Regulations and Legislation

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

For Adoption

16-05 Addition of Section 415.41 to Title 10 NYCRR
(Specialized Programs for Residents with Neurodegenerative Diseases)

VII. PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

Gary Kalkut, M.D., Vice Chair of Establishment and Project Review Committee

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

Residential Health Care Facility - Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	132129 C	Brooklyn Center for Rehabilitation and Residential Health Care (Kings County)	Contingent Approval

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

NO APPLICATIONS

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Acute Care Services – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	161389 E	The Burdett Care Center (Rensselaer County)	Contingent Approval
2.	161400 E	Saratoga Hospital (Saratoga County)	Contingent Approval
3.	162007 E	New York Community Hospital of Brooklyn, Inc. (Kings County)	Contingent Approval
4.	162009 E	New York Methodist Hospital (Kings County)	Contingent Approval
5.	162008 E	Lawrence Hospital Center d/b/a New York Presbyterian/Lawrence Hospital (Westchester County)	Contingent Approval

Ambulatory Surgery Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	161415 E	Carnegie Hill Endo, LLC (New York County)	Approval
2.	161456 E	Manhattan Endoscopy Center, LLC (New York County)	Contingent Approval

Dialysis Services – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	161243 B	Cassena Care Dialysis at Morningside (Bronx County)	Contingent Approval

Residential Health Care Facility – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	162141 E	The Bethel Methodist Home (Westchester County)	Contingent Approval

HOME HEALTH AGENCY LICENSURES

New LHCSA

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
	162118 E	LifeWorx Care LLC (amends and supersedes #2545L) (New York, Bronx, Kings, Richmond, Queens and Westchester Counties)	Contingent Approval

Changes of Ownership

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

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

Certificates

Certificate of Amendment of Certificate of Incorporation

Applicant

Prospect Park Nursing Home, Inc.

E.P.R.C. Recommendation

Approval

Restated Certificate of Incorporation

Applicant

The United Cerebral Palsy and Handicapped Persons
Association of the Utica Area, Inc.

E.P.R.C. Recommendation

Approval

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	162036 E	Bassett Healthcare Network (Otsego County) Mr. Robinson - Recusal	Contingent Approval

Ambulatory Surgery Centers – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 152377 B	Northern Westchester Facility Project, LLC d/b/a Northern Westchester Regional Surgery Center (Westchester County) Mr. Kraut – Recusal Dr. Martin - Recusal	Contingent Approval

Residential Health Care Facilities – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 161156 E	Renaissance Rehabilitation and Nursing Care Center (Dutchess County) Ms. Carver-Cheney - Recusal	Contingent Approval

Certified Home Health Agencies– Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 161393 E	HCR/HCR Home Care (Clinton County) Ms. Baumgartner - Interest	Contingent Approval
2. 161394 E	HCR/HCR Home Care (Schoharie County) Ms. Baumgartner - Interest	Contingent Approval
3. 161397 E	HCR/HCR Home Care (Onondaga County) Ms. Baumgartner - Interest	Contingent Approval

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

HOME HEALTH AGENCY LICENSURES

Changes of Ownership

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
152124 E	Core Care, LLC (Bronx, Queens, Kings, Richmond, Nassau and New York Counties)	Presented at the 9/22/16 and 10/6/16 Establishment/Project Review Committee No Recommendation

VIII. ADMINISTRATIVE LAW JUDGE’S REPORT AND RECOMMENDATION

<u>Number</u>	<u>Applicant/Facility</u>
1. 142183 B	Utica Partners, LLC d/b/a Dialysis Center of Oneida (Madison County)

IX. ADOPTION OF REVISED OBSERVERS GUIDELINES

Revised Guidelines for Committee Observers and Participants

Revised Guidelines for Observers for Full Public Health and Health Planning Council

X. NEXT MEETING

November 17, 2016 - ALBANY
December 8, 2016 – ALBANY

XI. ADJOURNMENT

State of New York
Public Health and Health Planning Council

Minutes
August 4, 2016

The meeting of the Public Health and Health Planning Council was held on Thursday, August 4, 2016 at the Empire State Plaza, Concourse Meeting Rooms 2-4, Albany. Chairman, Mr. Jeffrey Kraut presided.

COUNCIL MEMBERS PRESENT

Ms. Judy Baumgartner	Mr. Harvey Lawrence
Dr. John Bennett	Mr. Glenn Martin
Dr. Howard Berliner	Mr. Peter Robinson
Ms. Kathleen Carver-Cheney	Dr. John Ruge
Ms. Kim Fine	Ms. Nilda Soto
Dr. Angel Gutierrez	Dr. Theodore Strange
Mr. Thomas Holt	Dr. Kevin Watkins
Dr. Gary Kalkut	Dr. Patsy Yang
Mr. Jeffrey Kraut	Dr. Howard Zucker – via phone
Mr. Scott La Rue	

DEPARTMENT OF HEALTH STAFF PRESENT

- | | |
|---------------------------|------------------------|
| Mr. Charles Abel | Ms. Karen Madden |
| Mr. Udo Ammon | Ms. Sylvia Pirani |
| Ms. Tara Cope | Ms. Tracy Raleigh |
| Ms. Barbara DelCogliano - | Mr. Patrick Roohan |
| Ms. Alejandra Diaz | Ms. Linda Rush |
| Mr. Ken Evans | Mr. Daniel Sheppard |
| Mr. Mark Furnish | Ms. Lisa Thomson |
| Mr. Jason Helgerson | Ms. Lisa Ullman |
| Ms. Yvonne Lavoie | Mr. Richard Zahnleuter |
| Ms. Colleen Leonard | |

INTRODUCTION

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

WELCOME NEW MEMBERS

Mr. Kraut welcomed to the Council, newly confirmed Council members, Ms. Baumgartner, Dr. Bennett, Mr. La Rue, Mr. Lawrence, Ms. Soto, and Dr. Watkins.

RESOLUTION OF APPRECIATION

Mr. Kraut recognized Ms. Hines and Mr. Fassler whose terms have expired on the Council and noted that Dr. Boufford and himself have signed Resolution of Appreciation and thanked Ms. Hines and Mr. Fassler for their many years of dedicated service to the Council and wished them well in their endeavors.

APPROVAL OF THE MINUTES OF JUNE 9, 2016

Mr. Kraut asked for a motion to approve the June 9, 2016 Minutes of the Public Health and Health Planning Council meeting. Dr. Berliner motioned for approval which was seconded by Dr. Kalkut. The minutes were unanimously adopted. Please refer to page 7 of the attached transcript.

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

Mr. Kraut introduced Dr. Zucker who was participating over the phone to give the Report of Department of Health Activities.

State Antimicrobial Resistance Taskforce

Dr. Zucker began his report and spoke on the topic of the New York State Antimicrobial Resistance Taskforce. In July, the Greater New York Hospital Association agreed to join the Taskforce and become part of the effort to combat antimicrobial resistance. We are rapidly approaching a time when infectious diseases cannot be treated because they are resistant to all the available antibiotics. These drugs have been used so widely and for so long that the infectious organisms, the antibodies are designed to kill have adapted to them making the drugs that we have less effective. Each year in the United States at least two million people become infected with drug-resistant bacteria and at least 23,000 people die as a direct result of these infections. The threat was made worse recently because of this MCR1 gene. The gene had been detected in Pennsylvania, in one woman there, and it was found in a New York Hospital after that. Also been some cases around the world and it's result in resistance to all antibiotics. So New York is not at this point going to wait for the MCR1 gene to spread so the Department is taking this on the lead on this as the Department did with Ebola, Zika. Under leadership with Governor Cuomo, the Taskforce will create working partnerships and new initiatives aimed at the prevention and control of antimicrobial resistance in New York State. The goal is to have hospitals and nursing homes to adopt programs to improve antibiotic use so these drugs are used appropriately and only when necessary, and the Department is calling attention to the need for a collaborative approach across the healthcare settings as we work to stop the spread of these drug resistant organisms. The Taskforce is going to be a broad and comprehensive effort, it is made up of all stakeholders, multiple state agencies, academic partners, providers, nursing homes, and a range of the healthcare professionals from all sectors.

Zika

Dr. Zucker advised that a New York City woman with Zika recently gave birth to a child with microcephaly, the birth defect that causes smaller than normal heads and causes brain development abnormalities. As of August 1, 2016 New York had 537 cases of Zika. Of those 532 were travel related and the remaining five were sexually transmitted. The Department recently expanded the Zika testing in pregnant women after learning that the virus persists for a longer period of time in women who are pregnant. The Department also issued a health advisory recommending that pregnant women avoid all non-essential travel to the Miami area where local mosquito-borne transmission of Zika is happening. This initially is in a one mile square area in the North Miami neighborhood of Windwood.

Dr. Zucker stated that Governor Cuomo began placing larvacide tablets in the standing water in the New York City's subway system to reduce the potential mosquito breeding grounds in this heavily travelled part of the city. In addition the Department is urging doctors to rely more on urine testing than blood testing which is a much more sensitive test. It is important to note too that a negative test looking for the evidence Zika DNA does not mean that the person is safe, this is why the Department requires antibody testing to confirm that a patient does not have Zika. The Department has also begun a seasonal mosquito surveillance and testing. The Department deducts surveillance from mosquito borne viruses that pose a risk to human health including the Zika virus, West Nile virus, and obviously Eastern Equine Encephalitis virus. All these measures show that New York is working aggressively to protect its residents from Zika. I will note that the mosquito that we have up here is the Aedes Albopictus and it is the Aedes Aegypti mosquito that is the key one that has been transmitting Zika down in Florida and elsewhere, but the Albopictus is sort of its cousin so the Department is tracking and monitoring for that as well.

HIV AIDS

Dr. Zucker spoke on the topic of the epidemic numbers for HIV AIDS. The latest data shows that New York State is on track to reduce the number of new HIV infections to just 750 by the end of 2020. It will mark the first ever decrease in HIV prevalence since the epidemic began, and the number of New Yorkers with HIV at detectable levels decreased by approximately 10 percent between 2013 and 2014. As a result, 2/3 of all New Yorkers diagnosed with HIV have virus levels that are undetectable. The data also shows that the number of new HIV infections has fallen to fewer than 2500 which is therefore a record low. New York is now soon to become the place where the infections are extremely rare, and with those who have a disease can live a full normal and healthy life. To further advance our goals the State is awarding \$4 million to help providers make pre-exposure prophylaxis or PREP medication more accessible to persons who engage in high risk behaviors. In addition, the money will enhance the delivery of family-centered care for HIV positive women with dependent children and pregnant women.

Opioid Legislation

Dr. Zucker described the Department's latest efforts to combat opioids. In June Governor Cuomo signed a new law that will help combat the heroin and opioid epidemic in New York. Among the many changes the new law lowers the limit for initial opioid prescriptions for acute pain for 30 days to no more than a seven day supply with the exceptions for chronic pain and other conditions. The law also requires ongoing education for providers on

addiction and pain management, it eliminates prior authorization so that patients can get immediate access to inpatient treatment for addiction and drug treatment medications and it will add more treatment beds and program slots for people seeking services for addiction.

Dr. Zucker noted that New York is working hard to make sure people addicted to opioids get the treatment they need, the Department now began allowing hospitals that have a license to chemical dependent inpatient beds to temporarily increase bed capacity by up to 10 percent without the need to file a CON application. The Department developed an expedited approval process with OASAS to allow for increase for up to six months, and once the hospital notifies OASAS, OASAS will notify the Department us and we'll issue an emergency approval at effective the date of the OASAS approval. This is a good example of two agencies working together to eliminate administrative legislative, administrative barriers to battle an emergency public health issue

Legionella

Dr. Zucker advised that the Legionella regulations went into effect, which is first of its kind regulations protect New Yorkers from Legionella in the cooling towers across the State. They also include protections against Legionella in general hospitals and in residential healthcare facilities. The new regulations grew out of the emergency regulations that the Department adopted last summer when New York had 138 residents in south Bronx who were sickened with Legionella. The source of the south Bronx outbreak was found to be a cooling tower and the regulations require that cooling towers be registered, inspected, and tested for legionella. They require cooling tower owners to have a maintenance plan and to respond appropriately whenever there are problems. In addition to regulations require all general hospitals and residential healthcare facilities to perform legionella culture sampling and analysis of the drinking water system. By implementing these new measures we can help reduce exposure to Legionella and prevent illnesses that can be fatal in some people. Legionella occurs naturally in the environment, but can cause a legionosis in vulnerable populations such as over 50 and people who have chronic lung disease or weakened immune systems.

Breast Feeding

Dr. Zucker called everyone's attention to world breast feeding week. In honor of that the Department this morning hosted our annual breast feeding together with the University at Albany School of Public Health. The two hour webinar entitled Building Continuum of Care to Support Exclusive Breast Feeding in New York State targets healthcare professionals and highlights three initiatives in New York that promote exclusive breast feeding. The WIC exclusive breast feeding learning community, the breast feeding quality improvement in hospital initiative, and the breast feeding friendly practice designation. Health care providers play a crucial role in encouraging and supporting women to exclusively breast feed and the Department continues to work with hospitals and providers to make system changes that support that choice. There is also paid family leave which will help reinforce the decision to exclusively breast feed. Dr. Zucker encouraged the members to look for the webinar.

Dr. Zucker congratulated the members who were appointed and reappointed and noted that the Council is a really critically important Council and the Department values the input, questions, information. Dr. Zucker on behalf of the Governor, the legislature and the Department of Health thanked the members for their commitment to the Council

Dr. Zucker concluded his report. To view the member's questions and comments, please see pages 7 through 20 of the attached transcript.

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

Mr. Kraut introduced Mr. Sheppard to give an update on the activities of the Office of Primary Care and Health Systems Management Activities.

Mr. Sheppard reported on the topics of ambulatory surgery centers and charity care, long term care, quality, safety, and access issues.

To view Mr. Sheppard's complete report, please see pages 20 through 42 of the transcript.

Report of the Office of Public Health Activities

Mr. Kraut introduced Ms. Pirani to give an update on the activities of the Office of Public Health.

Ms. Pirani gave an update on the Prevention Agenda and how the Department is supporting hospitals and local health departments to complete their three year community health assessment and community health improvement plans.

Ms. Pirani concluded her report. To view the complete report, please see pages 40 through 44 of the attached transcript.

Report of the Office of Health Insurance Program Activities

Next, Mr. Kraut introduced Mr. Helgerson to give the report on the activities of the Office of Health Insurance Programs.

Mr. Helgerson reported on the work over the past two years of the Delivery System Report Incentive Payment Program and the Office of Health Insurance Programs move to value-based payment.

Mr. Helgerson concluded his report. To view the complete report along with questions and comments from the members, please see pages 44 through 71 of the attached transcript.

REGULATION

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

Report of the Committee on Codes, Regulation and Legislation

For Discussion

16-01 Addition of Part 350 to Title 10 NYCRR (All Payer Database)

Dr. Gutierrez described the proposed Addition of Part 350 to Title 10 NYCRR and noted that this regulation is presented only for discussion. Please see ages 71 and 72 of the attached transcript.

HEALTH POLICY

Dr. Ruge gave a brief report on the topic of designation of a stroke center and asked the Department staff to look through whether there should be two levels of stroke designations in the future.

Request for Stroke Center Designation

Exhibit #3

Applicant

Staten Island University Hospital – South Campus

Dr. Ruge then introduced Staten Island University Hospital-South Campus request for a stroke center designation and noted for the record that Mr. Kraut and Dr. Strange have recused themselves and have left the meeting room. Dr. Ruge moved for approved, Dr. Berliner seconded the motion. The motion to approve carried with Mr. Kraut and Dr. Strange's recusals. Mr. Kraut and Dr. Strange returned to the meeting room. Please see pages 72 and 73 of the transcript.

HEALTH POLICY/PUBLIC HEALTH SERVICES

Report on the Activities of the Public Health Committee and Health Planning Committee

Dr. John Ruge, Chair, Health Planning Committee

Dr. Ruge reported on the joint activities of the Health Planning Committee and the Public Health Committee. The committee's will be assessing how the social determinants can intersect and be impacted by the medical care system and in particular primary care. The committees are going to meet with the Department of Health, Office of Alcohol and Substance Abuse and the Office of Mental Health to look at the interactions between medical care and behavioral health services.

Ms. Ullman presented a brief slide presentation and briefly described the agenda for the September 23, 2016 joint meeting of the committee's.

Dr. Ruge concluded his report. To view Dr. Ruge's report, please see pages 74-81 of the attached transcript.

Mr. Kraut introduced Mr. Robinson to present the Project Review recommendations and establishment actions.

PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

Peter Robinson, Chair, Establishment and Project Review Committee

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Acute Care Services - Construction

Exhibit #4

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	161202 C	Hospital for Special Surgery (New York County)	Contingent Approval

Mr. Robinson called application 161202 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion carried. Please see page 82 of the transcript.

2.	161272 C	Memorial Hospital for Cancer and Allied Diseases (Nassau County)	Contingent Approval
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Mr. Robinson introduced application 161272 and motioned for approval. Dr. Gutiérrez seconded the motion. Mr. Abel noted for the record that the following will be deleted from the exhibit "...as Mercy Medical Center has decided to repurpose the space occupied by the MSK Rockville Center clinic, resulting in the termination of the clinic's lease at the end of 2019." The motion carried with the noted modification to the exhibit. Please see page 82 through 85 of the transcript.

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services - Construction

Exhibit #5

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	161298 C	New York Presbyterian Hospital – New York Weill Cornell Center (New York County) Dr. Brown – Recusal (not present at the meeting)	Contingent Approval

Mr. Robinson called application 161298 and noted for the record that Dr. Brown who is not present at the meeting had declared a conflict. Mr. Robinson motioned for approval. Dr. Gutiérrez seconded the motion. The motion carried. Please see pages 85 and 86 of the attached transcript.

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|----|----------|--|---------------------|
| 2. | 161246 C | Long Island Jewish Medical Center
(Queens County)
Mr. Kraut – Recusal
Dr. Strange – Interest/Abstaining | Contingent Approval |
|----|----------|--|---------------------|

Mr. Robinson noted for the record that Mr. Kraut has a conflict and Dr. Strange has an interest on applications 161246, 161369, 161148 and 161315. Mr. Kraut exited the meeting room. Dr. Gutiérrez presented application 161246 and motioned for approval. Dr. Berliner seconded the motion. The motion carried with Mr. Kraut’s recusal and Dr. Strange’s abstention. Please see page 85 of the transcript.

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|----|----------|--|---------------------|
| 3. | 161369 C | Richmond University Medical Center
(Richmond County)
Dr. Kalkut – Recusal
Mr. Kraut – Recusal
Mr. Lawrence – Recusal
Dr. Ruge – Recusal
Dr. Strange –Interest/Abstaining | Contingent Approval |
|----|----------|--|---------------------|

Mr. Kraut remained outside the meeting room. Dr. Gutiérrez introduced application 161369 and noted for the record that Dr. Kalkut, Mr. Kraut, Mr. Lawrence and Dr. Ruge have conflicts exited the meeting room. Dr. Gutiérrez motioned for approval. Dr. Berliner seconded the motion. The motion carried with the noted recusals and Dr. Strange’s abstention. Dr. Kalkut, Mr. Lawrence, and Dr. Ruge returned to the meeting room. Please see pages 87 and 88 of the transcript.

Ambulatory Surgery Centers - Construction

Exhibit #6

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	161148 C Southside Hospital (Suffolk County) Mr. Kraut – Recusal Dr. Strange – Interest/Abstaining	Contingent Approval

Dr. Gutiérrez called application 161148 and noted for the record that Mr. Kraut has a conflict and Dr. Strange has an interest. Dr. Gutiérrez motioned for approval, Ms. Fine seconded the motion. The motion carried with the noted recusals and abstentions. Mr. Kraut remained outside the meeting room. Please see pages 88 and 89 of the attached transcript.

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|----|----------|---|---------------------|
| 2. | 161315 C | Garden City Surgi Center
(Nassau County)
Mr. Kraut – Recusal
Dr. Strange – Interest/Abstaining | Contingent Approval |
|----|----------|---|---------------------|

Dr. Gutiérrez introduced application 161315 and noted Mr. Kraut’s recusal and Dr. Strange’s interest and motioned for approval. Ms. Fine seconds the motion. The motion carries with Mr. Kraut’s recusal and Dr. Strange’s abstention. Mr. Kraut returns to the

meeting room. Please see page 89 of the attached transcript.

Diagnostic and Treatment Center - Construction

Exhibit #7

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 161328 C	Columbia University Health Care Inc. (New York County) Dr. Brown – Recusal (not present at the meeting)	Contingent Approval

Mr. Robinson calls application 161328 and notes for the record that Dr. Brown has declared a conflict, but is not present and motions for approval. Dr. Kalkut seconds the motion. The motion to approve carries. Please see page 90 of the transcript.

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Ambulatory Surgery Centers – Establish/Construct

Exhibit #9

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	161170 B	Port Jefferson ASC, LLC d/b/a Port Jefferson Ambulatory Surgery Center (Suffolk County)	Contingent Approval
2.	161175 E	Mohawk Valley Endoscopy Center (Oneida County)	Contingent Approval
3.	161220 E	Surgical Specialty Center of Westchester (Westchester County)	Contingent Approval
4.	161332 E	EMUSC, LLC d/b/a EMU Surgical Center (Queens County)	Contingent Approval

Mr. Robinson calls applications 161170, 161175, 161220, and 161332 and motions for approval, Ms. Fine seconds the motion. The motion to approve carries. Please see pages 90 and 91 of the transcript.

Diagnostic and Treatment Centers – Establish/Construct

Exhibit #9

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	161093 E	Third Avenue Imaging LLC (Bronx County)	Contingent Approval
2.	161167 B	Alegria Operations LLC d/b/a Alegria Health & Wellness (Bronx County)	Contingent Approval

Dialysis Services – Establish/Construct

Exhibit #10

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	161203 B	Beachview Dialysis Center, LLC (Queens County)	Contingent Approval

Residential Health Care Facilities – Establish/Construct**Exhibit #11**

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 161279 E	IR Operations Associates LLC d/b/a Granville Center for Rehabilitation and Nursing (Washington County)	Contingent Approval

Mr. Robinson introduces applications 161170, 161175, 161220, 161332, 161093, 161167, 161203, and 161279 and motioned for approval. Dr. Kalkut seconded the motion. The motion carried. Please see pages 92 and 93 of the attached transcript.

Certified Home Health Agency – Establish/Construct**Exhibit #12**

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 161036 E	Tender Loving Care, an Amedisys Company (Nassau County)	Contingent Approval

Mr. Robinson calls application 161036 and motions for approval. Dr. Kalkut seconds the motion. The motion carries. Please see page 93 of the attached transcript.

HOME HEALTH AGENCY LICENSURES**Exhibit #13****Changes in Ownership**

161006 E	Boulevard ALP LHCSA Operations, LLC d/b/a Boulevard Home Care Associates (Queens, Nassau, Kings, Richmond, New York and Bronx Counties)	Contingent Approval
161222 E	Marabi Homecare Agency, Inc. d/b/a First Class Home Health Care of New York (Bronx, Kings, Nassau, New York, Queens and Richmond Counties)	Contingent Approval
161281 E	Life Quality Homecare Agency, Inc. (Kings, Bronx, Queens, Richmond and New York Counties)	Contingent Approval
161111 E	Crown of Life Care NY, LLC (Bronx, Queens, Kings, Richmond, Nassau and New York Counties)	Deferred

Mr. Robinson noted for the record that application 161111 was deferred. Mr. Robinson introduced and motioned for approval applications 161006, 161222, 161281. Ms. Fine seconded the motion. The motion to approve carried. Please see pages 93 and 94 of the attached transcript.

Certificates

Exhibit #14

Restated Certificate of Incorporation

<u>Applicant</u>	<u>Council Action</u>
Cabrini Center for Nursing and Rehabilitation, Inc.	Approval
Tioga Healthcare Facility, Inc.	Approval
Tioga Nursing Facility, Inc.	Approval
Sisters of Charity Health Care System Nursing Home, Inc.	Approval
St. Jerome’s Health Services Corporation d/b/a Holy Family Home	Approval
Bishop Francis J Mugavero Center for Geriatric Care, Inc.	Approval

Mr. Robinson motioned for consent to file for the above listed Restated Certificate of Incorporations. Dr. Gutiérrez seconded the motion. The motion carried. Please see pages 94 and 95 of the attached transcript.

Certificate of Assumed Name

<u>Applicant</u>	<u>Council Action</u>
Beth Israel Medical Center	Approval

Mr. Robinson motioned for consent to file the Beth Israel Medical Center Certificate of Assumed Name. Ms. Fine seconded the motion. The motion carried. Please see page 95 of the attached transcript.

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Ambulatory Surgery Center – Establish/Construct

Exhibit #15

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 161234 B	Hudson Yards Surgery Center, LLC (New York County) Mr. Kraut – Recusal	Contingent Approval

Mr. Robinson introduced application 161234 and noted for the record that Mr. Kraut has a conflict and has left the meeting room. Mr. Robinson motioned for approval which was seconded by Dr. Kalkut. The motion carried. Mr. Kraut returned to the meeting room. Please see pages 95 and 96 of the attached transcript.

Residential Health Care Facilities – Establish/Construct

Exhibit #16

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 152212 E	Surge Rehabilitation and Nursing LLC (Suffolk County) Ms. Carver – Cheney – Recusal	Contingent Approval
2. 152211 E	Quantum Rehabilitation and Nursing LLC (Suffolk County) Ms. Carver – Cheney – Recusal	Contingent Approval
3. 161185 E	Cedar Manor Acquisition 1 LLC d/b/a Cedar Manor Nursing & Rehabilitation Center (Westchester County) Ms. Carver – Cheney – Recusal	Contingent Approval

Mr. Robinson called application 152212, 152211, 161185 and noted for the record that Ms. Carver-Cheney has a conflict and has left the meeting room. Mr. Robinson motioned for approval, Dr. Gutiérrez seconded the motion. The motion carried with Ms. Carver-Cheney’s recusal. Ms. Carver-Cheney returned to the meeting room. Please see pages 96 and 97 of the attached transcript.

Certified Home Health Agency – Establish/Construct

Exhibit #17

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 161245 E	Dominican Sisters Family Health Services, Inc. (Westchester County) Mr. La Rue - Recusal	Contingent Approval

Mr. Robinson calls application 161245 and notes for the record that Mr. La Rue has a conflict and has exited the meeting room. Mr. Robinson motions for approval, Dr. Gutiérrez seconds the motion. The motion carries with Mr. La Rue's recusal. Mr. La Rue returned to the meeting room. Please see pages 97 and 98 of the attached transcript.

Certificate of Amendment of the Certificate of Incorporation

Exhibit #18

Applicant

RU System, Inc.
Mr. Robinson - Interest

Council Action

Approval

Mr. Robinson stated for the record that he has an interest and motion for the consent to file for the RU System, Inc. Certificate of Amendment of the Certificate of Incorporation. The motion was seconded by Dr Gutiérrez. The motion carried. Please see page98 of the attached transcript.

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

ADJOURNMENT:

Mr. Kraut thanked Mr. Robinson for his report. Mr. Kraut announced the upcoming PHHPC meetings and adjourned the meeting.

1 NEW YORK STATE DEPARTMENT OF HEALTH
2 PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
3 AUGUST 4, 2016
4 ALBANY, NEW YORK
5

6 JEFF KRAUT: Thanks so much Dr. Gutierrez. And I'd now
7 like to call to order the Public Health and Health Council
8 meeting for August 4, 2016. And welcome members, Dr. Zucker who
9 will be joining us in a moment on the phone - yes. And I'm just
10 doing the introduction, Dr. Zucker. And observers. And I'd like
11 to remind the council members, staff, and the audience, this
12 meeting is subject to the open meeting law and is broadcast over
13 the internet. The webcast may be accessed through the Department
14 of Health's website which is NYHealth.gov. These on-demand
15 webcasts are going to be available no later than seven days after
16 the meeting and they'll be available for a minimum of 30 days,
17 and then a copy is retained in the Department for upwards of four
18 months. Because we're synchronized captioning, it's important
19 that people don't speak over each other. The captioning can't be
20 done when two people are speaking at the same time. And the first
21 time you do speak, please state your name, briefly identify
22 yourself as a council member or DOH staff, and this is going to
23 be helpful to the broadcasting company who are recording the
24 meeting. Again, I remind you that the microphones in front of
25 you are hot. The little green light indicates that they are on
26 and they pick up every sound. They include rustling of papers

1 and any personal conversations probably held within a three feet
2 radius of that are picked up, so be cautious about whether you
3 think you're whispering to a neighbor or saying under your
4 breath. A reminder, that is a sign right in front of me here that
5 reminds me constantly. And there's a form that needs to be
6 filled out for our audience before you enter the meeting room,
7 right outside the door. It records your attendance at this
8 meeting, and that's required by the joint commission on public
9 ethics in accordance with executive law section 166. This form
10 is also available and posted on the Department of Health's
11 website, again NYHealth.gov, under Certificate of Need so you
12 could fill out that form prior to entering the council meeting,
13 and we appreciate your cooperation in helping us to fulfill our
14 duties as prescribed by law. And I am very pleased today to
15 welcome again some that attended our project committee day, that
16 the Governor has nominated and the Senate has confirmed six new
17 members to the Council, and I'd like you to welcome me in joining
18 Judy Baumgartner who is the Visiting Nurse Association of Western
19 New York. She'll be serving on the Establishment and Project
20 Review Committee, the Health Planning Committee, the Committee on
21 Codes, Regulations, and Legislation. John Bennet is President
22 and Chief Executive Officer of the Capital District Physicians'
23 Healthplan. He'll be serving on the Establishment and Project
24 Review Committee, Health Planning Committee and the Public Health

1 Committee. Scott Larue—sorry to promote you - who is the
2 President - well, maybe it's a demotion - the president and Chief
3 Executive Officer of ArchCare which is the Catholic Health System
4 of New York. He'll be serving on Establishment and Project
5 Review Committee as well as the Health Planning Committee.
6 Harvey Lawrence who serves as President and Chief Executive
7 Officer of the Brownsville Multi Service Family Health Center,
8 federally qualified health center in Brooklyn. He's joining us
9 at the Establishment and Project Review Committee and the Health
10 Planning Committee. Nilda Soto, who hopefully will be joining us
11 shortly, serves as the Assistant Dean of the Office of Diversity
12 Enhancement at the Albert Einstein College of Medicine. She'll
13 be serving on the Public Health Committee and the Ad-hoc
14 committee to lead the State Health Improvement Plan. And Dr.
15 Kevin Darnell Watkins who is the Public Health Director of
16 Cattaraugus County Department of Health, he'll be serving the
17 committee on Codes, Regulations, and Legislation, the Public
18 Health Committee, and the Ad-hoc committee to lead the State
19 Health Improvement Plan, and on behalf of the Department and the
20 Council I welcome all of you attended. We're looking forward to
21 your participation, and your perspectives in our deliberations
22 and discussions. And thank you for agreeing to serve. As you'll
23 find out it's not an insignificant amount of work, but its an
24 important work, and as you can hear from some of the

1 conversations you've attended, we all take it very seriously and
2 we hope we can just contribute and I know you will, to improving
3 the health of the citizens of New York ultimately. So, thank you
4 for doing that.

5 And as many of you noticed, because we've welcomed some new
6 members, that means some other members have left the Council. I
7 want to acknowledge the contributions of Mike Fassler and Vicky
8 Hines, who are not present today, but their terms have expired
9 and obviously their successors have been appointed to the
10 Council, and I'd like to take the time to thank them for their
11 contributions and on behalf of the Council, both Dr. Boufford and
12 I have signed a resolution of appreciation, and you know, the
13 kind of the standard resolution acknowledging for the work they
14 did on their committees. As you know Mr. Fassler really served
15 us as a representative of the long term care industry. When we
16 had those kinds of issues to discuss, his insights, his years of
17 experience, I think greatly enhanced our understanding and the
18 perspective from what we represented. And we do acknowledge that
19 valuable service. The council that he served for the past seven
20 years, and we appreciate and wish him well for his instrumental
21 role in enhancing the well-being of all of those who served in
22 New York and similar to Ms. Hines who started serving the Council
23 in 2011 for the following five years, she was a dedicated member
24 of the Council. She represented perspective on the home

1 healthcare industry and the kind of post-acute spectrum of
2 services. I think when we got to the home health applications in
3 particular, she constantly raised issues that over time I think
4 we got to appreciate more her perspective and in retrospect maybe
5 we should've listened to her a little earlier in the process than
6 towards the end, and I think she also raised the consciousness of
7 the Department of Health and the staff to take a harder look at
8 some of the things we were doing with respect to policy to
9 monitoring and oversight of licensed home care agencies, and she
10 had voiced her opinion in a very good-natured, very positive way,
11 and I think as a consequence of that it made a long-lasting
12 impact, I know on myself, and I think many other people around
13 that table. So we're really grateful for her role in serving and
14 representing not only that industry but I think in hopefully
15 advancing policy that are going to better serve the citizens of
16 New York. So, on behalf of all of here at the Council, we send
17 both of them our wishes and happiness for professional
18 achievement and thank them for their service. So I would also
19 encourage anyone of the council members who feels so include to
20 write to them individually and express those personal sentiments
21 about what they had done.

22 So today we're going to begin in a moment with a report from
23 Dr. Zucker followed by Mr. Sheppard who will give us the report
24 of the office of primary care and health systems management

1 followed by Ms. Pirani to update the Office of Public Health.
2 About mid-morning Mr. Helgerson will come and provide an update
3 against the Office of Health Insurance Programs and in response
4 to the request from the council members be prepared to answer
5 some of our questions about DSRIP and what's going on, and I'm
6 sure he's going to cover that. Then we'll turn to the Committee
7 reports from Dr. Rugge who will talk about the stroke centers and
8 then go into a report of the committee on Health Policy and
9 Public Health followed by Dr. Gutierrez on regulation. Mr.
10 Robinson on Establishment and Project Review. And Lastly after
11 the public portion of the meeting we're going to convene an
12 executive session to consider a public health law section 2801-B
13 matter as well.

14 I want to remind everybody that members of the council most
15 of our guests who attends this meeting are familiar with the
16 reorganization of the gender by topics or categories which
17 captures our roles and responsibilities including the batching of
18 CON applications. We've asked the members who have declared, some
19 have declared recusals or conflicts, that you've taken the time
20 to look at the batched applications to make sure that you do not
21 have a recusal, a conflict, to declare. And also if you'd like
22 to separate an application from the batch for our newer members,
23 what happens are if there are no discussion, it was passed
24 unanimously, no questions, we kind of batch these together as we

1 move them, but everybody at the Council has the right to remove
2 any application from a batched group if they have a question or
3 wants to bring up a point of view or a perspective that maybe
4 wasn't covered during the project review committee. So we'd like
5 to note before hand if that's possible. But if for some reason
6 the epiphany hits you as we call the application just say, hey, I
7 want to pull it out of the batch for a moment and we'll stop what
8 we're doing and adjust the batching accordingly. And so just let
9 us know that and let Tracy or Colleen know in the interim.

10 Our next agenda item is the adoption of the minutes, and I
11 need a motion for the adoption of the June 9, 2016 PHHPC minutes.
12 I have a motion by Dr. Berliner. I have a second by Dr. Kalkut.
13 All those in favor, aye.

14

15 [Aye]

16 Opposed? Abstention? The motion carries.

17 It's now my pleasure, we're going to hear from Dr. Zucker
18 who's going to update the Council about the Department's
19 activities since our last meeting, and we have Dr. Zucker on the
20 phone. Dr. Zucker I'll turn it over to you.

21

22 HOWARD ZUCKER: Thank you very much, and good morning. It's
23 my pleasure to share with you the latest from the Department of

1 Health and I'm sorry I'm not up there in person. I just need to
2 be down here in New York City.

3 I'd like to share, start by telling you about the New York
4 State Antimicrobial Resistance Taskforce. Last month the Greater
5 New York Hospital Association and Association of
6 New York State agreed to join the taskforce and become part of
7 the effort to combat antimicrobial resistance. We are rapidly
8 approaching a time when infectious diseases cannot be treated
9 because they are resistant to all the available antibiotics.
10 This is a big worry. These drugs have been used so widely and
11 for so long that the infectious organisms, the antibodies are
12 designed to kill have adapted to them making the drugs that we
13 have less effective. Each year in the United States at least two
14 million people become infected with drug-resistant bacteria and
15 at least 23,000 people die as a direct result of these
16 infections. The threat was made worse recently because of this
17 MCR1 gene. This was, in the news, the gene had been detected in
18 Pennsylvania, in one woman there, and it was found in a New York
19 Hospital after that. Also been some cases around the world and
20 it's result in resistance to all antibiotics. So New York is not
21 at this point going to wait for the MCR1 gene to spread so we're
22 taking this on, we're taking the lead on this as we did with
23 Ebola, as we've done with Zika, and so under leadership with
24 Governor Cuomo, the taskforce will create working partnerships

1 and new initiatives aimed at the prevention and control of
2 antimicrobial resistance in New York State. We want hospitals
3 and nursing homes to adopt programs to improve antibiotic use so
4 these drugs are used appropriately and only when necessary, and
5 we're calling attention to the need for a collaborative approach
6 across the healthcare settings as we work to stop the spread of
7 these drug resistant organisms. The taskforce is going to be a
8 broad and comprehensive effort. It's made up of all
9 stakeholders. It will involve multiple state agencies, it'll
10 involve our academic partners, providers, nursing homes, and a
11 range of the healthcare professionals from all sectors. We look
12 forward to seeing what the collaboration will produce, and most
13 importantly we look forward to addressing the threat of
14 antimicrobial resistance. I'll give you more updates on it as I
15 know. As we move forward.

16 Zika update is the next issue. I'd like to bring you up to
17 date on this issue. A New York City woman with Zika recently
18 gave birth to a child with microcephaly; the birth defect that
19 causes smaller than normal heads and causes brain development
20 abnormalities. And as of August 1 New York had 537 cases of
21 Zika. Of those 532 were travel related and the remaining five
22 were sexually transmitted. We recently expanded our Zika testing
23 in pregnant women after learning that the virus persists for a
24 longer period of time in women who are pregnant. We also issued a

1 health advisory recommending that pregnant women avoid all non-
 2 essential travel to the Miami area where local mosquito-borne
 3 transmission of Zika is happening. This initially is in a one
 4 mile square area in the North Miami neighborhood of Windwood. We
 5 are keeping close tabs on this because as you probably hear on
 6 the news, the cases may spread in that area and so we will keep
 7 everyone informed about this.

8 This week Governor Cuomo began placing larvacide tablets in
 9 the standing water in the city's subway system to reduce the
 10 potential mosquito breeding grounds in this heavily travelled
 11 part of the city. In addition we're urging doctors to rely more
 12 on urine testing than blood testing. It's a much more sensitive
 13 test. It's important to note too that a negative test looking
 14 for the evidence Zika DNA doesn't mean that the person is safe.
 15 So that's why we really require antibody testing to confirm that
 16 a patient does not have Zika. We've also begun a seasonal
 17 mosquito surveillance and testing. The Department deducts
 18 surveillance from mosquito borne viruses that pose a risk to
 19 human health including the Zika virus, West Nile virus, and
 20 obviously Eastern Equine Encephalitis virus. All these measures
 21 show that New York is working aggressively to protect it's
 22 residents from Zika. I will note that the mosquito that we have
 23 up here is the Aedes Albopictus and it's the Aedes Aegypti
 24 mosquito that is the key one that has been transmitting Zika down

1 in Florida and elsewhere, but the Albopictus is sort of it's
2 cousin so we're tracking and monitoring for that as well.

3 Regarding the epidemic numbers for HIV AIDS, last month we
4 had some very big news about this in the epidemic initiative. The
5 latest data shows that New York State is on track to reduce the
6 number of new HIV infections to just 750 by the end of 2020.
7 That is our target. It will mark the first ever decrease in HIV
8 prevalence since the epidemic began, and the number of New
9 Yorkers with HIV at detectable levels decreased by approximately
10 10 percent between 2013 and 2014. Then we'll have the numbers
11 for 2015 soon. As a result, 2/3 of all New Yorkers diagnosed
12 with HIV now have virus levels that are undetectable. The data
13 also shows that the number of new HIV infections has fallen to
14 fewer than 2500 which is therefore a record low. Once the
15 epidemic of the AIDS - sorry, once the epicenter of the AIDS
16 epidemic, New York is now soon to become the place where the
17 infections are extremely rare. And with those who have a disease
18 can live a full normal and healthy life. To further advance our
19 goals the State is awarding \$4 million to help providers make
20 preexposure prophylaxis or PREP as we know it, medication more
21 accessible to persons who engage in high risk behaviors. In
22 addition the money will enhance the delivery of family-centered
23 care for HIV positive women with dependent children and pregnant
24 women.

1 On the net issue is the issues of opioid legislation. It's
2 another topic we've heard about in the news. I want to call
3 attention to our latest efforts to combat opioids. In June
4 Governor Cuomo signed a new law that will help combat the heroine
5 and opioid epidemic in New York. Among the many changes the new
6 law lowers the limit for initial opioid prescriptions for acute
7 pain for 30 days to no more than a seven day supply with the
8 exceptions for chronic pain and other conditions. The law also
9 requires ongoing education for providers on addiction and pain
10 management. It eliminates prior authorization so that patients
11 can get immediate access to inpatient treatment for addiction and
12 drug treatment medications and it will add more treatment beds
13 and program slots for people seeking services for addiction.

14 New York is working hard to make sure people addicted to
15 opioids get the treatment they need and just this week we began
16 allowing hospitals that have a license to chemical dependent
17 inpatient beds to temporarily increase bed capacity by up to 10
18 percent without the need to file a CON application. We developed
19 an expedited approval process with OASAS to allow for increase
20 for up to six months, and once the hospital notifies OASAS, OASAS
21 will notify us and we'll issue an emergency approval at effective
22 the date of the OASAS approval.

23 This is a good example of two agencies working together to
24 eliminate administrative legislative, administrative barriers to

1 battle an emergency public health issue and we've read about this
2 in the news as well about this crisis, both here in New York but
3 of course the nation as well.

4 On Legionella, this is another event last month. Our new
5 Legionella regulations went into effect. These first of it's
6 kind regulations protect New Yorkers from Legionella in the
7 cooling towers across the State. They also include protections
8 against Legionella in general hospitals and in residential
9 healthcare facilities. The new regulations grew out of the
10 emergency regulations that the Department adopted last summer
11 when we had 138 residents in south Bronx who were sickened with
12 Legionella and unfortunately we have a die. The
13 source of the south Bronx outbreak was found to be a cooling
14 tower and the regulations require that cooling towers be
15 registered, inspected, and tested for legionella. They require
16 cooling tower owners to have a maintenance plan and to respond
17 appropriately whenever there are problems. In addition to
18 regulations require all general hospitals and residential
19 healthcare facilities to perform legionella culture sampling and
20 analysis of the drinking water system. By implementing these new
21 measures we can help reduce exposure to Legionella and prevent
22 illnesses that can be fatal in some people. Legionella occurs
23 naturally in the environment, but can cause a legionosis -
24 Legionella in vulnerable populations such as over 50 and people

1 who have chronic lung disease or weakened immune systems and this
2 is what we were concerned about last summer. So we're monitoring
3 this closely.

4 On the breast feeding I also want to call
5 attention to world breast feeding week. In honor of that the
6 Department this morning hosted our annual breast feeding
7 together with the University at Albany School of Public Health.
8 The two hour webinar entitled Building Continuum of Care to
9 support exclusive breast feeding in New York State targets
10 healthcare professionals and highlights three initiatives in New
11 York that promote exclusive breast feeding. The WIC exclusive
12 breast feeding learning community, the breast feeding quality
13 improvement in hospital initiative, and the breast feeding
14 friendly practice designation. Health care providers play a
15 crucial role in encouraging and supporting women to exclusively
16 breast feed and the Department continues to work with hospitals
17 and providers to make system changes that support that choice.
18 We also have paid family leave which will help reinforce the
19 decision to exclusively breast feed. I encourage you to look for
20 the webinar when it goes up on the University of Albany website
21 in about two weeks.

22 And then we have our PHHPC appointments and reappointments
23 that you've heard about. So far I'd like to finish with the list
24 of people who were confirmed by the Senate in June as members of

1 PHHPC. You've heard their names before but I'd like to mention
2 them again. New to the PHHPC this year are Dr. John Bennett,
3 Scott LaRue, Judy Baumgartner, Harvey Lawrence, Nilda Soto and
4 Dr. Kevin Darnel Watkins

5 So I thank all of you, and members who were reappointed, Dr.
6 Angel Gutierrez, Dr. Kraut, Dr. Theodore Strange, Howard
7 Berliner, Dr. Patricia Yang, Dr. John Ruge, and Dr. Anderson
8 Torrez. I will say as Jeffrey said, this is a really critically
9 important committee and we really value your input, questions,
10 information, and you probably don't know how many times we say
11 during the week, "well, we should bring that to PHHPC." So, it's
12 very much helpful that you serve and I know there's a lot of work
13 that you do. On behalf of the Governor, the legislature and the
14 Department of Health I thank you for all your commitment to the
15 council and I am always here to answer questions including now,
16 and in the future you can always call me or just send me an
17 email. So thank you. That concludes my remarks.

18

19 JEFF KRAUT: Dr. Zucker, thank you so much. And I just
20 wonder, how many times do you say, "let's not bring that to
21 PHHPC?"

22

23 HOWARD ZUCKER: Sometimes that does come up. Usually I think
24 that has to go through PHHPC.

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JEFF KRAUT: All right. We have questions? Yes, Dr. Strange. Just, by the way, I want to make aware, there are some of the topics that Dr. Zucker spoke about particularly early in his talk, we do have some subject matter experts here in case we need to go in depth. Dr. Strange.

DR. STRANGE: So just a comment and thank you Dr. Zucker. Last month, last meeting I commented on the ISTOP situation and I wanted to commend the State Department of Health that now with ISTOP we can look into other states through the ISTOP program specifically Vermont, Connecticut and New Jersey. And I would only hope, Dr. Zucker, that at a national level, I recently spoke to our local congressman about this, that somehow we can get a national program for this ISTOP. This is one of those governmental programs that was fostered and helped by local people involved in this that really has aided in the care of patients and the prevention, hopefully, of illegal prescription drugs, not that it's anything with our illegal heroin addiction out there. but I think being on Staten Island, for example where people were jumping across the bridge to Jersey, this is now an incredibly useful tool and I hope something that we're monitoring closely at all levels. So I just wanted to commend the state and the legislature on this.

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HOWARD ZUCKER: Thank you. And I am optimistic as well. I was on a call a couple of weeks ago with the health commissioners for the entire northeastern area and they were encouraged that we should do this in more states. So hopefully this will take off.

JEFF KRAUT: Yes, Dr. Gutierrez.

ANGEL GUTIERREZ: I am happy to hear that we have been able to prove with numbers that things are better in New York State regarding HIV care. That's a cause for celebration and I would like to, I hope, that we make this public for people to understand that properly approach diseases following scientific standards achieves success. This has been a long struggle. To be able to nowadays tell somebody you are HIV positive but this is not going to affect your life any more than if I were giving you a diagnosis of diabetes. In my mind, having practiced medicine at the 1990s and 80s when it was a disaster diagnosis, will have an impact on the public, and I think that we need to be proactive with this. When we have situations where groups of individuals decide not to vaccinate their children because they do not understand the epidemiological data. We need to celebrate publicly when we have a success story, and this is a big one.

1 JEFF KRAUT: Well said, Dr. Gutierrez.

2

3 HOWARD ZUCKER: Thank you.

4

5 JEFF KRAUT: Mr. LaRue.

6

7 SCOTT LARUE: Thank you. I had a question regarding the
8 Zika. Is the Department doing an analysis of how many infants
9 they're projecting could be affected by microcephaly?

10

11 HOWARD ZUCKER: We haven't directly looked at those numbers.
12 I mean, we could work on them I think we at one point were trying
13 to figure this out based on how many babies are born and some of
14 the numbers that we have from Brazil. Remember, right now the
15 largest outbreak is in Central South America. We're trying to
16 initially get some info from them. And also some of the data
17 keeps coming in because of just the logistics of the amount of
18 time from the sonogram being done. So we could work on that.
19 also Puerto Rico has a lot of cases and we can look at it from
20 there as well.

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22 SCOTT LA RUE: Because I think the second part of that is
23 what resources, do we have sufficient resources to deal with the
24 infants that are born with microcephaly.

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HOWARD ZUCKER: Right. So that is something we were talking about because it's one thing about having the concern of so you travel, mosquitos here and transmissions from here, but it's another story of someone who's traveled and unfortunately the child has microcephaly and they're in New York. So it's something which we were talking about recently and we'll look into that.

JEFF KRAUT: Thanks. Dr. Martin.

GLENN MARTIN: Hello. I have this image of you in mosquito netting and a flashlight walking through the subway tunnels. So we have really good reception given that. I just wanted to ask one thing about ISTOP and if I mentioned it before I apologize because it's come up in various different meetings which is one of the holes in ISTOP at the moment even within the State, I believe, is that for methadone clinics and the like who dispense their own medication it's not a prescription therefore it's not included in ISTOP so there is something that would be really helpful if we could figure out a way to make sure the dispensed medicines be it BUPE or methadone or the like, get into the ISTOP because that would be extraordinarily helpful. Not just for diversion issues, but more just medical interactions and the

1 like. So it would be a useful addition, and I think it's under
2 our control, so I'd encourage us looking at it.

3

4 HOWARD ZUCKER: We'll look into it. I've talk to Josh
5 Vinciguerra about it.

6

7 JEFF KRAUT: Any other questions? Dr. Zucker, thank you so
8 much, and we appreciate the report you just gave us.

9

10 HOWARD ZUCKER: Thank you very much. Look forward to seeing
11 you in a few months. Thanks.

12

13 JEFF KRAUT: Now we ask Mr. Sheppard to give us an update
14 of the Office of Primary Care and Health Systems Management.

15

16 DAN SHEPPARD: Good morning. So, couple of topics here.
17 there's been lots of focus on OPCHSM recently increasing focus
18 both facility specific and broader systematic focus on long term
19 care, quality safety and access issues, and in that vein I'm very
20 pleased to say that the commissioner recently appointed Mark
21 Kissinger who previously served as the Director of Division of
22 Long Term Care in OHIP as the special assistant to the
23 commissioner for long term care, and in that role Mark will be
24 part of OPCHSM and he'll be working both directly with

1 commissioner on a broader long term aging agenda as well as
2 working specifically with OPCHSM and staff on long term care
3 improvement efforts in the areas of quality access and safety. I
4 think there are few people in the State with Mark's depth and
5 breadth of experience in long term care area and his involvement
6 will be a real boost to our efforts.

7 Topic on the healthcare transformation capital award front,
8 we are in the process of implementing about a billion and a half
9 dollars of grants which were awarded for 162 projects back in
10 March of this year, and we've just two weeks ago issues request
11 for applications for additional \$195 million of capital awards
12 for projects that are focused on preserving and expanding
13 sustainable healthcare delivery services and provider systems.
14 Now, in addition to hospitals, the program, this \$195 million
15 program which is called the Statewide Health Facility
16 Transformation Program, it's available to community-based clinics
17 and that includes both behavior health and substance abuse
18 service clinics, nursing homes, home care agencies, and primary
19 care providers, and there's a \$30 million minimum set aside
20 awarded for community-based providers in this program. We
21 anticipate we'll be receiving applications in September and we
22 anticipate making the awards under this program in a
23 November/December timeframe. Do expect a great deal of demand
24 for this program.

1 At the last meeting Dr. Boufford asked us for an update on
2 workforce activities and I'm a very compliant patient so im going
3 to follow my doctor's advice, and then the bulk of my
4 presentation today will be dedicated to giving a high level
5 overview of the many programs that OPCHSM administers with
6 respect to workforce activities. We have a unit headed by Lisa
7 Ullman and more directly by Susan Mitnick that's dedicated to
8 supporting workforce issues. It's the Division of Workforce
9 Transformation and these programs generally relate to the ongoing
10 development of the State's healthcare workforce, particularly
11 workforce in underserved communities and settings as well as
12 graduate medical education. I'll just be highlighting a few
13 programs that are specifically administered by OPCHSM but just as
14 many of you are aware from other experience and presentations
15 there are other programs in the Department. We work closely with
16 our colleagues in those parts of the Department on implementation
17 of workforce programs including the SHIP DSRIP workforce
18 workgroup which is one of the workgroups working with the health
19 innovation council in helping to identify issues and make
20 recommendations to facilitate implementation of the State
21 Innovation Model or the SIM project, the federal grant that we
22 received for that, and this workgroup includes members from
23 multiple state agencies including, in addition to DOH OMH OASAS
24 the State Education Department as well as representatives from

1 stakeholder, external stakeholders that are active in healthcare
2 arena.

3 So the first program I just wanted to give a quick highlight
4 on is called the Health Workforce Retraining Initiative. We call
5 it HWRI is the acronym you hear mostly. It supports training and
6 retraining of healthcare workers to obtain new positions, meet
7 new job requirements, existing positions, or otherwise meet the
8 requirements of a changing public health and healthcare market.
9 This program is really I think will come in increasing focus as
10 many workers need to shift from inpatient settings to outpatient
11 settings, so I think it's a long standing program but one that I
12 think will get increasing focus and have increasing utility going
13 forward. Another program, probably one of our more well known
14 popular programs is called Doctors Across New York, DANY and this
15 includes both a physician loan repayment, direct loan repayment
16 program as well as something called physician practice port which
17 is money that goes to practices to support their attraction
18 retention of physicians. So, again, these programs provide loan
19 repayment and other financial support to help recruit and retain
20 physicians in medically underserved areas of the State. there
21 have been three application cycles since 2009 and in those cycles
22 we've made 162 placements through the physician practice support
23 program and 93 physician loan repayment awards. Just this past
24 June we issued another 210 awards and for the fourth cycle of the

1 program. The awards for, are for the physician loan repayment are
 2 \$150,000 over five years and the physician practice support is
 3 \$100,000 over two years. We're going to begin the next cycle,
 4 cycle 5 of these programs in this coming February 2017. Also
 5 just in, related to this program, we're working new in this
 6 year's budget was an offshoot of the program that was to
 7 specifically focus on Office of Mental Health, attracting and
 8 retaining physicians, psychiatrists - excuse me, who are
 9 physicians of course - and in the [as I look at Dr. Martin] in
 10 the Office of Mental Health operated facilities. Psychiatrists
 11 are currently eligible for awards under our regular programs, but
 12 there's a particularly acute need in the State operated OMH state
 13 operated facilities, and there's a program that we're working
 14 with OMH to implement specifically related to that.

15 Next program to mention is the Primary Care Service Core
 16 Loan Repayment Program, and this program provides loan repayment
 17 funding to non-physician health practitioners who agree to
 18 practice in the health professional shortage areas, the HPSAs in
 19 New York State. The program is open to a wide variety of
 20 providers including dentists, dental hygienists, nurse
 21 practitioners, physician assistants, midwives, clinical
 22 psychologists, licensed social workers, psychiatric nurse
 23 practitioners and even licensed marriage and family therapists
 24 and licensed mental health counselors. Approximately a third of

1 the practitioners currently supported under this program are in
 2 the New York City area and the rest are in the remainder of the
 3 State. The, Dr. Rugge asked us about the status of the rural
 4 residency program at the last meeting, and one of the programs we
 5 administer. This is actually overseen by Pat Roohan's shop,
 6 OPPS, and also supported by the SIM grant. And OPCHSM is
 7 assisting with the administration of this program. The goal is
 8 to develop accredited, innovated graduate medical education
 9 programs that serve specifically rural communities and these
 10 programs will focus on internal medicine, family medicine,
 11 pediatrics, or combined medicine and pediatrics, and we're
 12 anticipating the four awards will be made and a total of \$3
 13 million will be available over a three year period and that
 14 includes a 50 percent match contributed by awardees. And the
 15 RFA, request for applications for this was released on June 20 of
 16 this year and the deadline is August 15 for applications.

17 We also administrate Visa waiver program and programs
 18 actually, there are a couple of them and these are generally
 19 designed to allow physicians who are in the United States on a J1
 20 Visa to apply for a waiver of the requirement if they return to
 21 their home country for two years, and in exchange for such a
 22 waiver they agree to practice for a minimum three years in
 23 underserved areas. And finally we have one of the major
 24 programs, workforce related programs we administer is called the

1 Empire Clinic Research Investigator Program, we call it ECRIP and
2 not direct care program but a research focused program. It
3 provides funding to eligible teaching hospitals for the purpose
4 of training physicians in clinical research and supporting
5 projects that advance biomedical research. And in 2015 we issued
6 26 two-year awards totaling \$17.2 million and it's expected that
7 those awards are going to train 86 physician researchers.
8 There'll be another round of funding opportunity posted in the
9 next month or two with the awards announced in early 2017. So
10 that completes my quick overview of the workforce programs that
11 we administer.

12 And the last topic for my report today, in the packet in
13 front of you and also emailed you have our mid-year report on
14 ambulatory surgery center compliance. This is compliance with
15 both their Medicaid and charity service commitments. I think I'd
16 like to highlight a couple of points and there's been a lot of
17 numbers for your to sort through. I think the report generally
18 reflects progress on a couple of fronts and is with some early
19 efforts, I think we in some ways have a bit to go. So first I
20 think our concerted efforts to assure that ambulatory surgery
21 centers are submitting their required annual reports have
22 improved compliance with the reporting piece. This is how we get
23 the information. Currently about half of the ambulatory surgery
24 centers have submitted reports and will continue to follow up

1 aggressively with providers who are not compliant and expect that
2 this number will continue to improve, so I would hope we see
3 marked improvement in six months when we come back to you with
4 the next report.

5 Second thing I'd like to point out is out of the 28
6 ambulatory surgery centers that are on the limited life report,
7 two have met or exceeded their approved charity goals already. So
8 they have a period of time, generally, they have multiple years
9 to do this, but if you just look at them, all the years together,
10 two have met or exceeded their approved charity goals in the
11 latest reporting period. Two have come within about a half a
12 percent of their goals. Unfortunately five have had no progress,
13 but generally 11 of the 28 are show an increasing trend in their
14 reported charity care percentage, even though they're not yet on
15 target and again, of course with the low performers we'll be
16 following up.

17 Third, there is rather marked improvement in charity care
18 compliance for the limited life extension projects, and for those
19 of you who are new to the Council, earlier this year there was
20 some vigorous PHHPC discussions at these meetings regarding
21 ambulatory surgery centers that had come to the end of their
22 limited life and had not yet met their targets, and so, and there
23 was again, a lot of very vigorous discussion about what to do
24 with these ambulatory surgery centers, and how to improve

1 compliance and I think those discussions seem to have had an
2 impact as we see on the separate sheet of paper in front of you,
3 there has been some significant improvement with those. I think
4 overall we continue at both the application stage and once
5 they've been awarded to aggressively remind and follow up with
6 ambulatory surgery centers of their obligations for charity care
7 and Medicaid commitments, and that completes my report.

8

9 JEFF KRAUT: Thank you very much Mr. Sheppard. Questions,
10 Dr. Gutierrez.

11

12 ANGEL GUTIERREZ: Thank you Mr. Kraut. Looking at the
13 report I see that the largest number of non-compliant comes from
14 the charity care and I wonder what effect the affordable care act
15 has had on that? Ability of people to comply with that.

16

17 DAN SHEPPARD: I mean, we haven't done survey data, but I
18 think logically it could've reduced the pool, but -

19

20 JEFF KRAUT: I'm just going to have Mr. Robinson remind
21 you how we were going to deal with that, because it was a
22 discussion point in the ad-hoc committee.

23

1 PETER ROBINSON:Right. I think what we decided was that we
2 were going to actually look at a blend of the Medicaid access and
3 charity care recognizing not only through the affordable care act
4 but through the expansion of the Medicaid program, the
5 significant numbers of people that previously were in need of
6 charity care now have that kind of coverage. So we were giving
7 the Department through the ad-hoc committee's recommendations
8 flexibility in looking at appropriate access as it totality and
9 so if charity care is down for reasons that have nothing to do
10 with the efforts to provide access, Medicaid eligibility and
11 access is improved, we feel that's a successful way of meeting
12 those goals.

13

14 ANGEL GUTIERREZ: The other portion is that I'm very happy
15 to see the report because we have asked for it and here we have
16 it. I would like to remind my colleagues that we wanted to use
17 the data in the future when the time came to renew or not the
18 licenses that allowed the people that for this particular CON,
19 there are a couple of instances that I highlight in my sheet here
20 where there seems to have been no progress whatsoever in any
21 other categories and I wonder whether these people are being
22 alerted to the fact that where are you and why is this? so.

23

1 DAN SHEPPARD: Absolutely. So out of the, so if its, if you
2 can't measure it you can't manage it context, so with this data
3 we're waiting until towards the end of the limited life which
4 gives us the ability to follow up during the limited life
5 authorization with these providers to give them some runway to
6 become compliant. So the answer is yes, we are following up and
7 we can, I think we can certainly - hopefully that will minimize
8 the amount of permanent, when we come to you for permanent life.

9

10 ANGEL GUTIERREZ: I'm assuming that when you say "we are
11 following up..." you mean we are talking with these people.

12

13 DAN SHEPPARD: Yes. Following up with the licensees.

14

15 JEFF KRAUT: Just before I get to the other questions, I
16 just want to take a little time out for our new members to
17 explain what you just heard, because I think it does need some
18 context in order to see if you have a perspective on this. we've
19 struggled over the years with respect to new providers coming
20 into a market that are in some respects people have claimed are
21 skimming off essentially a commercial payer and ignoring the
22 Medicaid and charity care cases or underserved populations. As a
23 consequence of that we established, we've asked the applicants to
24 establish a minimum of some level of activity that would reflect

1 the communities they operated in, but also make extraordinary
2 efforts to relate to other providers such as FQHCs and other
3 community health centers to increase access. So if we're giving
4 you this license to do something in am-surg which as you'll see
5 the applications you can earn a reasonable margin on, part of
6 that is also that comes with an obligation to make sure all the
7 members of the community can be served and have access to that.
8 So as a consequence of our thinking, we did not approve these
9 permanently. We gave them something called a temporary life, and
10 then we've asked them to come back periodically to monitor their
11 progress. We had an issue, because this was kind of done before
12 the affordable care act and that's the conversation you just
13 heard between, there was a real distinction between charity care
14 and Medicaid. Now that there's been a Medicaid expansion and
15 somewhat of a reduction of charity care we chose to just kind of
16 blend the rates, our intent is not to be punitive but to incent
17 positive community-minded behavior and so far we've not turned
18 down any limited life application for permanent life because
19 we've seen things. we're not so much concerned - well, we are
20 concerned to some extent, where they are. Think of it as a
21 ladder. If they're not serving Medicaid, well, they've got five
22 years to serve Medicaid. And as long as we're seeing progress
23 along the way they're moving up that ladder to the thresholds
24 that have been established, things should go well and when they

1 come back in here we'd approve it. However, we've had situations
2 where we've not seen that behavior happen and we are, we have not
3 had a test case yet but we came pretty close to not - to taking
4 away a license from a provider who failed to meet this
5 requirement and this document is our attempt to essentially
6 monitor the pipeline of limited life approvals and where they're
7 at, and in all frankness heighten public and provider awareness
8 of how serious this council is taking this issue, and so those
9 individuals who manage that they can't claim that they didn't
10 know or they didn't understand or that they didn't have the data.
11 And that's what this conversation periodically tries to attempt.
12 So just to put it in context, so you understand - it's been a
13 very serious concern that we've put a lot of teeth into and spent
14 a lot of time on, a lot of energy. And with that let me just
15 turn to Dr. Martin, Dr. Kalkut, and Ms. Soto.

16

17 GLENN MARTIN: Just a quick follow up. Probably has more to
18 do with your language than anything else about runways and the
19 like is that again, at least in my personal expectation is, and I
20 know we've discussed this is you don't get to do nothing for four
21 years and then at the fifth you kick up. So we understand, and I
22 clearly understand there are some people who just started up of
23 course, I understand it, and all of the issues we talked about
24 the changing landscape but the idea that they should be making

1 incremental improvement or have actually - I know we've never
2 asked, I don't think we've asked as a committee for sort of mid-
3 cycle corrective action plans that they're clearly far behind. I
4 know you're sort of doing it informally in your conversations,
5 but I think it needs to understand you don't get to cross the
6 finish line barely because you've ignored it for five years
7 either, and I assume that's the situation.

8

9 DAN SHEPPARD: Yeah, we can explore I think we can explore
10 the options of some type of more formal corrective action plan.
11 We can certainly, we can notify by letter, we can inform the
12 teeth come at the end, but your point is well taken.

13

14 JEFF KRAUT: Dr. Kalkut.

15

16 GARY KALKUT: Mr. Sheppard, thank you for the workforce
17 report. It's great to hear the range of activities that are going
18 on and I think one of the biggest certainly is in the
19 transformation of the delivery system and the reimbursement
20 system in DSRIP and the focus the state has put on workforce,
21 both in planning and funding. Without that we'd risk tremendous
22 dislocation and loss of skilled people who could contribute
23 greatly to this transformation which is not going to be easy in

1 any way, but I commend the state in how they've framed this and
2 funded workforce development in DSRIP.

3

4 JEFF KRAUT: Ms. Soto

5

6 NILDA SOTO: So my question has to do with the workforce
7 that you described and the HWRI which are the people that are
8 going to be retrained. So what are the professions in the state
9 that are no longer as needed, that people are being retooled or
10 retrained and are there other areas of the State that have
11 greater needs than others.

12

13 DAN SHEPPARD: So, and I'm going to do this - tag team with
14 Lisa Ulman who has a very direct involvement with this program.
15 So, I think generally I think as - so particularly as technology
16 changes, we think about sort of the best example or the most what
17 we hear about frequently is as inpatient volumes decline which is
18 a trend, we see it particularly with safety net community
19 hospitals, and the non-clinical workforce, particularly the aides
20 have those jobs associated generally with inpatient services tend
21 to fade, but yet there demand and growth in the outpatient needs
22 and so that is one very significant training example. But then
23 some of them are much more micro. Some of them are even just
24 training with new technologies and new ways of going from manual

1 ways of doing things to automated ways of doing things and making
2 sure there's adequate training for that. I don't know Lisa, can
3 you take—hundreds of awards here and many of them are for very
4 distinct purposes.

5

6 LISA ULMAN: Yeah, absolutely. I think you asked about
7 where are they based. I mean, these are located in a variety of
8 places throughout the state and the programs are focused, some of
9 them are specific to certain practitioner types, so for example
10 you'll have programs that train nurses with associate degrees and
11 help them get their bachelor's degree. Some of them are, as Dan
12 alluded to, more focused to figuring out what the specific skills
13 are needed with the changes in the healthcare world. So for
14 example, there's a lot of programs that will focus on providing
15 workers with skills to help them understand how to work with
16 electronic medical records and other emerging technologies.
17 Certainly there's a focus and this certainly fits in with all the
18 other work we mentioned regarding the transformations that are
19 happening. You'll see a lot of training in projects that are
20 focused on team based interdisciplinary care and care
21 coordination. So there really is a wide range of the types of
22 projects throughout and we think it does just cover a wide
23 variety and its really interesting stuff, but it does evolve as
24 the needs of the market evolve. And so we do have a new RFA, the

1 application period ended so we'll have a new bunch of projects
2 starting relatively soon and you'll see more of this. and I
3 think we're happy to come back and report on what some of those
4 look like over time.

5

6 JEFF KRAUT: Mr. Robinson. I'm sorry, Mr. Lawrence.

7

8 HARVEY LAWRENCE: ...the ambulatory care centers, I guess I
9 can understand that you could not meet your charity care if
10 there's an expansion of Medicaid services, but under the
11 affordable care act I would think that there would be an
12 opportunity for additional charity care because of the
13 deductibles alone, that most of the tiers are confronted with.
14 So is there some tracking of that looking at exactly how under
15 the affordable care act whether that is impacting their
16 abilities? And then the second part of this is what are the
17 ambulatory care surgery centers doing proactively to reach out to
18 these populations and to create relationships?

19

20 DAN SHEPPARD: So, one of our - one of our first things that
21 we tell them is go visit your nearest FQHC and work with them, so
22 that's - but it really is being a presence in the portions of the
23 areas they serve, actively outreach where individuals who might,
24 who are on Medicaid or don't have any insurance live. And

1 depending on the locations, some of these facilities, that's
2 challenging. But we expect them to take those steps. But again,
3 outreach to primary care providers and other community-based
4 providers who serve those communities is really I think one of
5 the things we really push them to do.

6

7 JEFF KRAUT: Mr. Robinson, he has a question, but he'll
8 respond to that because his ad-hoc committee worked out a plan
9 how to do that.

10

11 PETER ROBINSON: We actually had some testimony from CHCANYS
12 as part of the process of getting an understanding of how these
13 ambulatory surgery center could access populations that had need
14 of both charity care and/or bringing Medicaid populations to these
15 newly approved centers. And I think we even had testimony from
16 one of the centers that actually proactively, the surgery centers
17 that proactively worked and actually put an outreach worker into
18 the ambulatory surgery center, into the FQHC in order to ensure
19 that patients were educated as well as the providers in the FQHCs
20 about this opportunity for access. So I do think there needs to
21 continue to be that and I'm pleased to hear the department is
22 driving applicants towards FQHCs as a means of achieving the
23 standards that we are expecting of all the newly certified
24 ambulatory surgery centers.

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JEFF KRAUT: Yeah, we just tried to encourage CHCANYS and the ambulatory surgery center of New York by region to get everybody in a room and speed date. You know, to try to facilitate those things.

PETER ROBINSON: We're seeing progress but it's obviously something that seems a little bit new to you and the center that you're working with, and perhaps, especially when we see applications in Brooklyn we ought to be directing them your way.

JEFF KRAUT: Part of the problem Mr. Lawrence, is many of the surgi-centers in Brooklyn are on the southern tier where the core of the insured population is and some are not really developed in those neighborhoods.

PETER ROBINSON: Mr. Sheppard, one, just maybe it's a comment and maybe it's a question; this relates to capital and the program that you described. What we've seen in the Finger Lakes region and I don't know if it's L-Square but we're seeing requests for capital going through the regional economic development councils at least this cycle, in addition to what they may do through the Department of Health. Is there coordination between I guess Empire State Development and the

1 Department with regard to these capital programs, and is that an
2 authorized mechanism for trying to access capital in addition to
3 the Department's program?
4

5 DAN SHEPPARD: Its certainly not, and we did notice this in
6 the last cycle of capital. It's certainly not precluded and I
7 think is particularly - hospitals, healthcare providers are
8 significant employers in all the communities typically that they
9 exist in urban and rural but in upstate rural areas in
10 particular, they're very often the largest, if not the second
11 largest employer. So it's very much aligns with economic
12 development purposes. So we certainly don't, wouldn't discourage
13 them from doing that. We would - I would have to look at the
14 cycles of the awards are off, are not in align, but I think it's
15 a good suggestion, do some affirmative outreach to (ESD) and just
16 talking about healthcare projects.
17

18 PETER ROBINSON: Thank you.
19

20 JEFF KRAUT: And I'm just going to close with making one
21 observation I made at the public planning. All the things on the
22 workforce are great, but I do think the Department, with OMH,
23 OASAS and the industry has to sit with State Education Department
24 because there are some training and licensing issues that are

1 anachronistic for the new care models that we're developing based
2 on value-based purchasing and the new jobs that are being
3 created, and then we have some enormously trained individuals
4 whose professional licensure restricts them to working in one
5 environment, take EMTs for example, whose knowledge and skills
6 can be deployed in some primary care and community-based settings
7 that would be extraordinarily helpful, and I just think all of
8 that needs to be aired out and come up - and recognize I think
9 the contemporary framework that we're trying to provide care and
10 how we're being paid for that care and we'd all benefit, and know
11 it's hard enough to get three commissioners on the healthcare
12 side in a room, much less the State Ed commissioner, but it's
13 something that I think merits and intergovernmental effort.

14 Yes, Dr. Gutierrez then we're going to go to Ms. Pirani.

15

16 ANGEL GUTIERREZ: If I can tag on that. Thank you. EMTs
17 are a part of a dream I have the someday, sometime, somewhere,
18 New York State will listen or look and see what the military is
19 doing with emergencies in very difficult to reach areas. They
20 lead the way in providing extremely urgent care and the people
21 that are making the decisions at the site are equivalent to our
22 EMTs or even below perhaps, but those incredible decisions and
23 that model is what shows in the numbers of successive treatment

1 of devastating injuries that occur in the battlefield, and we
2 need to provide for that in isolated areas in New York State.

3

4 JEFF KRAUT: Dr. Gutierrez, yes, Mr. Lawrence.

5

6 HARVEY LAWRENCE: I guess I'm a little curious in terms of
7 some of the training because when you're training in the
8 inpatient side to reposition people in primary care, you're
9 really looking at a huge disparity in terms of I guess fringe
10 rates. I guess some institutions have fringe rates that are up
11 in 50, 55, 60 percent and you come in through my world that's
12 like, that's a Lamborghini.

13

14 JEFF KRAUT: I'm going to ask you to hold that question.
15 Mr. Helgerson is here and will talk to us in a moment, and I
16 think that's one of the things DSRIP is looking at, those
17 transformational things, unless you want to respond now which I
18 doubt very much you did. But yes, you're absolutely right. This
19 is not an uncomplicated transformation on so many levels. It's
20 how we redeploy our workforce from a hospital centered point of
21 view to a community-based primary care and it comes with a lot of
22 sticky issues that need to be resolved. So we're going to hold
23 off until Mr. Helgerson comes and gives him plenty of time to
24 think.

1 Ms. Pirani. Public Health.

2

3 SYLVIA PIRANI: Thank you. I'm here giving the report for
4 Brad Hutton today who is on vacation this week. Dr. Zucker gave
5 a very complete public health report so I will be brief. I just
6 wanted to say that we're working on the Prevention Agenda front,
7 busy supporting hospitals and local health departments who are
8 working right now to complete their new three-year community
9 health assessment and community health improvement plans. We're
10 hearing that many are working together, which is of course our
11 goal. We're hearing that the priorities continue to be
12 preventing chronic disease and focusing on obesity but also more
13 and more communities focusing on substance abuse which won't be a
14 surprise to people here. We are working to connect the dots
15 between the Prevention Agenda work in the communities with
16 efforts in DSRIP as well as in the State Innovation Model grant
17 and I'm pleased to report that later this week we're going to be
18 releasing an RFA with SIM funding to help up to five communities
19 implement population health interventions, connecting primary
20 care to prevention agenda interventions, giving an opportunity to
21 local health departments and others to form collaborations,
22 hopefully they've already got them to focus on chronic disease
23 prevention. So we're excited about that. And finally since
24 you've been talking about charity care just want to remind people

1 as part of the prevention agenda requirements, hospitals are
2 required to submit to us their schedule H so we can monitor
3 community benefit obligations, both of the affordable care act
4 and our goal of course is that as the affordable care act
5 provides more and more reimbursement - provides reimbursement for
6 insurance that hospitals will be making investments in the
7 community benefit and the community health improvement parts of
8 the schedule H IRS reporting. We're monitoring that. The goal
9 is to encourage hospitals who are making those investments to
10 invest in prevention agenda evidence-based interventions, and we
11 are going to be giving feedback to hospitals overall and how
12 we're doing.

13

14 JEFF KRAUT: Any questions for Ms. Pirani? Thank you so
15 much. I'd now ask Jason Helgerson who is going to give us a
16 report of the Office of Health Insurance Program activities, and
17 - thank you. OK. We'll get you in the corner so that everybody
18 at the council at least can see. By the way, I apologize for
19 this configuration. The room was renovated and I guess they
20 thought we could have a new configuration. If we are in this
21 room again we're get to the middle so we can see everybody next
22 time. I'm sorry. I said when I came in, Oh, old Yankee Stadium.
23 Mr. Helgerson.

24

1 JASON HELGERSON: Thank you, pleasure to be here. Give an
2 update on what's happening relative to the Office of Health
3 Insurance Programs. So, the two biggest things that we are
4 working on, first and foremost is DSRIP, delivery system reform
5 incentive payment program. We are not quite at the halfway mark
6 of the second year of the five-year demonstration. That
7 initiative I would say in terms of an overall report is going
8 well. For the first year, we have the independent assessor has
9 calculated the payments to the 25 point provider systems through
10 the first full year of the demonstration. The good news is they
11 qualified for 99 percent of the total available award for the
12 first year. Now, that's very good news. That means that the
13 provider systems are hitting the performance metrics to which
14 they're held accountable, but I would say that first year is
15 definitely the easiest of the five years. Little over half the
16 money for the first year was linked to them completing an
17 application that was approved by the State and CMS which all 25
18 did, and then the remaining dollars were allocated based on
19 process measures. So, we now we are in year two and in fact,
20 we're already starting to look at performance that's now going to
21 dictate year three payments, and that's where we start getting
22 away from the process measures into these performance provider
23 systems and their networks of providers, really actually
24 improving the health and wellbeing of Medicaid members. And that

1 really is the process. And we say that PPSs are now moving sort
2 of beyond some of the infrastructure deployment type activities
3 into actually trying to change the quality of care for
4 individuals on Medicaid and the uninsured. So we feel, say
5 overall very good about where we are in the initiative but
6 there's still a tremendous amount of work to be done. One other
7 sort of DSRIP update is that we have been trying very hard to
8 deploy resources out to the PPSs and support them in their
9 efforts. One of the great challenges to have is that these are
10 in essence groups of providers networks, you could call them.
11 Some people describe them sort of as a version of an accountable
12 care organization sort of built specifically for some of our
13 highest needs, most vulnerable in our society. So large groups
14 of organizations, hundreds if not thousands of organizations
15 trying to work together, so one of the challenges they each have
16 it how do they share information, how do they work together and
17 HIT is a major component of that. So we have been deploying
18 systematically some resources providing data to the 25
19 specifically related to the patients that they're serving, so
20 some important developments there. but also this summer we've
21 been going around meeting face to face with each and every one of
22 the 25 to get their perspectives in terms of the challenges they
23 face, particularly in this HIT area and things that we can do
24 with them to support their efforts. It's been a very fruitful

1 series of listening sessions and as a result of that we're going
2 to be working essentially to some additional functionality and I
3 think at the end of the day the listening sessions got what we
4 hoped for which is some good feedback in terms of what more we
5 can do to support them in their effort.

6 In September we will have a statewide learning collaborative
7 where all 25 will come to Syracuse where we will be hosting, we
8 do the statewide meeting once every year, so this will be our
9 second one. Very well attended. Somewhere in the range of about
10 1000 individuals attend this. We have also two regional ones
11 that are done. Little bit smaller but we do one upstate, one
12 downstate, but they're very helpful. Not only is it an
13 opportunity to present information, answer questions, but it's
14 also an opportunity frankly at this stage for the PPSs to present
15 to each other. There's some really innovative things that are
16 going on across the State, some real best practices that could be
17 transferred to other parts of the State, so we try to use those
18 learning collaboratives as an opportunity for that kind of
19 information and best practice sharing.

20 The other major priority for the Office of Health Insurance
21 Programs is the move to value-based payment, so our waiver
22 requires that by the end of this decade 80 to 90 percent of our
23 reimbursement in the Medicaid program our \$60 billion enterprise
24 has to be value-based. And so that's a major transition. We

1 recently conducted a survey of our Medicaid managed care plans
2 and found that about 26 percent of our current reimbursement is
3 value-based so we need to go from 26 percent to 80 percent by the
4 end of the decade. Our vehicle for doing that on the Medicaid
5 managed care plans that we contract with, the vast majority of
6 services individuals are enrolled in those plans and receive
7 services to those plans. So it's really the plans working with
8 our networks over the next four years to really ensure that we
9 hit those milestones and with that CMS has mandated us to hit.
10 In supporting that effort I would say 2016, calendar year '16 and
11 value-based payment first and foremost is the year of policy
12 developments. We've been spending a lot of time trying to
13 finalize our path to value-based payments. Out on the website is
14 the latest version that was called the roadmap which is CMS
15 approved document that outlines our path and defines what value-
16 based payment means in the New York Medicaid context. It's also
17 2016 is the year of the pilot so we're attempting to finalize
18 contracts between plans and providers to launch as many as 15
19 pilots. These pilots will try different forms of value-based
20 payment. Some will do what we call total care for general
21 population or basically looking at the complete needs of a larger
22 number of individuals. Others will pursue bundle payments in
23 various areas like maternity care, and so we also have some
24 pilots where we look at special populations particularly those

1 who are enrolled in HRPs health and recovery plans, those are
 2 people with significant behavioral health needs, as well as a
 3 pilot that's in discussions around potentially using value-based
 4 payment as a vehicle to help end the epidemic, the AIDS epidemic
 5 in New York State. So, pilots very important. We think we'll
 6 learn a good deal. We already have learned a good deal from that
 7 experience and we'll transition, transfer that learning out to
 8 the broader public as all providers move in that direction. The
 9 last key element of 2016 value-based payment wise and sort of key
 10 theme is raising awareness about value-based payment, providing
 11 information, training out there to a diverse array of providers.
 12 Value-based payment in New York is being applied across the
 13 entire spectrum. All services, all populations simultaneously.
 14 And that means we have a significant task, challenge, of
 15 communicating out to providers of all types at all stages of
 16 knowledge and expertise in value-based payment what it means and
 17 how they proceed and move forward with the initiative. And so
 18 what we've been doing this year has been holding regional
 19 bootcamps so we broke the State up into five regions and we've
 20 been holding and there's still more to come on this. These three
 21 all-day sessions where we come and present a [great deal]of
 22 information. It's really meant that by the end of the three days
 23 providers of all different types and patient advocates and other
 24 agency stakeholders will have a very very good sense of what it

1 means to be in a value-based world and hopefully they'll be able
2 to take that knowledge back to their organizations and help their
3 organizations prepare to be successful in that environment. And
4 so they've been very well received of these bootcamps, very well
5 attended, usually hundreds of people come and attend them, so
6 that's going to be, that's been a big part of this summer and
7 fall. We'll continue. We're also working with a number of
8 provider associations and we'll continue to do so to have
9 specialized tailored, specially [sic] tailored training sessions
10 for providers of different types. I think there are a number of
11 provider associations who have already hosted specific meetings
12 around value-based payments which we are strongly encouraging
13 because that way you can tailor the discussion to the unique
14 needs of individual providers, provider types, that will be
15 something we will continue to support throughout the next year
16 plus.

17 So that's, I would say, the biggest things that are
18 happening in OHIP. So happy to answer your questions.

19

20 JEFF KRAUT: Mr. Helgerson, thanks so much. Dr. Bennet.
21 I'm sorry. Let me start with Dr. Bennet and the Dr. Rugge.

22

23 JOHN BENNET: Thanks for that summary Jason. DSRIP as you
24 know better than anyone in the world is a huge program with

1 extremely laudable goals. Without appearing to put you on the
2 spot, --

3

4 JASON HELGERSON: You wouldn't be the first.

5

6 JOHN BENNET: But I'm going to a little bit. So, you're
7 two years into it and it's an enormous project and at this point,
8 what do you think is the biggest barrier to achieving your goals
9 that you see?

10

11 JASON HELGERSON: Sure, so, there's 25 of these perform
12 systems across the state. They're at various different points of
13 evolution. As one might imagine, one measure of where we are
14 today is are they qualifying for their payments, and the answer
15 to that question is a definitive yes. So at least what they've
16 been asked to do to date to which they've been evaluated, they
17 have been successful. But underneath that I think we would all
18 suspect is a level of question about where they are in their
19 overall evolutionary arch and how well they're positioned for
20 when the rubber really hits the road, when the outcomes for the
21 patients really matter, how well positioned are those 25 and what
22 are the challenges that they face. Interestingly when we started
23 this initiative I would've told you or ask the same question or
24 ask me a question about whose best position to be successful I

1 would say it's those performing provider systems with providers
2 who have had previous investments in population health
3 management. Those who have done other initiatives, those who
4 already were parts of larger collaboratives where they had
5 communications, were working together across sectors, anyone who
6 had had some of those built-in advantages would be ahead of
7 everyone else. But I would say is while that is a factor, I
8 would say that the two most important factors to date in terms of
9 whether or not PPS is in the leading edge of the continuum would
10 be, do they have a strong governance structure. As I said, these
11 are hundreds and not thousands of organizations. Have they
12 figured out how they're going to govern themselves and make
13 decisions and be able to do that in a timely and effective
14 fashion. The PPSs who have the strongest governance who have the
15 greatest buy-in amongst their network of providers are in my
16 view, tend to be the ones that are the most advanced. The second
17 also perhaps not surprising in retrospect is each of these
18 organizations had to build up sort of a backbone, essential
19 staff, an organization, had to hire key positions, CEO or
20 executive director, COO, CFO, various types of individuals to
21 basically do and run the day to day operations of this and work
22 very hard to keep these networks of providers together informed
23 and also rowing in the same direction. That is not a small task.
24 And the PPSs who have done a really good job of hiring very

1 strong people and have retained those people throughout the
 2 period, and they become very knowledgeable, those PPSs are very
 3 very strong and well positioned. I'll give one example of a PPS
 4 that's one of the most advanced we have and that's in Staten
 5 Island. Interesting that was a PPSs that came together late as a
 6 single PPS in the region. There was to say the least a little
 7 bit of bad blood perhaps between certain providers on the Island.
 8 But they did find very quickly how to govern themselves. They
 9 hired a very, very, very strong central staff and they are doing
 10 some amazing things. and I would suggest that maybe future means
 11 of this group that having some of them come and present what
 12 they're doing, I think would be interesting. They are, on Staten
 13 Island, racing to try to be the first PPS and I think they will
 14 accomplish it and they will beat us frankly at the State level to
 15 actually link the HR data with claims data to give a 360 degree
 16 view of the needs of the Medicaid population in Staten Island.
 17 They also were the first PPS to actually do a complete inventory
 18 of the entire workforce, the entire healthcare workforce on the
 19 Island. So they know of everyone who works, what their job
 20 descriptions are, what type of work they do, where they work, and
 21 so now we're talking about workforce planning, they actually have
 22 the baseline upon which to say what is actually happening. That
 23 was a survey that had never been done and I don't know of any
 24 community that ever had that level of specificity. And that,

1 those are two examples of what can be done, but I would say in
 2 one other PPS and I always get in trouble when I highlight the
 3 ones that are successful because then I don't tell the story
 4 about everybody, but one other one, I go up to the north country
 5 - north country initiative is a great example around watertown,
 6 single PPS. They had a history around Ft. Drum of regional plan,
 7 and it came together to some extent out of economic need to try
 8 to help save the military base. So they had a history, but they
 9 also have strong governance and they also have a really strong
 10 core team there and I was hearing the conversation earlier about
 11 workforce. They embrace the workforce challenge in ways that
 12 transcends what was actually required in DSRIP. So remember much
 13 the focus on DSRIP is inductions and avoidable hospital use, and
 14 how do you transform the delivery system in ways that will help
 15 you achieve that objective. But they realized when they looked
 16 at their community needs that they had other areas where they had
 17 access problems that really are, their impact on those core goals
 18 was maybe not that significant but was important to their
 19 community. And so one case was they have actually I think it's
 20 26 healthcare professionals. New health professionals have been
 21 hired in the north country filling vital roles such as
 22 psychiatry, psychology, nurse practitioners, primary care
 23 doctors, and I think one of the sort of nice stories of DSRIP is
 24 they hired a dentist into a five county rural area that hadn't

1 had a dentist serving the Medicaid population for five years.
2 And dental access is just generally a problem for the Medicaid
3 population and uninsured. Not just in New York but all across
4 the country, and this to me was an example of a PPS that said
5 hey, yes we have to hit the DSRIP goals for inductions and
6 avoidable hospital use. We can use this initiative to go above
7 and beyond that and use this to fill the community's needs. And
8 I think we're trying to encourage PPSs at this point to make the
9 most of it for their communities and to use the resources, the
10 dollars, the tables that have now been created, the conversations
11 that are happening, to really roll up the sleeves and see what
12 you can do to the maximum degree possible. So that was the long
13 answer.

14

15 JEFF KRAUT: Let me just, Dr. Rugge and then I'll go to
16 Dr. Bennet.

17

18 JOHN RUGGE: Thanks. You mentioned that the vehicle for
19 value-based payment are the managed companies doing Medicaid. A
20 corollary vehicle are those ACOs or providers that are coming
21 together. They need to be in current state license. Is there
22 progress in terms of licensure of these and how is that going.

23

1 JASON HELGERSON: So, under state regulations and I could
2 defer to my colleagues, we could give you more on that is there
3 is an application process for becoming an ACO. I don't know how
4 many and Lisa probably know better than me.

5

6 LISA ULMAN: We haven't quite - we do have a number that
7 we recognize as participating in the Medicare programs so we have
8 been able to issue certificates for that. We do have a number of
9 applications that are in progress. I think you'll start seeing
10 some of those very soon actually where they are seeking
11 certification to proceed as an ACO for multiple payer types so I
12 think there's a lot of exciting things on the horizon for that.

13

14 JOHN RUGGE: correlated question. It seems that progress
15 would depend eventually on listing other payers in addition to
16 Medicaid so that providers based on a single set of incentives
17 and standards. What about progress on that front?

18

19 JASON HELGERSON: Sure, so we've been working closely with
20 our colleagues with the State Health Innovation Plan on this
21 particular item which is as we move beyond getting sort of
22 policies in place relative to what value-based payment means in
23 New York for Medicaid program is to begin a conversation around
24 sort of all-payer efforts. I think the good news is that we are

1 already hearing and it feels like - I open up Cranes or I read
2 someplace about a new value-based payment arrangement or contract
3 going into place between a payer and a provider, so I think that
4 the market is moving already and moving quite rapidly in this
5 direction, but that's that, I think what we're prepared to do and
6 Pat and I have talked about this is, the State can serve as a
7 convener for coalitions or the willing and communities across the
8 State where we can try to help and this Department has played
9 that role. I mean, obviously Foster Gestin and his role around
10 in the Adirondacks around that all-payer demonstration which is
11 extremely successful, I think we're prepared to roll up our
12 sleeves and do that as well because we know that in particular in
13 certain communities get, making sure you have all the payers at
14 the table is really important to successes.

15

16 JEFF KRAUT: I'm going to go Dr. Bennet, Dr. Strange, Dr.
17 Kalkut, Dr. Berliner.

18

19 JOHN BENNET: As a follow up in terms of hospitals reducing
20 avoidable admissions by 25 percent and the switch of the
21 workforce that people have talked about from inpatient to
22 outpatient. We know hospitals have a lot of fixed costs. And
23 one of the issues we have in controlling costs is as hospitals
24 begin to downsize, how do we do that? Now, one of the things

1 that is of concern is that as hospitals try and downsize and as
2 they lose inpatient revenue that they'll need to cover these
3 fixed costs, and since they can't obviously recover them from
4 Medicaid and they can't recover them from Medicare. One of the
5 concerns that we have and it's a great one is that the cost
6 shifting, this will actually accelerate the cost shifting and put
7 enormous pressure on hospitals to seek higher negotiated rates
8 from commercial payers and while at the same time an unintended
9 consequence of PPS is that you've now concentrated in one
10 organization what is in many communities comprises 90 percent.
11 So many upstate communities particularly you have one or perhaps
12 two PPSs. So that's a great fear that I have because the
13 consumer will ultimately pay for that in terms of higher
14 commercial rates. And how are we going to work together to try
15 to avoid that.

16

17 JASON HELGERSON: I think the key, that's the concern you
18 articulate is I think a key reason why we need to do value-based
19 payment. Because I think at the end of the day there is the
20 win/win possibility here which is that we can in fact slow the
21 rate of growth in overall healthcare expenditures, get better
22 outcomes for patients, and actually ensure the financial
23 viability of providers across the state. I think that can in
24 fact be done, but the only vehicle for doing that is to migrate

1 away from fee-for-service reimbursement to value-based payment,
2 because I think what is in it for the payer community, whether
3 that's plans, businesses or individuals is that the value - the
4 path to value-based payment gives us an opportunity to say it's
5 not about cost-shifting, it's not about higher commercial rates
6 to cover fixed costs as service utilization goes down. We're
7 willing to in essence capitate payments or institute some other
8 form of reimbursement that now gives you the flexibility to begin
9 to reconstruct the services that you offer to take cost out of
10 the system while retaining the revenue that you have today so
11 that you can go through a period of transition. That I think in
12 it's core is what I think needs to happen, and I think that what
13 we're talking about here in DSRIP is taking away avoidable
14 hospital use. So these are people who are in hospitals today
15 when they shouldn't be. They're sicker today than they should be
16 if the system overall did it's job. And I think what I'm saying,
17 and I think that's why there's a moral imperative here to move to
18 value-based payment is that we should not have a healthcare
19 delivery system who has to in order to be successful allow people
20 to get sicker than they need to be. And I think that while we
21 are better aligned in the incentives, getting people out of the
22 hospital, we have to use value-based payment as a bridge so that
23 these providers can achieve a more cost-effective model that more

1 closely matches the needs, real healthcare needs of the
2 community, and not the way services are being provided today.

3

4 DR. STRANGE: So I heard about the bloody battle on Staten
5 Island, so I'm here to tell you I survived that bloody battle.
6 It wasn't so bloody. Two hospital systems that were competitive
7 came together under a PPS. I've been actively involved in one of
8 the large provider groups out there, and there have been many
9 other groups including nursing homes, in home care agencies and
10 other doctor groups, and it has come together for the betterment
11 of the community, and we are a great social experiment, Staten
12 Island. Because we're 500,000 person community surrounded by
13 water with only four bridges to get off without much out
14 migration other than for certain specialty care and even that's
15 now staying on board. And so to the point of avoiding the
16 unnecessary hospitalization and to avoid the cost shifting but
17 keeping the hospitals whole, although a challenge, that's been
18 one of the things that's been attempted. We had our own group
19 with Staten Island (Mercy) hospital, Northwell Health had the
20 opportunity because of an ACO product that we were involved with
21 Montefiore to do exactly what Dr. Ruge was speaking about here,
22 and that is to try to standardize the care for all comers, for
23 all payers, regardless of age, regardless of anything other than
24 to provide evidence-based medicine care. And so that's one of

1 the things that we've put out there, and the organization lead by
2 an excellent executive director that has an excellent experience
3 and their chief medical officer has made this a culture. Now, and
4 it only was done first of all by the way through having good
5 information systems. Good data in and good electronic health
6 information was the only way this could be done. So we really
7 have measurement tools now, and not only have the denominators
8 but are now actually measuring the numerators of diseases. So
9 diabetes, NH1C, optometry care, and mammograms in women. The
10 challenge as was first asked here and I think will continue to be
11 the challenge, I think the ACO population of the elderly is an
12 easier population because they tend to go to physicians, they
13 tend to know they're sick or they tend to know they want to get
14 their check-ups. The 25, 35, 40 year old just doesn't do that.
15 And the challenge there is to get them in because of the
16 substance abuse issues, because of behavioral issues, and because
17 of the screening issues that have to occur there to prevent the
18 40 and 50 year old diseases, they just don't get it. And so
19 telehealth with telepsychiatry is now being implemented on Staten
20 Island because we just don't have that many psychiatrists,
21 putting behavioral health providers in offices, not only
22 psychiatrists, psychologists, social workers and the like, and
23 pairing them together so that we can cross breed when a
24 behavioral sign psychiatric patient comes in to get their

1 internal medicine care or their gynecologic care and vice-versa.
2 And that's where the challenge lies. How do we especially on the
3 behavioral health side get that care there to those that are
4 necessary? But I think, I have to give kudos to my Island, to
5 both systems Northwell Health and Richmond University Medical
6 Center, for bringing this together as you just said, I think
7 showing that we can do this and understanding the challenges that
8 lie before us that value-based payments that gets their ABCD
9 letters, we're going to have ABCDs in our offices and say you did
10 this and you met the standard for all. And we're proud to say
11 we're here to do that and there are no scars left. This is about
12 patient care.

13

14 JEFF KRAUT: Thanks so much. Dr. Kalkut.

15

16 GARY KALKUT: Thanks. And thank you Jason for the report
17 to the council, complete report to the council. It's great.

18 I had two questions, one of which you've addressed and
19 that's the status of the pilots. And a number of mechanisms that
20 people are using to move down that roadmap. The second question
21 I'd ask is about tempo and readiness. As you've said, I think
22 the providers and the managed care companies will learn and we'll
23 learn a lot during this process and the question is your sense of
24 the readiness of the managed care organizations to move down that

1 road in the tempo you've outlines which I think is absolutely
2 necessary and to go from I think you said 26 percent of value
3 based to an 80 percent value base with all of the infrastructure
4 on the managed care company side to provide that kind of data and
5 assistance to the providers.

6

7 JASON HELGERSON: Sure. No, it's a good question.

8 Overall I think the plans, at least what they're communicating to
9 us is that they are ready or are in the process of getting ready.
10 It's interesting some plans have already a lot of experience in
11 value-based payment. Others not very much at all, and so it is
12 something where it has both systems implications but it also has
13 staffing implications. And the plans I know are staffing up and
14 they're staffing differently and they're bringing in resources to
15 prepare themselves for this, and as I say to the plans are, we
16 see Medicaid managed care, their roles are in essence going to
17 change as we migrate into value-based payment. What will become
18 less important will be utilization control, utilization
19 management. What will become much more important is creative
20 value-based payment contracting and then the analytical support
21 to those contractors that is so key to their success. And I
22 think that the plans are going to be, and one of these reasons we
23 use the plans is cause they have the ability to be flexible in
24 ways that on a statewide basis we would as a single payer would

1 never be able to do, and we have such a diverse state, right,
2 largest city in America, some of the most rural parts of the
3 country, and everything in between and we have 100,000 providers
4 in the Medicaid program across all these different types and they
5 are coming at value-based payment at all different levels. Some
6 very advanced with many years of population health management
7 experience, and others who are trying to figure out what value-
8 based payment actually means. And so that's why we think that
9 the plans, we've been talking to plans about this for a while,
10 but overall the plans are telling us that generally they feel
11 like they're ready to go, but they I think also understand that
12 this is no small task.

13

14 JEFF KRAUT: Dr. Berliner then Dr. Bennet. Sorry Dr.
15 Kalkut. You follow up on that.

16

17 GARY KALKUT: Our experience is as you described. There's
18 a lot of variability and the concern is primarily about the data
19 itself, the claims, the analytics we feel we need to develop
20 internally certainly could use some help but is that consistency
21 with providing the data that we will build a foundation on to do
22 this well.

23

1 JASON HELGERSON: Yeah, the advanced analytics, the
2 ability to provide data in a timely fashion all extremely
3 important to success.

4

5 JEFF KRAUT: Dr. Berliner.

6

7 HOWARD BERLINER: Jason, this is a question I would
8 normally ask to Dan so he get the reprieve I guess this cycle.
9 New York Times reports this morning that there's something like a
10 24 percent chance that DSRIP will change in January, if you will.
11 And so I'd like to get your sense of -

12

13 JASON HELGERSON: 24 percent chance? I didn't see that
14 article. Oh, are you talking about the presidential elections?
15 OK.

16

17 JEFF KRAUT: I thought it was 25 percent. But we could be
18 wrong.

19

20 JASON HELGERSON: I gotcha.

21

22 HOWARD BERLINER: But the question is really what do you
23 see as the future of the PPSs and of this kind of project going
24 forward if there is a change in the way - I mean the republican

1 plan is really for the per capita cap and who knows where that
2 goes but what do you see as the future for DSRIP in the near term
3 future.

4
5 JASON HELGERSON: Sure, so, having lived in - I have, I
6 don't know if it's a dubious honor but I've now been a Medicaid
7 director, I was Medicaid director in two states, here in New York
8 and then in Wisconsin before, but continuously Medicaid director
9 for 9 ½ years so more longer than anyone else in the country
10 actually, which is why I have so many gray hairs now. But so I've
11 lived through a transition in power and the thing about it is
12 it's often times two things; one, things don't change as quickly
13 as you might think, and secondly is that it's often hard to
14 predict exactly how things will change. Things like DSRIP we
15 have an existing waiver agreement. That's a two-way agreement.
16 The federal government can't unilaterally end that agreement.
17 Now, certainly there are things they could do to make our lives
18 difficult, but they couldn't unilaterally change that. And their
19 plans relative to Medicaid and block grants and things like that,
20 any of those structural changes in entitlement programs would
21 require that they not only control the presidency but they would
22 probably they would need the House of Representatives and most
23 likely 60 votes in the United State senate. So if they did
24 achieve that in this election then I think there would be

1 potential for a wholesale change in the program which obviously
2 transcends DSRIP and could put us on a very different trajectory.
3 I guess at this point I'm not I don't spend a lot of time
4 thinking or worrying about that possibility because I don't think
5 it's likely but at the same time if presidential elections matter
6 in this country and it matters in lots of ways, some which are
7 not as explicit or understood by the public, but Medicaid
8 healthcare program it's the biggest purchaser of services of the
9 healthcare system in our state, could be impacted in some way
10 shape or form. But that said, DSRIP we have this five-year
11 agreement. The federal government can't end it. So we'll have
12 to watch what happens with the elections in November, but I'm
13 still optimistic that we'll be able to see it through.

14

15 JEFF KRAUT: Let me just do Dr. Bennet, Dr. Lawrence, and
16 then I'd like to move on. We can spend the entire day on DSRIP
17 and I'm sure everybody would like to. I don't think this would
18 be the only opportunity we have to discuss it, and obviously
19 Jason you know our level of interest, so let me just try to get
20 to closure here.

21

22 JOHN BENNET: Just a comment a little bit on plans,
23 readiness for value-based payment. As was mentioned, it is
24 highly variable. Some plans are very active in that field at

1 CDPHP we have over 80 percent of our primary care network now on
2 value-based payment, on global based payments and are working
3 actively with other payers in our region and that includes our
4 Medicaid managed care business which is quite large in the
5 capital area. The capital area and the Hudson Valley have also
6 been chosen for the federal government's comprehensive primary
7 care plus initiative and had a very successful run at the first
8 round. So you have some very advanced things going on with value
9 based payment. I think that the Medicaid program can clearly
10 lead in that and I'm just going to make one final comment about
11 my prior comment, that relates to my prior comments and that is
12 because the Medicaid program in terms of the New York State fee
13 schedule and reimbursement methodology can actually dictate
14 payment to providers, but we have to be very careful at one of
15 the biggest limitations on the commercial sector in moving
16 forward with value-based payment. Obviously you need a willing
17 payer and a provider, and I think different markets are very
18 different. Different markets are heavily leveraged against
19 payers. There's heavy provider consolidation and I think that at
20 the end of the day the devil is in the details and unit prices
21 matter, and I think that's going to be very important as we begin
22 to forge a (cattle care) agreements around value-based payment in
23 the commercial sector. that is a very very different animal. It
24 is very difficult. And I don't think we can forget that.

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JEFF KRAUT: Dr. - Mr. Lawrence.

HARVEY LAWRENCE: I'll accept a promotion. As a small provider, we've attempted to sort of I guess ride and glide in this change to DSRIP and also to a value-based payment arrangement, and when I hear that we're moving to 85, 90 percent value-based payment arrangements, I guess I have a more macro-level question and that relates to what happens in the healthcare marketplace? Will we see more sort of consolidation at the provider level, at the plan level? Will there be more vertical integration across the system? Because I think the consequence of more of that consolidation for smaller providers become that much more of a challenge in the system for us.

JASON HELGERSON: Right, I would say if you think about DSRIP and what it's trying to do, it's trying to achieve the benefits of integrated delivery without going to sort of the single employed model of integrated delivery. Where most of the time we talk about integrated delivery systems, we think about it as a single system employing and providing a wide array of services but sort of within a single employed sort of model or near single employed model. What I would say is that we're trying to do in value-based payment is to allow individual

1 independent providers to partner together and enter into value-
 2 based arrangements that allows them when they're successful to
 3 capture shared savings and hopefully either invest that into ever
 4 better care or to help insure their financial viability for the
 5 long run. But at the end of the day we do need healthcare to
 6 become a team sport. Healthcare can't be an isolated siloed
 7 providers not talking to each other, not viewing each other as
 8 competitors and asking particularly the most vulnerable in our
 9 society to try and navigate the complexities of that system. we
 10 have tried that for decades and that is why I believe you have
 11 got some tremendous inefficiencies. I'll give you one statistic
 12 that struck me the other day. We were looking at the total cost
 13 of care for children with asthma in the Medicaid program.
 14 Hundreds of millions of dollars spent on the treatment for
 15 children with asthma and there are certain communities like the
 16 Bronx where that is particularly a, almost like an epidemic.
 17 When you look at that, 35 percent of the total expenditure for
 18 that care is avoidable. That to me is a pretty sad statistic
 19 that over a third of the total amount of money we spend on
 20 children with asthma is for things that shouldn't have happened
 21 in the first place. And I think while that's a sad statistic,
 22 it's also a tremendous opportunity that if the system can come
 23 together and work more functionally providing the services and
 24 the most cost effective fashion possible, we can actually improve

1 the health of children in our state and also save money. And I
2 think that's what we should aspire to isn't easy, the answer is
3 no. Are there potential pitfalls out there if we don't do this
4 in a thoughtful fashion, the answer is yes. But I think at the
5 end of the day that statistic of how much waste is in and the
6 consequences of that waste for children at least drives me
7 forward to want to make the system work better for kids.

8

9 JEFF KRAUT: Mr. Helgerson, thank you so much for your
10 report and the amount of time you spent here. I got an email
11 from Joe Conte at Staten Island. He's very appreciative of the
12 praise and he says given the level of interest we've expressed,
13 if we're willing to wait three hours he could be up here to
14 continue it and I assured him that we would invite him back at an
15 appropriate, with a little more notice and scheduling. But,
16 thank you so much, and we hope you return to give another report.

17 Now I'm going to introduce Dr. Gutierrez to give the report
18 on the codes, regulation and legislation.

19

20 ANGEL GUTIERREZ: Thank you Mr. Kraut. The committee on
21 Codes, Regulations, and Legislation met this morning before the
22 full council meeting and we dealt with one proposal for
23 discussion. This is the all-payer database. This proposal will
24 create a new part 350 of title 10 New York Codes Rules and

1 Regulations pertaining to the all-payer database heretofore to be
2 known as APD. The APD will collect and contain public and
3 private healthcare claims and encounter data. This proposal is
4 needed to implement and operate the APD. This proposal will
5 define APD specific terminology, create parameters for data
6 submissions to the APD, address issues of security,
7 confidentiality and privacy, permit the formation of an APD
8 advisory group and allow for the creation of APD guidance
9 documents. Since the proposal was for discussion, there was no
10 vote from the committee. Mr. Roohan from the Department is
11 available to answer any questions from council members. Are there
12 any questions from council members? If not, I complete my
13 report. Thank you very much.

14

15 PETER ROBINSON: Thank you Dr. Gutierrez. We are now going to
16 get a report from Dr. Rugge that includes a request for approval
17 of a stroke center. I think Mr. Kraut and Dr. Strange need to
18 recuse themselves.

19

20 JOHN RUGGE: Perhaps just before recusing -

21

22 PETER ROBINSON: Oh, you're going to do the report first?

23

1 JOHN RUGGE: Just a brief report in the course of
2 discussion as specific application. It was noted by members of
3 the committee that since the designation of a stroke center has
4 been affirmed, there are new technologies, and specifically
5 intervascular quad extraction is now become available, favorable,
6 and to some degree a standard of care that is not recognized in
7 the designation. And so we've asked DOH staff to help us to
8 think through whether there might be two levels of stroke
9 designations in the future to recognize those facilities which do
10 have those capabilities. Not all do. Just to put that on the
11 record, and then we'll move on with I guess two recusals, Dr.
12 Strange and Mr. Kraut.

13 The committee unanimously voted to approve an application
14 for stroke center designation by the Staten Island University
15 Hospital south campus, and I would so move.

16

17 PETER ROBINSON: Thank you. I Have a motion, second by Dr.
18 Berliner. Any questions from the members of the council? All in
19 favor?

20

21 [Aye]

22 Any opposed? Motion carries. Please have Mr. Kraut and Dr.
23 Strange come back.

24

1 JEFF KRAUT: Dr. Rugge, you're going to give the report on
2 the activities of the joint activities of the Public Health
3 Committee and Health Planning Committee.

4
5 JOHN RUGGE: Yes, just to start on a brief personal note,
6 way back when I was a student of religion and at the time the
7 preeminent theological thinker was Paul Tillick who liked to talk
8 about Chyros, the Greek term for 'pregnant moment' a time when
9 profound and lasting transformation could take place, and I think
10 it feels to most of us around the table that this is a moment of
11 Chyros for the healthcare system. That we have enormous change
12 in the wind and in the works. Based, I think on two fundamental
13 realizations or maybe in the spirit revelations. One is that the
14 most important determinants of health status don't lie within the
15 medical care system, but are social. And the second realization
16 that we truly are over dependent on high tech services and their
17 deployment, services that many times can be averted through
18 prevention or early treatment and diagnosis and that those
19 services are lacking is a corollary I'd like to say that in
20 almost every human endeavor there's an important executive
21 function where it seems in the practice arena for medical care,
22 everybody is task-oriented and there is no responsibility for
23 directing the work and guiding therapy in the way that should be
24 the responsibility of primary care.

1 So to attend to that there have been any number of policy
2 developments, interventions, and I think in this era starting
3 with the MRT, the Medicaid redesign team, looking at how to
4 fundamentally restructure Medicaid, capping the cost, improving
5 the quality and expanding the reach all at the same time. As a
6 concomitant event, on a national level the development of
7 patient-centered medical homes and now within the state with some
8 funding our attempt to go beyond PCMH to advanced primary care
9 and new definitions and new reach. And most importantly perhaps
10 as we've just heard, DSRIP and all that it portends to do by way
11 of changing the way we provide care leading ultimately to value-
12 based payment which means truly taking care of populations or
13 communities of people and taking total responsibility for their
14 care, their outcomes, and their costs. So with that there have
15 been any number of advisory groups and opportunity for public
16 input including the integrated care workgroup, the value-based
17 payment workgroup, the health innovation council, and here we are
18 as PHHPC the Public Health and Health Planning Council; seems to
19 connect. So, really at the instigation of Dr. Boufford who can't
20 be here today the council has been looking to have a joint
21 enterprise of the two committees, Public Health and Health
22 Planning to assess for one how social determinants can intersect
23 and be impacted by the medical care system, starting really with
24 primary care and also recognizing that caring for the whole

1 person means taking care of their psyche and psychological health
2 as well as their physical health taking a look at the
3 interactions between medical care and behavioral health services.

4 So to do this I think we are looking to launch some pretty
5 big conversations. Conversations that go across agencies, DOH,
6 OASAS, OMH, and also across geography and jurisdictions thinking
7 between Albany and Washington because some of the impediments we
8 face are really federal rather than state. In addition to those
9 big conversations I think there are some small conversations, and
10 going back to, again, personal experience, as long as 20 years
11 ago we looked to bring behavioral healthcare into our primary
12 care organization with co-locating behavioral health providers
13 with our primary care teams and still had trouble with high no-
14 show rates of a system of pointing the specialty care where I
15 could call a physician, a surgeon and ask for an appointment or
16 consultation regarding an appendectomy. We went through layers
17 of triage officers and having patients condition cause
18 to receive their appointments. And several years ago I had a
19 presentation at an Adirondack summit by Verna Little at the
20 Institute for Family Health saying when they're setting, when
21 there's an immediate need or opportunity for a warm handoff, a
22 knock on the door of the behavioral health provider, never
23 occurred to me that we could do this, interrupt that kind of
24 consultation. And so our setting now we have green and red

1 markers so our behavioral health providers can indicate when do
2 not interrupt no matter what, but when most of the time it's OK
3 to bring somebody over from one side to the other. Small
4 conversations. Small knocks. And so what we're trying to do with
5 these two committees is knock on this door of opportunity so we
6 can break down the barriers that are sometimes regulatory,
7 sometimes behavioral if you will, sometimes based on culture and
8 find the kind of recommendations for us as providers and for
9 others in the room our regulators and our developing agents so
10 that we can do a better job and really advance the system in
11 which we need. So with that we had I think a very interesting
12 and productive initial meeting as a kick off session to try to
13 lay out the opportunities before us given all the changes that
14 are now in play, and as you will see, are looking at a full day
15 meeting of the two committees together to discuss these
16 interrelated areas of the social determinants and how we can
17 impact and how they impact us and how to connect the behavioral
18 and the physical aspects of healthcare so that we can indeed make
19 an impact on the entire person. And with that we have four
20 slides just showing the structure of discussions we had to date,
21 and our plans for our meeting in September that will lead
22 eventually we think to recommendations for improvement up and
23 down the line. Big and small conversations together.

24 Lisa or Sylvia.

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LISA ULLMAN: So thanks Dr. Rugge. So just to provide a quick overview of the progress of the discussion at the last committee meeting of the joint committees, so basically our idea was to get together to focus more on the issues that Dr. Rugge mentioned, really talking about the facilitation of the integration of primary and behavioral services and really talking about how we make sure that we're incorporating considerations about social determinants into primary care, so we wanted to talk about the various key state initiatives that are going on and talk about how these things are being factored into those projects. We really wanted to talk about, starting to hear about some of the successes that are already happening and figure out what are the challenges and how can we sort of overcome them, and we'll hear more about that at the future session on September 23. We'll talk more about that in a minute. And the ultimate idea is, as Dr. Rugge mentioned, to identify recommendations that the council can make to the Department so that we can figure out how we can keep pushing this agenda forward.

So we were very pleased to be able to bring together a number of people from various areas throughout the Department. We also had a representative from the Office of Mental Health as well. OASAS wasn't there for that session, but I would like to just mention that all three agencies are working together very

1 closely on these and other initiatives and I believe that both
2 OMH and OASAS will be available for the next session. And so we
3 look forward to continuing that work together. So really these
4 presentations I think just to briefly summarize the, you heard
5 about the State Health Innovation Plan and the State Innovation
6 Model really a focus on the efforts that are being made under
7 that project to move along the advanced primary care model. And
8 those efforts as we've heard include a focus on population health
9 and how to build on the Prevention Agenda. We heard an overview
10 on DSRIIP and in particular the focus within that project on the
11 integration of behavioral and primary care services including but
12 not limited to project 3Ai. Also we heard highlight some
13 thinking about the social determinants of health. We heard a
14 presentation on various models of how we can all go about trying
15 to further this idea of facilitating the integration of primary
16 and behavioral healthcare. We've a number of different
17 mechanisms for that and then the OMH presentation focused on the
18 collaborative care model which is really a way of encouraging the
19 treatment off behavioral health conditions such as depression and
20 anxiety in the primary care setting. I think I would really
21 encourage people to watch that webcast if you didn't have a
22 chance to be present for the last session because it really was a
23 great informative exploration of these issues, and in particular
24 how the agencies are working together and how the initiatives fit

1 together and how well they're aligned. So, I think that was just
2 an important focus there was to really focus on that alignment
3 and talk about how in those initiatives strategies for
4 identifying the challenges are being identified. And again, that
5 idea of the collaboration between the agencies, the alignment
6 between the initiatives, really a key thing that I think came
7 from that presentation, that's something we're going to make sure
8 you know, continues to be an important aspect of these ongoing
9 efforts. And we really talked about, there were certain efforts
10 that are ongoing to address challenges. I think Dr. Ruge
11 mentioned working with the federal government to try and see if
12 we can make co-location something that we can take advantage of
13 more often, talking about some of the reimbursement issues,
14 talking about some of the workforce issues, and I think we'll
15 hear more of that in detail in our next session. So that's the
16 idea that we are getting together again, on September 23, I think
17 it's a Friday in New York City and again, the idea is we would
18 love to invite people who have been working on these issues,
19 entities and organizations who have already been engaged in
20 efforts to address the social determinants of health who have
21 been working on the integration of primary behavioral healthcare
22 services to come and tell us about your experiences, come tell us
23 about the challenges you're facing, and that will help us
24 generate those recommendations for the committee to make to the

1 council and then to the Department again. So we've got the RSVP
2 address up there. Again, that'll be September 23. Thanks.

3

4 JOHN RUGGE: So, all are invited and expect an interesting
5 day with experts from around that State. Commissioner Sullivan
6 from OMH is planning to attend and we think we will be making
7 progress.

8

9 JEFF KRAUT: Thanks so much Dr. Rugge. Any questions from
10 the council? Great. So we'll remind you again about the 23rd
11 and whether or not you are on that committee you are all invited
12 to attend and to participate in the conversation. I'd now like
13 to turn it over to Mr. Robinson who will give us the report of
14 the Project Review Recommendations and Establishment actions.

15

16 PETER ROBINSON: Thank you Mr. Kraut. As Jeffrey mentioned at
17 the beginning of the meeting, for the most part we'll go through
18 this in categories and look to bundle these actions, but members
19 of the council can suggest items that they want to pull out and
20 have separate discussions on and we'll be happy to do that.

21 Let me begin actually by breaking out the first two in
22 applications for construction with no issues or recusals. First
23 calling application 161202C, Hospital for Special Surgery in New
24 York County. This is to certify 10 additional medical surgical

1 beds and renovate approximately 6300 square feet of space on the
2 sixth floor west wing of the main hospital. We are, we do believe
3 that this is really a transformational project and setting new
4 precedent with regard to how we're approving the transition of
5 ambulatory and inpatient spaces and having them work together
6 much more effectively, geographically near each other but not
7 physically co-located. The Department has recommended approval
8 with conditions and contingencies as does the committee and I so
9 move.

10

11 JEFF KRAUT: I have a second by Dr. Gutierrez. Any comment
12 from the Department of Health? No. Any comments, questions from
13 the council members? Hearing none I'll call for a vote. All
14 those in favor, aye.

15

16 [Aye]

17 Opposed? Abstention? The motion carries.

18

19 PETER ROBINSON: Application 161272C, Memorial Hospital for
20 Cancer and Allied Diseases in Nassau County. This is the
21 relocation of an extension clinic from the campus of Mercy
22 Medical Center to 1255 Hempstead Turnpike in Uniondale. The
23 Department has recommended approval with conditions and
24 contingencies. The committee does likewise. And I would like to

1 just make the note here the Mr. Abel would like to make a comment
2 for the record as part of this, and I so move.

3

4 JEFF KRAUT: So I have a motion. I have a second, Dr.
5 Gutierrez. Mr. Abel.

6

7 CHARLIE ABEL: CON staff take all reasonable efforts to
8 verify information that are in applications and test applicant
9 assumptions in almost all cases by the time an application is
10 presented to the Establishment and Project Review Committee you
11 know all the bugs are worked out and things have been vetted.
12 Three days ago the Chief Administrative Officer of Mercy Medical
13 Center brought to our attention a, what I'll call a factual error
14 in the Department's exhibit. Upon looking at that element it was
15 taken from the Memorial application specifically so we had to
16 have a discussion with Memorial and after have that discussion
17 with Mercy. It's a specific element and I'm going to read, going
18 to read what it is, and I make a correction to the public record.
19 The element that Mercy Medical Center objected to was part of the
20 justification used in the application for the relocation of this
21 extension clinic by Memorial and the specific language that is
22 part of the middle sentence of the first paragraph in the
23 executive summary of the staff review. The specific phrase within
24 that sentence is "...as Mercy Medical Center has decided to

1 repurpose the space occupied by the MSK Rockville Center clinic,
2 resulting in the termination of the clinic's lease at the end of
3 2019." That specific phrase I will request be deleted from the
4 record. After discussion among the Department, Mercy and
5 Memorial it was agreed that Memorial would remove that aspect
6 from the application, which his has. So I want to delete that
7 phrase prior to the word "as" where the comma is, I'd like to
8 place a period at the end of that sentence and add an additional
9 sentence then which would be "MSK Rockville Center's lease will
10 expire on December 31, 2019." And then the final sentence of that
11 paragraph retains. We believe this is a factual error that has
12 been brought to our attention or allegedly a factual error. The
13 Department has not been able to, because there was still a
14 discrepancy in position with respect to the two parties. Not
15 been able to determine if it was a factual error or not, but as I
16 said, Memorial Hospital has revised it's application and we are
17 deleting that phrase from the record. Mercy Medical Center has
18 made it clear that it does not wish to oppose this project but
19 wants to have that matter corrected on the record. So I would
20 like to have the public record corrected in that manner. Thank
21 you.

22

23 PETER ROBINSON: So, Mr. Kraut, the motion incorporates the
24 modification to the record that Mr. Abel presented.

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JEFF KRAUT: I have a second. Dr. Berliner.

HOWARD BERLINER: So, Charlie, can we expect to see an application from Mercy about the now, or soon-to-be vacated space?

CHARLIE ABEL: I have no information about that.

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

[Aye]

Opposed? Abstention? The motion carries.

PETER ROBINSON: I'm calling application 161298C, New York Presbyterian Hospital, New York Weill Cornell Center. A conflict and recusal by Dr. Brown who is not here. So we have nothing more to do with regard to that. By the way, this is the application that I erroneously commented on before as being innovative with regard to it's ambulatory and inpatient structure, not the special surgery one. So my apology for that. This application is to certify a new division and add 17 net new beds to be located on the top five floors of a new building

1 currently under construction via different CON. The number is
2 132362 and it's located at 1283 York Avenue in Manhattan. The
3 Department has recommended approval with conditions and
4 contingencies, as does the committee and I so move.

5

6 JEFF KRAUT: I have a motion. I have a second by Dr.
7 Gutierrez. Does the Department wish to comment further? Any
8 questions from the council? Hearing none I'll call for a vote.
9 All those in favor, aye.

10

11 [Aye]

12 Opposed? Abstention? The motion carries.

13

14 PETER ROBINSON:for the next four applications Mr. Kraut has
15 declared a conflict and is recusing himself. Also Dr. Strange has
16 declared an interest in these four applications. Dr. Gutierrez
17 will present these four applications.

18

19 ANGEL GUTIERREZ: Thank you very much. Application
20 161246C, Long Island Jewish Medical Center, Queens County.
21 Conflict and recusal Mr. Kraut. Interest, Dr. Strange. Construct
22 a pediatric operating room suite consisting of eight pediatric
23 operating rooms, seven to be completed with this project and one
24 to have the infrastructure in place for a future fit out. 26 pre

1 and post-op recovery beds and intake areas. Consultation rooms
2 and changing areas. The Department recommends approval and the
3 committee recommends approval with conditions and contingencies
4 recommended by the Health Department and I so move.

5

6 PETER ROBINSON: We have a second, Dr. Berliner. Any
7 questions from members of the council? Any comments from the
8 staff? Call the question. All in favor?

9

10 [Aye]

11 Any opposed? Motion carries.

12

13 ANGEL GUTIERREZ: Project number 161369C, Richmond
14 University Medical Center in Richmond County. Recusals conflict
15 Dr. Kalkut, Mr. Kraut, Mr. Lawrence, Dr. Rugge, interest Dr.
16 Strange. Project to relocate and modernize the emergency
17 department in the main site campus and create a new urgent care
18 in the space of the old emergency room department. The Department
19 recommended approval and Dr. Rugge has left the room. And the
20 committee recommends approval with conditions and contingencies
21 as recommended and I so move.

22

1 PETER ROBINSON:I have a motion and a second, Dr. Berliner.
2 Any questions from the members of the council? Any comments from
3 the staff? Hearing none I'll call the question. All in favor?

4
5 [Aye.]

6 Any opposed? The motion carries.

7
8 ANGEL GUTIERREZ: Back in the room everybody but Mr. Kraut
9 who has a conflict in the next application number 161148C. Dr.
10 Strange has an interest on the project. Everybody back in.
11 Certify a new extension clinic to be located at 39 Brentwood
12 Road, Bayshore. For the provision of gastroenterology and pain
13 management and ambulatory surgery services. The Department and
14 the committee recommend approval with conditions and
15 contingencies, and I so move.

16
17 PETER ROBINSON:Second by Ms. Fine. Any questions from the
18 members of the council? Any comments by the Department staff?
19 Hearing none I'll call the question. All in favor?

20
21 [Aye]

22 Opposed? Motion carries.

23

1 ANGEL GUTIERREZ: application number 161315C, Garden City
2 Surgi-Center, Nassau County. Recusal Mr. Kraut, Dr. Strange
3 declares an interest. Construct a multi-specialty ambulatory
4 surgery center extension clinic to initiate provide ophthalmic,
5 orthopedic and otolaryngology services to be located at 240
6 Jericho Turnpike, Syosset. The Department and the Committee
7 recommend approval with conditions and contingencies, and I so
8 move.

9

10 PETER ROBINSON:Second by Ms. Fine. Questions from the
11 members of the council? Anything from the Department staff?
12 Hearing none, call the question. All in favor.

13

14 [Aye]

15 Any opposed? Motion carries. Thank you. Have Mr. Kraut
16 return.

17

18 PETER ROBINSON:Calling application 161328C, Columbia
19 University Healthcare Inc., in New York County. Dr. Brown
20 declared a conflict. He is not here. This application is to
21 expand the existing main site facility and perform related
22 renovations. The Department has recommended approval with
23 conditions and contingencies, as does the committee. And I so
24 move. Second by Dr. Kalkut.

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JEFF KRAUT: Any comments by the Department? Are there questions from the council? Hearing none I'll call for a approval. All those in favor, aye.

[Aye]

Opposed? Abstention? The motion carries.

PETER ROBINSON: Thank you. I'm going to now batch the following group of applications. 161170B, Port Jefferson Ambulatory Surgery Center, d/b/a Port Jefferson Ambulatory Surgery Center in Suffolk County. To establish and construct a freestanding multispecialty ambulatory surgery center to provide ophthalmology orthopedics pain management and otolaryngology procedures to be located at 1500 Rt. 112 in Port Jefferson Station.

Application 161175E, Mohawk Valley Endoscopy Center in Oneida County. This is a request for an indefinite life for CON number 092142.

Application 161220E, Surgical Specialty Center of Westchester in Westchester County, also a request for indefinite life for CON 072092.

Application 161332E, EMUSC LLC, d/b/a EMU Surgical Center in Queens County. This establishes EMUSC LLC as the new operator of

1 the diagnostic and treatment center. It includes a
2 multispecialty ambulatory surgery center located at 8340
3 Woodhaven Blvd. in Glendale, currently operated at the Queens
4 Surgi-Center. And the Department has recommended approval in
5 some cases with conditions and contingencies, and I so move.

6

7 JEFF KRAUT: I have a motion, I have a second by Ms. Fine.
8 Any comments on the batch from the Department? Any questions
9 about the batch or any application within the batch from the
10 council? Hearing none I'll call for a vote. All those in favor,
11 aye.

12

13 [Aye]

14 Opposed? Abstention? The motion carries.

15

16 PETER ROBINSON: Moving on to the next batch of applications,
17 161093E, Third Avenue Imaging, LLC, in Bronx County. To
18 establish Third Avenue Imaging LLC as the new operator of the
19 facility located at 2781 Third Avenue in the Bronx, currently
20 operated by Third Avenue Open MRI Inc.

21 Application 161167B, Allegria Operations LLC d/b/a Allegria
22 Health and Wellness in the Bronx. Establish and construct the
23 diagnostic and treatment center 2to be located at 899 Westchester
24 Avenue in the Bronx.

1 Application 161203B, Beachview Dialysis Center, LLC, Queens
2 County. To establish and construct a 12 station end state renal
3 dialysis facility to be located at 353 Beach 48th Street in
4 Edgemere located on the second floor of the Rockaway Care Center.

5 And application 161279E, IR Operations Associates LLC, d/b/a
6 Grandville Center for Rehabilitation and Nursing in Washington
7 County which would establish IR Operations Associates as the new
8 operator of the 122 bed residential healthcare facility located
9 at 17 Madison Street, Grandville, currently operated as Indian
10 River Rehabilitation and Nursing Center. And I so move. With
11 conditions and contingencies as noted by the Department and the
12 committee.

13

14 JEFF KRAUT: I have a motion, I have a second, Dr. Kalkut.
15 Any comments? Any questions from the council? All those in
16 favor, aye.

17

18 [Aye]

19 Opposed? Abstention? The motion carries.

20

21

22 PETER ROBINSON:One home health agency application. 161036E,
23 Tender Loving Care and Amythesis Company in Nassau County. That
24 allows for the acquisition of the Visiting Nurse Association of

1 Long Island Inc., Certified Home Health Care Agency. The
2 Department recommends approval with a condition and a
3 contingencies as does the committee, and I so move.

4
5 JEFF KRAUT: I have a motion. May I have a second?
6 Second Dr. Kalkut. Any comments? Any questions from the
7 Council? No, ok. . All those in favor, aye.

8
9 [Aye]

10 Opposed? Abstention? The motion carries.

11
12 PETER ROBINSON: Now going to home health agency licensures.
13 I will notes that application 161111E, Crown of Life Care is
14 deferred. The following are changes in ownership. 161006E.
15 161222E, and 161281E. These are all changes in ownership. The
16 Department recommends approval with a contingency as does the
17 committee and I so move.

18
19 JEFF KRAUT: So I have a motion. May I have a second. Ms.
20 Fine. Any comments? Any questions on the batch? Hearing none
21 I'll call for a vote. All those in favor, aye.

22
23 [Aye]

24 Opposed? Abstention? The motion carries.

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2 PETER ROBINSON:the following are certificates of
3 dissolution. Cabrini Center for Nursing and Rehabilitation Inc.;
4 Tioga Healthcare Facility, Inc.; Tioga Nursing Facility, Inc.;
5 Sisters of Charity Healthcare System Nursing Home, Inc.; St.
6 Jerome's Health Services Corporation d/b/a Holy Family Home; the
7 Bishop Francis J. Mogavero Center for Geriatric Care, Inc.; All
8 of these are recommended for approval by the Department and the
9 Committee as well, and I so move.

10

11 JEFF KRAUT: I have a second, Dr. Gutierrez. No comments
12 from the Department. Any questions from the Council? Hearing
13 none All those in favor, aye.

14

15 [Aye]

16 Opposed? Abstention? The motion carries.

17

18 PETER ROBINSON:Once certificate for assumed name. Beth
19 Israel Medical Center changed their assume name to Philip School
20 of Nursing at Mount Sinai, Beth Israel. The Department
21 recommends approval as does the committee and I so move.

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23 JEFF KRAUT: I have a second, Ms. Fine. No comments. Any
24 questions? All those in favor, aye.

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[Aye]

Opposed? Abstention? The motion carries.

ANGEL GUTIERREZ: Application number 161234B, Hudson Yard Surgery Center LLC, New York County. Mr. Kraut recuses himself and is out of the room. Establish and construct a single specialty ambulatory surgery center for ophthalmology to be located at 450 West 31 Street, New York. The Department and the committee recommend approval with an expiration of the operating certificate five years from the date of it's issuance with conditions and contingencies. And I so move.

PETER ROBINSON: Thank you. Second by Dr. Kalkut. Any questions from the members of the council? From the staff? Hearing none, call the question. All in favor?

[Aye]

Any opposed? Motion carries. Have Mr. Kraut return.

The next three applications involve a recusal by Ms. Carver-Cheney who is leaving the room.

I will be batching these three applications. 152212E, Surge Rehabilitation Nursing LLC in Suffolk County. This is to

1 establish Surge Rehabilitation and Nursing LLC as the new
2 operator of the 164 bed residential healthcare facility located
3 at 49 Oak Crest Avenue in Middle Island, currently operated as
4 Oak Hollow Nursing Center and this involves the decertification
5 of 15 RHCF beds.

6 152211E, Quantum Rehabilitation and Nursing, also in Suffolk
7 County. This establishes Quantum Rehabilitation and Nursing LLC
8 as the new operator of the 120 bed residential healthcare
9 facility located at 63 Oak Crest Avenue, Middle Island, currently
10 operated as Lakeview Rehabilitation and Care Center. These two
11 applications are linked and the decertification of these 15 beds
12 mentioned earlier actually creates the occupancy levels and
13 efficiencies that were required for both.

14 Application 161185E, Cedar Manor Acquisition One, LLC, d/b/a
15 Cedar Manor Nursing and Rehabilitation Center in Westchester
16 County, establishes Cedar Manor Acquisition One LLC as the new
17 operator of Cedar Manor Nursing and Rehabilitation Center, a 153
18 bed residential healthcare facility located at Cedar Lane in
19 Ossining, New York. The Department recommends approval with
20 conditions and contingencies as does the committee and I so move.

21

22 JEFF KRAUT: I have a second Dr. Gutierrez. Any comments?
23 Any questions from the council? Hearing none All those in favor,
24 aye.

1

2 [Aye]

3 Opposed? Abstention? The motion carries.

4

5 PETER ROBINSON:So this next application involves a recusal
6 and declaration of conflict by Mr. LaRue who is leaving the room.
7 Ms. Carver-Cheney has returned. Calling application 161245E,
8 Dominican Sisters Family Health Services Inc., in Westchester
9 County. Establishes Catholic Healthcare System as the sole
10 corporate member of Dominican Sisters Family Healthcare Services,
11 Inc. The Department recommends approval with a condition and
12 contingencies, as does the committee, and I so move.

13

14 JEFF KRAUT: I have a second, Dr. Gutierrez. No comments.
15 Any questions from the council? All those in favor, aye.

16

17 [Aye]

18 Opposed? Abstention? The motion carries.

19

20 PETER ROBINSON:The last item is a certificate of amendment
21 to the certificate of incorporation. I declare an interest in
22 this. The application is RU System Inc., it involves a name
23 change. The Department recommends approval as does the
24 committee, and I so move.

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JEFF KRAUT: I have a second, Dr. Gutierrez. No comments.
Any questions? All those in favor, aye.

[Aye]

Opposed? Abstention? The motion carries.

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

JEFF KRAUT: I want to thank you Mr. Robinson and the
committee and all the committees and all the chairs and the
Department for kind of a robust conversation we had on a wide
range of topics. This will conclude the public portion of the
meeting of the Public Health and Health Planning Council. I have
a motion to adjourn. So moved. I will adjourn. I want to
remind everybody that the next committee day is on September 22
in New York City. And on September 23 there will be a joint
meeting of the Health Planning and Public Health committee in New
York City and the full council will convene on October 6 in New
York City. We are now going to go into executive session in the
adjoining room to deal with a matter under 2801B.

***REVISED**

Public Health and Health Planning Council

2017 Timeline

PHHPC Mailing #1 (Committee Day Mailing)	PHHPC Committee Meeting	PHHPC Mailing #2 (Full Council Mailing)	PHHPC Full Council Meeting	PHHPC Meeting Location
01/17/17	01/26/17	02/02/17	02/09/17	NYC
03/14/17	*03/22/17 (Wednesday)	03/30/17	04/06/17	Albany
05/09/17	05/18/17	06/01/17	06/08/17	NYC
07/11/17	07/20/17	07/27/17	08/03/17	Albany
09/12/17	*09/20/17	10/04/17	*10/11/17	NYC
11/07/17	11/16/17	11/30/17	12/07/17	Albany

PHHPC meetings begin @ 10:00 a.m.

*Albany Location – Empire State Plaza, Concourse Level, Meeting Room 6, Albany
NYC Location - 90 Church Street, Meeting Rooms A/B, 4th Floor, New York, NY*

PLEASE NOTE THE MEETING WILL BE HELD ON WEDNESDAY

Adopted 6/9/16

SUMMARY OF EXPRESS TERMS

A new section for Part 415 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is proposed, to be designated as section 415.41 and entitled “Specialized Programs for Residents with Neurodegenerative Diseases”.

(a) General. For purposes of the proposed regulation, “Neurodegenerative Disease” shall mean Huntington’s disease or Amyotrophic Lateral Sclerosis. “Specialized program” means a discrete unit within a nursing home that offers services and facilities for individuals with Neurodegenerative Diseases, with the goal of helping them attain or maintain the highest practicable level of physical, affective, behavioral and cognitive functioning. The program must be located in a nursing unit which is specifically designated for this purpose and physically separate from other facility units.

The proposed regulation also provides that the facility shall make information and data available to assist the Department of Health (department) in evaluating the effectiveness of specialty units and their impact on outcomes for individuals with Neurodegenerative Diseases.

(b) Admission. The proposed regulation requires nursing homes to develop written admission criteria for specialty units for individuals with Neurodegenerative Diseases. At a minimum, the resident’s medical record must document that the resident has a

Neurodegenerative Disease diagnosis, cannot appropriately be served and is not safe in a less restrictive setting, and can benefit from the care and services available in a specialty unit. The proposed regulation also provides that a facility shall evaluate the effects of its admission criteria on its success in achieving its goals and objectives for the specialty unit and requires the facility to report its findings to the department annually thereafter.

(c) Assessment and Care Planning. The proposed regulation requires a home evaluation with the future resident and his or her family, as appropriate, prior to admission to discuss care needs. The proposed regulation also requires development of a care plan for each resident, which shall include a discharge plan, by an interdisciplinary resident care team. The care plan must be reviewed and modified at least once a month for the first three months following admission and then quarterly or upon a significant change in the resident's condition thereafter.

(d) Discharge. The proposed regulation requires that a proposed discharge plan must be developed within 30 days of admission for each resident as part of the overall care plan and shall include input from all professionals caring for the resident, the resident and his or her family, as appropriate, and any outside agency or resource anticipated to be involved with the resident following discharge. The resident must be discharged to a less restrictive setting when he or she no longer meets one or more of the admission criteria for the unit. Additionally, the proposed regulation provides that a facility shall evaluate the effects of its discharge criteria on its success in achieving the goals and objectives for the specialty unit and requires the facility to report its findings to the department annually

thereafter.

Nursing homes with specialty units shall have a written agreement with a general hospital or hospitals providing for the transfer of residents in need of emergency or acute inpatient care services. Such hospital(s) shall have expertise in caring for individuals with Neurodegenerative Diseases, except in cases where a general hospital with such expertise is not available within a distance and time considered reasonable by accepted emergency medical standards. In the event of a transfer to any general hospital, the facility must require a member of the specialty unit's staff to accompany the resident, if feasible, and must communicate with the hospital and provide any relevant information about the resident at the time of transfer. The resident shall be given priority readmission status to the unit as warranted by his or her condition.

(e) Program/Unit Staffing Requirements. The facility must maintain consistent assignment of direct care staff to residents in the specialty unit. In addition, the proposed regulation requires that a specialty unit shall be managed by a program coordinator and that a physician must be responsible for medical direction of the unit. The proposed regulation also identifies other specific categories of personnel who must be assigned or available to the specialty unit, including a psychiatrist, a clinical psychologist or licensed clinical social worker, at least one registered professional nurse on each shift, a respiratory therapist, and a therapeutic recreation specialist.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health in section 2803(2) of the Public Health Law, Part 415 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, is amended by adding a new section 415.41 to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

415.41 Specialized Programs for Residents with Neurodegenerative Diseases.

(a) General.

1. “Specialized program” shall mean a discrete unit with a planned array of services, staffing, equipment and physical facilities designed to serve individuals with Neurodegenerative Diseases, and approved pursuant to Part 710 of this Title. The program shall provide goal-directed, comprehensive and interdisciplinary services directed at attaining or maintaining the individual at his or her highest practicable level of physical, affective, behavioral, psychosocial and cognitive functioning.
2. For purposes of this section, “Neurodegenerative Disease” shall mean Huntington’s disease or Amyotrophic Lateral Sclerosis.
3. For purposes of this section, and consistent with the requirements of section 415.11 of this Part, the program shall have an “interdisciplinary resident care team” consisting of, at a minimum, the resident’s physician, a registered professional nurse with responsibility for the resident and, depending on the resident’s diagnosis, needs and symptoms, other appropriate staff in disciplines determined to meet the resident’s needs which may

include staff assigned to the unit as set forth in subdivision (e) of this section.

4. The program shall be located in a nursing unit which is specifically designated for this purpose and physically separate from other facility units. Residents of the unit shall have access to all of the facility's recreational and therapeutic resources, including those resources that are not located in the unit.

5. The facility shall ensure that sufficient space, equipment and facilities are available to support the clinical, education and administrative functions of the program in accordance with the standards set forth in Parts 711 and 713 of this Title.

6. In addition to the implementation of the quality assessment and assurance plan for this program as required by section 415.27 of this Part, the facility shall participate with the department in an evaluation of the efficacy and effectiveness of the program and its impact on residents, families and staff. The facility shall collect data and furnish records, reports and data in a format requested by the department and shall make members of the interdisciplinary resident care team available for participation in the evaluation, as requested by the department. The facility shall submit such information to the department for the period ending December 31, no later than ninety days following the end of the calendar year, annually through calendar year 2021.

7. This section shall be implemented as a Quality Assessment and Performance Improvement (QAPI) project, as described in guidance from the federal Centers for Medicare and Medicaid Services.

(b) Admission.

1. The facility shall develop written admission criteria for the specialty unit to include the criteria in paragraph (2) of this subdivision and take into account the facility's goals and objectives regarding outcomes (e.g. minimizing self-inflicted injuries/falls, chorea-related trauma, hospitalization (length of stay), emergency department utilization, bed hold, and satisfaction surveys of residents with Neurodegenerative Diseases staff, families, and others) for residents who live in the specialty unit. The facility shall evaluate the effects of its admission criteria on its success in achieving its goals and objectives for the unit and report its findings to the department no later than ninety days following the end of the calendar year, annually through calendar year 2021.

2. At a minimum, for residents admitted to the unit, there shall be documented evidence in the resident's medical record that:

(i) the resident has been diagnosed with Neurodegenerative Disease based on a medical evaluation by a physician as determined by highly suggestive family history, neurological testing, genetic testing when available, formal consultation setting and/or formal neurological diagnostic consultation.

(ii) the resident cannot be managed and is not safe, and his or her needs cannot be met, in an available, less restrictive setting; and

(iii) the resident has the ability to benefit from the specialized care and services available in the unit.

(c) Assessment and Care Planning.

1. Any assessment of a potential resident must include the admission criteria described in paragraph (2) of subdivision (b). Where feasible, one or more members of the staff of the specialty unit shall conduct an evaluation of the home or current residence, living situation or inpatient setting of the future resident and his or her family prior to admission to discuss care needs. For purposes of this paragraph, “feasible” means the resident’s home or other setting is within reasonable travel distance (in terms of round trip travel time) from either the facility or the home(s) of the staff member(s) conducting the home evaluation. Results of an evaluation shall be used to identify preliminary approaches and interventions appropriate for the resident for purpose of preparing a resident’s care plan.

2. A care plan shall be prepared by the interdisciplinary resident care team for each resident, taking into account input from the resident and the resident’s family or caregivers, in conformance with the timeframes set forth in section 415.11 of this Part. Each resident’s care plan shall include care and services that are therapeutically beneficial to the resident, appropriate to the resident’s interests and selected by the resident or resident’s caregiver as appropriate. The care plan may require environmental accommodations, as well as results from any evaluation of the home or current residence, living situation, or inpatient setting of the resident.

3. Based on the resident's response to therapeutic interventions, as well as the progression of the disease and its impact on the resident's functioning, health and psychosocial status, the resident shall be reassessed and the care plan, including the discharge plan described in the next subsection hereof, shall be reviewed and modified at least once a month for the first three months following admission and then quarterly or upon any significant change in the resident's condition thereafter. The care plan shall be reviewed by at least three members of the interdisciplinary resident care team and shall include at least one certified nurse aide who is assigned to the resident on a permanent basis.

4. Facility or unit staff shall initiate a discussion of advance directives in accordance with the provisions of section 400.21 of this Subchapter with the resident and the resident's family member or other adult, consistent with such section, as soon as practicable following the decision to admit the resident to the unit.

(d) Discharge.

1. The facility shall develop written discharge criteria for the specialty unit, which at a minimum shall address the provisions of paragraph (5) of this subdivision.

2. The resident and his or her family and caregivers shall be notified of discharge criteria upon admission.

3. A written discharge plan shall be developed within 30 days of admission for each resident as part of the overall care plan and shall include input from all professionals

caring for the resident, the resident's family and caregivers, as appropriate, and any outside agency or resource anticipated to be involved with the resident following discharge. The discharge plan shall be reviewed and modified at least once a month for the first three months following admission and then quarterly or upon any significant change in the resident's condition thereafter.

4. When the interdisciplinary resident care team determines that discharge of a resident to another facility or community-based program is appropriate, a discharge plan shall be implemented which is designed to assist and support the resident, family and caregivers in the transition to the new setting. The resident, his or her family, and caregivers, as appropriate, shall receive preparation for discharge from the specialty unit through the facility's educational and counseling services.

5. The resident shall be discharged to a less restrictive setting when he or she no longer meets the minimum admission criteria for the unit set forth in paragraph (2) of subdivision (b) of this section or meets other discharge criteria established pursuant to paragraph (1) of this subdivision.

6. The facility shall evaluate the effects of its discharge criteria on its success in achieving its goals and objectives for the unit and report its findings to the department no later than ninety days following the end of the calendar year, annually through calendar year 2021.

7. (i) The facility shall have a written agreement with a general hospital or hospitals providing for the transfer of residents in need of emergency or acute inpatient care services. Such hospital(s) shall have expertise in caring for individuals with Neurodegenerative Diseases, except in cases where a general hospital with such expertise is not available within a distance and time considered reasonable by accepted emergency medical standards.

(ii) In the event a resident of a specialty unit requires transfer to a general hospital:

(a) When feasible and practicable, a resident who is transferred to a hospital shall be accompanied by an informed member of the program's direct care staff to ensure continuity of care. For purposes of this paragraph, "feasible" means that round trip travel time between the facility and the hospital is reasonable.

(b) When it is not feasible for a staff member to accompany the resident to the hospital, the resident's physician, or the specialty unit's medical director, or their designee, shall communicate with a physician or another health care practitioner at the receiving hospital at the time of the transfer.

(c) In either case, the staff member or physician shall provide to the receiving hospital appropriate documentation and other information that may be needed at the time of transfer to ensure continuity of care.

(d) The resident shall be given priority readmission status to the unit as his or her condition may warrant.

(e) All transfers shall be conducted in compliance with all other applicable law, including without limitation, section 415.3(h) of this Title.

(e) Program/Unit Staffing Requirements.

1. The facility shall maintain a level of direct care staff to residents that is appropriate for the required degree of care for the residents in the program unit.

2. The facility shall ensure that any direct care staff assigned to the unit have been thoroughly trained and educated with regard to the special needs of unit residents, are competent to work in the unit, and are familiar to unit residents.

3. The assignment of direct care staff must be sufficient to enable timely and appropriate care as determined by resident assessment and to protect both resident and staff safety. In addition to the staff assigned to the unit as specified in this subdivision, the facility shall make available other staff as necessary for the provision of care and services set forth in each resident's care plan.

4. The unit shall be managed by a program coordinator who has formal education, training and experience in the administration of a program that focuses on the care and

management of individuals with Neurodegenerative Diseases. The program coordinator shall be dedicated only to the specialty unit. The program coordinator shall be responsible for the operation and oversight of the program. Other responsibilities of the program coordinator shall include:

(i) planning for and coordination of direct care and services;

(ii) screening prospective admissions;

(iii) developing and implementing in-service and continuing education programs, in collaboration with the interdisciplinary resident care team, for all staff in contact or working with these residents;

(iv) participating in the facility's decisions regarding resident care and services that affect the operation of the unit; and

(v) ensuring the development and implementation of a program plan and policies and procedures specific to this program.

5. A physician who preferably has specialized training in the care of individuals with Neurodegenerative Diseases shall be responsible for the medical direction and medical oversight of this program and shall assist with the development and evaluation of policies and procedures governing the provision of medical services in this unit. If, at the time the

physician is appointed as medical director of the unit, he or she does not have experience in providing care to individuals with Neurodegenerative Diseases, he or she shall have access to physicians who do have such experience.

6. A psychiatrist shall be available on staff or on a consulting basis (including via telemedicine in conformance with applicable law) to the residents and to the program at a level consistent with residents' care plans. The facility shall exercise best efforts to utilize a psychiatrist who has clinical experience working with individuals who have Neurodegenerative Diseases.

7. A clinical psychologist or a licensed clinical social worker shall be available on staff or on a consulting basis (including via telemedicine in conformance with applicable law) to staff, residents, and residents' family members and caregivers at a level consistent with residents' care plans. The facility shall exercise best efforts to utilize a clinical psychologist or a licensed clinical social worker who has clinical experience working with individuals who have Neurodegenerative Diseases.

8. A social worker shall be available either on staff or on a consulting basis to work with the residents, staff and family as needed. The facility shall exercise best efforts to utilize a social worker who has experience working with individuals who have Neurodegenerative Diseases.

9. There shall be at least one registered professional nurse readily available during each

shift in the unit. The facility shall exercise best efforts to utilize registered professional nurses who have training and experience in caring for individuals with Neurodegenerative Diseases. This registered professional nurse may not be the specialty unit program coordinator required under paragraph (4) of this subdivision.

10. A therapeutic recreation specialist certified by a nationally recognized body which is acceptable to the department shall be responsible for the therapeutic recreation program.

11. A respiratory therapist shall be available to residents who are no longer able to maintain normal oxygen and carbon dioxide levels.

(f) Program/Unit Service and Environmental Requirements.

1. The program shall consist of a variety of medical, behavioral, counseling, recreational, exercise, nutritional and other services appropriate to the needs of each individual resident.

2. Specific services that shall be available to residents who need them include but are not limited to: neurology; pulmonary specialist; psychotherapy; physical, occupational, respiratory and speech therapy; specialized eating and nutritional interventions to maximize independence and prevent unplanned weight loss and dehydration; technology to enable the resident to communicate effectively with staff, family members, caregivers, friends, and other residents; and oral care. Consults as needed shall be provided by but are not limited to surgical, podiatry, optometry, ophthalmology, orthopedic, cardiac,

gastroenterology, dental, and hearing licensed professionals.

3. The therapeutic recreation program shall incorporate the principles of rehabilitation, occupational, physical, nutritional, and speech therapies.

4. Appropriate activities that accommodate individual residents' interests shall be available at times that accommodate their waking hours.

5. Support groups for staff, residents, and residents' family members and caregivers shall be established and facilitated by the social worker or other counseling professional.

6. The environment shall be customized to meet the needs and characteristics of residents and minimize injuries to residents and staff.

(i) Each resident's living space shall be customized to safely accommodate his or her specific movement and motor control characteristics, and changes in movement and motor control characteristics as the resident's disease evolves.

(ii) Such customization may include, but is not limited to, padding around hard surfaces that could harm the resident, staff or visitors; self-protective equipment such as soft helmet, elbow and knee pads; broda chairs (including shower/commode, bariatric, geriatric and glider chairs) with HD special padding if needed; and adequate space to accommodate high amplitude involuntary movements without injury to either the resident,

staff or visitors.

(iii) The unit shall include, in their new construction designs, small recreational and dining room areas where residents can be with their families in privacy and comfort.

(iv) Units shall include central bathing and toilet facilities that can accommodate two-person assists. In-room toilets and bathing accommodations shall be modified or restricted to ensure resident safety and privacy as described in (i) and (ii).

7. The unit shall be equipped and staff shall be trained as necessary for the provision and management of non-invasive ventilation for residents for whom this service is appropriate. Supervision shall be provided by a respiratory therapist and pulmonary specialist.

8. Residents shall not be prevented from participating in research projects and clinical trials that have been approved by an Institutional Review Board (IRB) that is registered with the federal Office of Human Research Protection (OHRP) in the United States department of Health and Human Services and in compliance with the human subjects research requirements at 45 CFR Part 46 as determined by OHRP. To the extent practicable, facilities may facilitate residents' participation in such research and trials by, for example, becoming trial sites, providing transportation to the trial site, providing assistance to enroll in the research, and working with families to facilitate participation.

9. The facility shall provide outdoor access to residents.

(g) Program/Unit Training Requirements

1. The facility shall ensure that all staff assigned to the direct care of the residents have pertinent experience or have received training in the care and management of people with Neurodegenerative Diseases.

2. Training shall be appropriate to the functions and responsibilities of specific staff in the unit and shall include but not be limited to:

(i) the Neurodegenerative Disease itself, e.g., signs and symptoms, genetics, diagnosis, management, progression/history of the disease, prognosis and epidemiology;

(ii) how each type of staff can contribute to better quality of care and quality of life for residents;

(iii) injury prevention for the resident, staff and visitors;

(iv) creating an organized environment that minimizes stressors, maintains routines and encourages/maximizes independent functioning and decision-making;

(v) ensuring adequate hydration and nutrition; and

(vi) providing and encouraging cognitive stimulation and socialization through passive

and active participation in appropriate activities.

3. Families and informal supports, including the resident's friends and caregivers, shall also have access to this training as appropriate to their activities in the unit.

4. The facility shall ensure that educational programs are conducted for staff who do not provide direct care but who come in contact with the residents on a regular basis such as housekeeping and dietary aides. The educational programs shall familiarize staff with the goals of the specialty unit and the needs of residents with Neurodegenerative Diseases.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Public Health Law (PHL) section 2803(2)(v) provides that the Public Health and Health Planning Council shall adopt rules and regulations, subject to the approval of the Commissioner of Health, governing the standards and procedures followed by nursing homes which, at a minimum, must meet federal standards.

Legislative Objectives:

The legislative objective of PHL Article 28 includes the protection of the health of the residents of the State through the efficient provision and proper utilization of health services of the highest quality at a reasonable cost. The proposed amendments are consistent with this objective through the development of specialty units designed to address the unique needs of individuals with Neurodegenerative Disease and help them maintain or attain the highest practicable level of physical, affective, behavioral and cognitive functioning.

Needs and Benefits:

The purpose of the proposed amendments to 10 NYCRR Part 415 is to provide regulatory standards for nursing home specialty care units for people with Neurodegenerative Diseases. The environmental and care needs for nursing home residents with Neurodegenerative Diseases, at least before the end stages of the disease, often vary from those of other populations in need of nursing home care today. The proposed standards

do not codify clinical pathways and interventions as these may change over time. Rather, they describe the service and environmental needs of people with Neurodegenerative Diseases and the nursing home's responsibilities to meet the resident's needs as well as, to a certain extent, their families' needs.

Four nursing homes have taken steps to create specialty units for people with Neurodegenerative Diseases. Specifically, the following facilities either have already established specialized care units for people with Neurodegenerative Diseases or have submitted Certificate of Need (CON) applications to do so:

- Terence Cardinal Cooke Health Care Center – an established 48-bed unit in New York City;
- Ferncliff Nursing Home – an established 38-bed unit in Rhinebeck;
- Victoria Home – CON submitted for a 12-bed unit in Ossining; and
- Sitrin Health Care Center – CON submitted for a 32-bed unit in New Hartford.

These four facilities will serve as a statewide resource for individuals with Neurodegenerative Diseases, leading to better service for people living in New York and repatriation of out-of-state residents to nursing homes that are closer to their home communities and families. For example, there are currently about 50 Medicaid-eligible New Yorkers with Huntington's disease living in out-of-state nursing homes. Many of these New Yorkers would not have had to seek nursing home care outside of New York had there been a nursing home capable of caring for them closer to their home communities and families.

Costs to Regulated Parties:

Nursing homes are not required to implement the proposed regulation since the operation of specialty units is voluntary. A nursing home may incur costs associated with the construction of a specialty unit for individuals with Neurodegenerative Diseases. The department will establish Medicaid reimbursement rates for nursing home providers for delivering appropriate services through the specialty units. A facility is unlikely to apply for approval to operate a specialty unit if it does not expect that doing so will be cost effective.

Costs to Local Governments:

Nursing homes are not required to implement the proposed regulation, as the operation of specialty units is voluntary. To the extent a nursing home operated by a local government seeks approval to operate a specialty unit, the costs will be the same as for other regulated parties who operate such units.

Costs to State Government:

The proposed rule does not impose any new costs on state government, as regulation of specialty units will be managed as part of the department's overall nursing home surveillance activities.

Local Government Mandates:

The proposed amendments do not impose any program, mandate, service, duty or

responsibility upon any county, city, town, village, school district, fire district or other special district. Implementation is voluntary.

Paperwork:

Nursing homes interested in operating a specialty unit for individuals with Neurodegenerative Diseases would need to submit and receive approval of a CON application. In addition, nursing homes are already required to maintain compliance with certain reporting, record-keeping obligations and staffing under federal and State requirements. For nursing homes interested in providing specialty care for Neurodegenerative Diseases, which is voluntary, the proposed regulations require additional reporting on admissions, discharges and outcomes and compliance with certain staffing requirements as necessary to meet the objectives of the specialty units. This additional reporting will allow the department to assess compliance and implementation.

Duplication:

The proposed regulation does not duplicate, overlap or conflict with any other State or federal rules and regulations, but sets forth additional standards for care in specialty units for individuals with Neurodegenerative Diseases.

Alternatives:

“Scatter beds” as opposed to specialty unit beds were considered but rejected. Specialty units are preferable from a clinical perspective, as they will enable residents to be cared for by an interdisciplinary care team in a customized environment, and likely will be

more cost effective in providing residents with the enhanced level of service required.

Federal Standards:

The proposed amendments exceed federal standards by setting forth additional standards for care in specialty units for individuals with Neurodegenerative Diseases.

Compliance Schedule:

As implementation of the proposed amendments is voluntary, there is no compliance schedule. CON applicants will determine a compliance schedule in conformance with the scope of changes needed in their facilities to accommodate the specialty unit regulatory requirements.

Contact Person:

Katherine Ceroalo
NYS Department of Health
Bureau of House Counsel, Regulatory Affairs Unit
Corning Tower Building, Room 2482
Empire State Plaza
Albany, NY 12237
(518) 473-7488
(518) 473-2019 FAX
REGSQNA@health.ny.gov

REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS

Effect of Rule:

Implementation of this rule is voluntary, subject to submission and approval of a Certificate of Need (CON) application. It is not known how many small nursing homes (those with less than 100 beds), or how many nursing homes owned and operated by counties and cities, will choose to implement the proposed regulation.

Compliance Requirements:

Nursing homes are already required to maintain compliance with record-keeping obligations and staffing under federal and State requirements. For nursing homes interested in providing specialty care for Neurodegenerative Diseases, which is voluntary, the proposed regulations require additional reporting on admissions, discharges and outcomes and compliance with certain staffing requirements as necessary to meet the objectives of the specialty units. This additional reporting will allow the department to assess compliance and implementation.

Professional Services:

Implementation is voluntary. The professional staff needed to comply with the proposed specialty unit regulations do not vary from the professional staff required to comply with current nursing home rules and regulations, except that the proposed regulation expresses a preference for professional staff with experience in meeting the unique needs of individuals with Neurodegenerative Diseases.

Compliance Costs:

Implementation of the proposed regulation is voluntary, subject to submission and approval of a CON application. A nursing home may incur costs associated with the construction of a specialty unit for individuals with Neurodegenerative Diseases. The department will establish Medicaid reimbursement rates for nursing home providers for delivering appropriate services through the specialty units. A facility is unlikely to apply for approval to operate a specialty unit if it does not expect that doing so will be cost effective.

Economic and Technological Feasibility:

The proposed regulation is economically and technically feasible. In particular, implementation is voluntary, and a nursing home is unlikely to propose construction and operation of a specialty unit unless it is cost-effective for the facility.

Minimizing Adverse Impact:

As implementation of the proposed rule is voluntary, a nursing home is unlikely to propose construction and operation of a specialty unit unless it is cost-effective for the facility.

Small Business and Local Government Participation:

The department created a stakeholder advisory group, which helped guide the development of the proposed regulation. The members of this group include representatives of small businesses, nursing homes specifically interested in serving

individuals with Neurodegenerative Diseases, as well as family members and advocates for individuals with Neurodegenerative Diseases, and clinical experts with experience caring for such individuals. In addition, a copy of this notice of proposed rulemaking will be posted on the department's website. The notice will invite public comments on the proposal and include instructions for anyone interested in submitting comments, including small businesses and local governments.

The proposed regulation provides that the facility shall make information and data available to assist the department in evaluating the effectiveness of specialty units and their impact on outcomes for individuals with Neurodegenerative Diseases. Such evaluation will be conducted four years after the adoption of the proposed regulations and the department will consider whether changes are warranted to the programmatic requirements. This period of time is designed to ensure that there is sufficient experience to allow the department to assess implementation.

RURAL AREA FLEXIBILITY ANALYSIS

Types and Estimated Numbers of Rural Areas:

While there are a number of nursing homes located in rural areas throughout the State, implementation of the proposed rule is voluntary. Nursing homes in rural areas will not be affected differently than those in non-rural areas.

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

Nursing homes are already required to maintain compliance with certain reporting, record-keeping obligations and staffing under federal and State requirements. For nursing homes interested in providing specialty care for Neurodegenerative Diseases, which is voluntary, the proposed regulations require additional reporting on admissions, discharges and outcomes and compliance with certain staffing requirements as necessary to meet the objectives of the specialty units. This additional reporting will allow the department to assess compliance and implementation.

Costs:

Implementation of the proposed rule is voluntary, subject to the submission and approval of a Certificate of Need application. A nursing home may incur costs associated with the construction of a specialty unit for individuals with Neurodegenerative Diseases. The department will establish Medicaid reimbursement rates for nursing home providers for delivering appropriate services through the specialty units. A facility is unlikely to apply

for approval to operate a specialty unit if it does not expect that doing so will be cost effective.

Minimizing Adverse Impact:

As implementation of the proposed rule is voluntary, a nursing home is unlikely to propose construction and operation of a specialty unit unless it is cost-effective for the facility.

Rural Area Participation:

The department created a stakeholder advisory group, which helped guide the development of the proposed regulation. The group's members are located throughout the state and include family members and advocates for individuals with Neurodegenerative Diseases, clinical experts with experience caring for individuals with Neurodegenerative Diseases, and representatives of nursing homes interested in serving such individuals. In addition, a copy of this notice of proposed rulemaking will be posted on the department's website. The notice will invite public comments on the proposal and include instructions for anyone interested in submitting comments, including individuals and entities located in rural areas.

The proposed regulation provides that the facility shall make information and data available to assist the department in evaluating the effectiveness of specialty units and their impact on outcomes for individuals with Neurodegenerative Diseases. Such evaluation will be conducted four years after the adoption of the proposed regulations and

the department will consider whether changes are warranted to the programmatic requirements. This period of time is designed to ensure that there is sufficient experience to allow the department to assess implementation.

**STATEMENT IN LIEU OF
JOB IMPACT STATEMENT**

No Job Impact Statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment, that it will not have an adverse impact on jobs and employment opportunities.



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 Midwood 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:

Table with 2 columns: Category, Amount. Rows: Revenues (\$32,596,594), Expenses (32,192,380), 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.

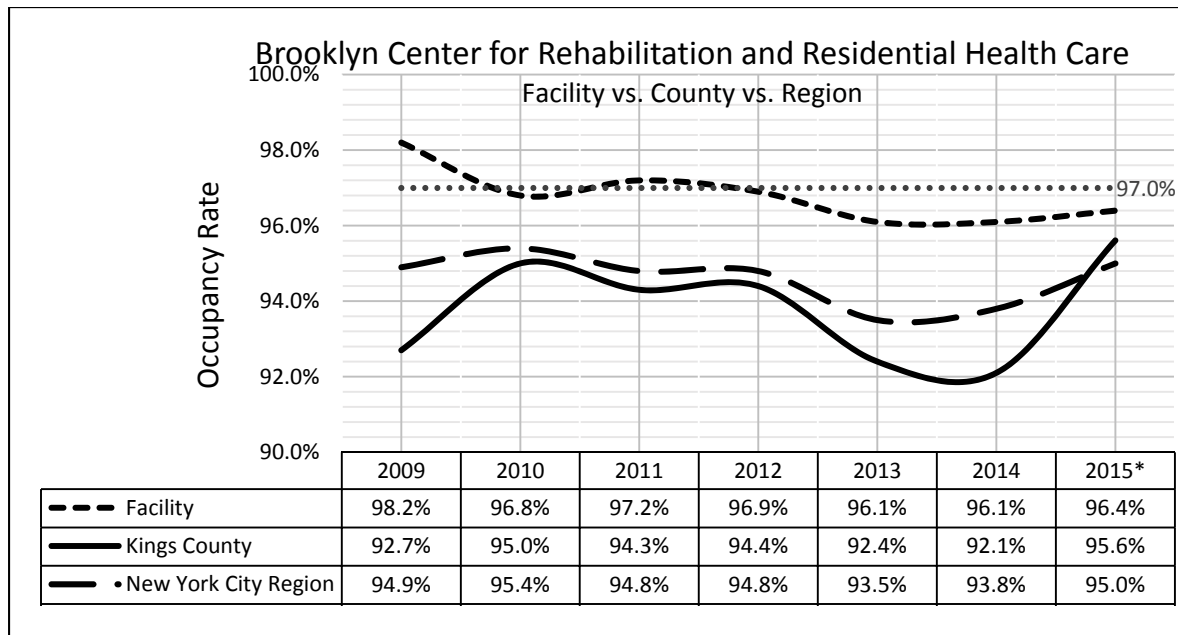
Analysis

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%
5-mile Radius Total		3,927	95.5%	95.5%

*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>
Total Project Cost	\$79,370,437
Total Reimbursable Project Cost*	\$74,594,012

* 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 (2012-1st 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>

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>
Revenues: Inpt.						
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
Revenue: Outpt.						
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
Total Revenue		\$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.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 6th day of October, 2016 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to request a three year extension of its limited life for CON #091172, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

161389 E

The Burdett Care Center

APPROVAL CONTINGENT UPON:

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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



**Project # 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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 6th day of October, 2016 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Albany Medical Center as the active parent and co-operator of Saratoga Hospital, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

161400 E

Saratoga Hospital

APPROVAL CONTINGENT UPON:

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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



**Project # 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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 6th day of October, 2016 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to disestablish NYHB, Inc. as the active parent and co-operator of the hospital. 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, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

162007 E

FACILITY/APPLICANT:

New York Community Hospital of Brooklyn, Inc.

APPROVAL CONTINGENT UPON:

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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



**Project # 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
<i>**Brian Regan, PhD</i>	Trustee
<i>**Sharon Greenberger</i>	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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 6th day of October, 2016 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to disestablish NYHB, Inc. as the active parent and establish NYP Community Programs, Inc. as the new active parent and co-operator of the New York Methodist Hospital, and change the hospital's corporate name to New York-Presbyterian/Brooklyn Methodist, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

162009 E

New York Methodist Hospital

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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



Project # 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, Bronxville (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, Bronxville (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.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 6th day of October, 2016 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to disestablish NYP Community Services, Inc. as the active parent, establish NYP Community Programs, Inc. as the new active and co-operator of the New York-Presbyterian/Lawrence Hospital, and change the hospital's corporate name, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

162008 E

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

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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



**Project # 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 (2013-1st full year) and Year 3 (2015) based on CON 092188.

CON 092188- Procedures	Year 1		Year 3	
Carnegie Hill Endo	Projected	Actual	Projected	Actual
Total	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.

Payor	CON 092188 Projected Year 3 (2015)	Actual Year 3 (2015)	CON 161415 Projections Years 1 & 3
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%
Total	100%	100%	100%

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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of section 2801-a of the Public Health Law, on this 6th day of October, 2016, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby approves the following application for indefinite life for CON #092188, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

161415 E

FACILITY/APPLICANT:

Carnegie Hill Endo, LLC



**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 5th 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 (2012-1st 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	Year 1		Year 3	
	Projected	Actual	Projected	Actual
Manhattan Endoscopy Center				
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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 6th day of October, 2016 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to for indefinite life for CON #101024, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

161456 E

Manhattan Endoscopy Center, LLC

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]

APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



Project # 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 ¹	Total County Residents in Treatment ¹
		2,984	3,086	3,460	3,373
Free-Standing Dialysis Stations		2014	2016	2019	
A	Stations Required to Treat ²	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

¹Based upon an estimated 3% accrued annual increase

²Based 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.

Program Analysis

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).

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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 6th day of October, 2016 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a 21-station end stage renal dialysis center to be located at 1000 Pelham Parkway South, Bronx in the Morningside Nursing Home, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

161243 B

Cassena Care Dialysis at Morningside

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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



Project # 162141-E

The Bethel Methodist Home

Program: Residential Health Care Facility
Purpose: Establishment

County: Westchester
Acknowledged: August 24, 2016

Executive Summary

Description

The Bethel Methodist Home, a New York not-for-profit corporation, requests approval to be established as the new operator of Westchester Meadows, a 20-bed, voluntary not-for-profit, Article 28 Residential Health Care Facility (RHCF) located at 55 Grasslands Road, Valhalla (Westchester County). The facility operates a 35-slot Adult Day Health Care Program (ADHCP) onsite, which is also part of this transaction. The RHCF and ADHCP are the Article 28 assets of an Article 46 Continuing Care Retirement Community (CCRC) known as Westchester Meadows, also at the same location, operated by Hebrew Hospital Senior Housing, Inc., a not-for-profit corporation. The CCRC, which includes 120 independent living units and ten enriched housing units, is currently in bankruptcy proceedings. Upon approval of this application, the applicant will operate the RHCF and ADHCP under the name The Bethel Methodist Home.

On December 9, 2015, Hebrew Hospital Senior Housing, Inc. filed a voluntary petition of reorganization under Chapter 11 of the Bankruptcy Code. The Court Order of The United States Bankruptcy Court for the Southern District of New York, filed on August 19, 2016, authorized the sale of the CCRC to The Bethel Methodist Home, Inc. or its designee, subject to the terms of a draft Asset Purchase Agreement (APA) dated as of August 11, 2016. The Bethel Methodist Home, Inc. and the Hebrew Hospital Senior Housing, Inc. entered into the APA contingent upon the "Final Order" from the Bankruptcy Court for the Southern District of New York, Manhattan Division (Case 15-13264-MEW). Per the Court Order of Sale, as of the

Closing, the transfer of the assets to the Buyer will be legal, valid, and free and clear of all liens, claims, rights, liabilities, and encumbrances. The final executed version of the APA will reflect a purchase price for the CCRC's assets, inclusive of the Article 28 RHCF and ADHCP, of \$16,114,000.

BMH, Inc. is the passive parent of six affiliated New York corporations that provide a continuum of care to seniors in Westchester County. Five of the corporations are voluntary not-for-profits that collectively operate two RHCFs with a total of 243 beds, two ADHCPs with a total of 45 slots, a 150 patient capacity LTHHCP, 50 independent senior living apartments (IL), a 125-bed assisted living Enriched Housing Program (EH), an eight-bed inpatient hospice in partnership with Phelps Memorial Hospital, a Respite Care program and a Licensed Home Care Services Agency. A sixth for-profit entity that provides supplemental nursing services is also an affiliate. The Bethel Methodist Home is the corporate entity that currently provides management services to all the Bethel entities and the proposed operator of the subject RHCF and CCRC. These six corporate entities, collectively referred to as The Bethel Homes, are located in Ossining and Croton-on-Hudson, and currently serve over 400 seniors. BFA Attachment A provides an organizational chart of the affiliated Bethel Homes entities.

Subsequent to approval by the Public Health and Health Planning Council (PHHPC) for establishment of The Bethel Methodist Home as the new operator of the Article 28 RHCF and ADHCP, approval must also be obtained from

the Continuing Care Retirement Community Council to establish The Bethel Methodist Home as the new operator of the Article 46 CCRC. The Continuing Care Retirement Community Council may not act on the certificate of authority application for the full continuing care retirement community project until Article 28 approval has been granted by the PHHPC.

- o \$8,500,000 Series B taxable, 7.5% fixed rate, 30-year term and 36-months interest only; and
- o \$9,500,000 Series C taxable, 6.5% unspecified as to fixed or variable rate, 7-year term with repayment from a sweep of days cash on hand in excess of 200 days quarterly.

BFA Attachment E presents the financial summaries for the two Bethel affiliated RHCFS.

The proposed project term sheet identifies Cross Point Capital LLC as the underwriter, Hamlin Capital Management LLC as the bond purchaser, Hamlin Capital Advisors, LLC as a special purpose financial advisor, and Westchester County Local Development Corporation as issuer of the bonds.

OPCHSM Recommendation
Contingent Approval

Need Summary

Continuing Care Retirement Community nursing home beds are not subject to a need methodology, and therefore there will be no need recommendation for this project.

To prevent any adverse effects upon the Article 28 entities currently within The Bethel Homes corporate structure, the Department is requiring that all financial and other support provided to the CCRC must come originally and directly from the proposed CCRC owner, The Bethel Methodist Home, and not via a repayment of outstanding inter-company debt owed by the current Bethel Article 28 entities to The Bethel Methodist Home.

Program Summary

The CCRC will operate under the name The Bethel Methodist Home after the change of ownership has been completed. No negative information has been received concerning the character and competence of the proposed applicants identified as new members. No changes in the program or physical environment are proposed in this application. The review and recommended approval of this application is in compliance with the Bankruptcy Court sale motion for Westchester Meadows CCRC. 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).

The applicant states that the funds will be used as follows:

- \$16,114,000 to acquire the Westchester Meadows CCRC, including the Article 28 assets;
- \$6,000,000 for capital expenditures (held in a trustee account for approved purposes);
- \$4,000,000 for working capital (the CCRC is currently operating at a deficit);
- \$500,000 for a liquid reserve fund that the New York State Department of Financial Services requires; and
- \$1,900,000 to cover the cost of issuance (various legal fees, issuance fees and advisor costs).

Financial Summary

There are no project costs associated with this application. The acquisition price for CCRC facility, inclusive of the Article 28 assets, is \$16,114,000. However, to accommodate funding for necessary physical plant capital expenditures, operating reserve requirements, working capital needs, and cost of issuance (legal and other fees), the total proposed funding for the CCRC project is \$28,514,000 to be financed as follows:

The projected budget is as follows:

- \$2,000,000 via equity by The Bethel Methodist Home;
- \$26,514,000 from 2016 revenue bonds comprised of the following:
 - o \$8,514,000 Series A, tax-exempt, 7% fixed rate, 30-year term and 36-months interest only;

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$2,474,243	\$2,782,976
Expenses	<u>2,173,500</u>	<u>2,284,802</u>
Gain/(Loss)	\$300,743	\$498,174

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an Article 46 Certificate of Authority application to transfer ownership of the CCRC to Bethel Methodist Home. [LTC]
2. Submission of revised by-laws for The Bethel Methodist Home which provides for a Board of Directors comprised of seven directors, consistent with the overall management structure. [LTC]
3. Submission of the consulting and service agreement between Bethel Methodist Home and SK Advisors. [LTC]
4. Submission of a copy of the "Final Order" from the Bankruptcy Court for the Southern District of New York (Case 15-13264-MEW), acceptable to the Department of Health. [BFA]
5. Submission documentation of approval by the New York State Department of Financial Services of the financial feasibility of the Article 46 Continuing Care Retirement Community, which includes the Article 28 skilled nursing home operation. [BFA]
6. Submission of an executed asset purchase agreement, acceptable to the Department of Health. [BFA]
7. Submission of a bond resolution, acceptable to the Department. Included with the submitted bond resolution must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
8. Submission of documentation verifying the source of the required \$2 million equity contribution for the acquisition of the Article 46 Continuing Care Retirement Community, acceptable to the Department of Health. [BFA]
9. Submission of documentation verifying the source of the working capital equity requirement for the Article 28 facility, acceptable to the Department of Health. [BFA]
10. Submissions of an executed policy statement, acceptable to the Department of Health, that The Bethel Methodist Home is the only entity within the Bethel organization that will provide financial support to the Continuing Care Retirement Community currently known as Westchester Meadows. [BFA]
11. Submission of an executed policy statement, acceptable to the Department of Health, that The Bethel Methodist Home's ownership and operation of the Continuing Care Retirement Community, currently known as Westchester Meadows, will not negatively impact the financial status of any other Article 28 entity currently within the Bethel organization. [BFA]
12. Submission of a photocopy of a signed Certificate of Amendment of the Certificate of Incorporation of the Applicant, which is acceptable to the Department. [CSL]
13. Submission of a photocopy of the Applicant's Bylaws which are acceptable to the Department. [CSL]
14. Submission of a photocopy of a signed Certificate of Amendment of the Certificate of Incorporation of BMH, Inc., which is acceptable to the Department. [CSL]
15. Submission of a photocopy of BMH, Inc.'s Bylaws which are acceptable to the Department. [CSL]
16. Submission of a photocopy of the updated and signed Asset Purchase Agreement, which is acceptable to the Department. [CSL]
17. Submission of photocopies of all Administrative Services Agreements, Consulting Agreements, etc. which the Applicant is or will be a party to. [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. The Article 28 license must operate as part of an Article 46 Continuing Care Retirement Community with a valid Certificate of Authority. [LTC]
3. Receipt of all necessary approvals from the Bankruptcy Court for the transfer of the Article 28 license from Westchester Meadows to Bethel Methodist Home. [LTC]

Council Action Date

October 6, 2016

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Westchester Meadows	The Bethel Methodist Home
Address	55 Grasslands Road Valhalla, NY 10595	Same
RHCF Capacity	20	Same
ADHC Program Capacity	35	Same
Type of Operator	Voluntary	Voluntary
Class of Operator	Not-for-profit Corporation	Not-for-profit Corporation
Operator	Hebrew Hospital Senior Housing Inc.	The Bethel Methodist Home <u>Board of Directors</u> James Holden, Jr., Chairman Robert W. Elliot, Vice-Chairman Andrew Samalin, Treasurer James J. Campbell Rev. Dr. John E. Carrington Rev. Kevan Thomas Hitch Catherine Wissner, MD

Character and Competence – Background

Facilities Reviewed

Nursing Homes

Bethel Methodist Home, Inc.	09/2006 to present
Bethel Nursing Home	09/2006 to present
Bethel Nursing and Rehabilitation Center	09/2006 to present

Hospital

NY Methodist Hospital	09/2006 to 01/2012
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Enriched Housing Program

Living Independently for the Elderly	09/2006 to present
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Individual Background Review

James Holden, Jr. is a practicing attorney at the firm of Holden Brothers, PC, since June 1975. Mr. Holden has a license in good standing, and discloses that he has served on the boards of the following nursing related corporations:

Bethel Methodist Home, Inc.	01/1985 to present
Bethel Nursing Home	01/1985 to present
Bethel Nursing and Rehabilitation Center	01/1985 to present
Living Independently for the Elderly	01/1985 to present

Robert Elliott works as a consultant. Mr. Elliott was employed by the New York Department of State from 2007 to 2009. Mr. Elliott discloses that he serves on the boards of the following nursing related corporations:

Bethel Methodist Home, Inc.	01/2000 to present
Bethel Nursing Home	01/2000 to present
Bethel Nursing and Rehabilitation Center	01/2000 to present
Living Independently for the Elderly	01/2000 to present

Catherine Wissner, MD has been working as Consulting Physician at Industrial Medicine Associates in White Plains since 2007. Dr. Wissner has a physician license in good standing. Dr. Wissner discloses that she serves on the boards of the following nursing related corporations:

Bethel Methodist Home, Inc.	01/2011 to present
Bethel Nursing Home	01/2011 to present
Bethel Nursing and Rehabilitation Center	01/2011 to present

Andrew Samalin is a principal in the investment management firm Samalin Investment Counsel, LLC, since 2007. Mr. Samalin indicates he is a Certified Financial Planner by the CFP Board of Standards and a stockbroker certified by the FINRA Series 7 and 63 licensing exams. Mr. Samalin is also certified as an enrolled agent in the IRS which permits him to represent taxpayers before the IRS. Mr. Samalin discloses that he serves on the boards of the following nursing related corporations:

Bethel Methodist Home, Inc.	01/2007 to present
Bethel Nursing Home	01/2007 to present
Bethel Nursing and Rehabilitation Center	01/2007 to present
Living Independently for the Elderly	01/2007 to present

Reverend John Carrington is a retired minister, with his most recent employment as interim pastor at Brooks Memorial United Methodist Church, and previously Commack United Methodist Church in 2008, and Grace United Methodist Church. Rev. Carrington discloses he serves on the boards of the following health related corporations:

Bethel Methodist Home, Inc.	01/2007 to present
Bethel Nursing Home	01/2007 to present
Brooklyn Methodist Home	01/2002 to 01/2012
NY Methodist Hospital	01/2002 to 01/2012

Reverend Kevan Thomas Hitch is a minister currently serving as pastor of Valhalla United Methodist Church. Rev. Thomas discloses he serves on the board of the nursing related corporation:

Bethel Methodist Home, Inc.	01/2006 to present
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Character and Competence - Analysis

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

A review of operations for the above reference facilities, for the period identified above, reveals the following:

- Bethel Methodist Nursing Home was fined \$12,000 pursuant to a Stipulation and Order NH-12-02 issued January 17, 2012 for surveillance findings on December 17, 2010. Deficiencies were found under 10 NYCRR 415.11(c)(2)(i-iii) Right to Participate Planning Care Revise CP and 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accident Hazards and Supervision.
- Bethel Nursing and Rehabilitation Center was fined \$2,000 pursuant to a Stipulation and Order NH-08-02 issued January 3, 2008 for surveillance findings on August 30, 2006 and January 30, 2007. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents and 10 NYCRR 415.12(c)(1)&(2) Quality of Care: Pressure Sores.
- NY Methodist Hospital was fined \$6,000 pursuant to a Stipulation and Order 07-08H issued April 2, 2007 for surveillance findings on December 22, 2006, related to the care of a newborn infant.

The review found that any citations noted above were properly corrected with appropriate remedial action.

Quality Review

Provider Name	Overall	Health Inspection	MDS Quality Measures
Westchester Meadows	*****	****	*****
Bethel Nursing And Rehab Center	**	***	****
Bethel Nursing Home, Inc.	****	****	****

Above ratings are based on CMS Provider Rating dated 8/3/16

Project Review

Westchester Meadows CCRC is a Public Health Law Article 46 facility that contains 120 independent living units, 12 enriched housing beds and 20 skilled nursing beds. The skilled nursing license also contains a 35 slot Adult Day Health Care Program (ADHCP) that operates on the campus. This application is part of a larger Article 46 Certificate of Authority application to transfer ownership of the entire CCRC to Bethel Methodist Home. This CON is requesting Public Health and Health Planning Council approval to transfer the Article 28 license of the CCRC to the new operator. The Article 46 Certificate of Authority application will be presented to the CCRC Council for approval under separate action as required by statute.

The Article 28 facility license for this facility was originally established as part of the Certificate of Authority of the Article 46 CCRC entity, therefore it cannot be licensed or operated separately from the CCRC entity. The Article 28 beds are intended to be used to provide care for CCRC independent living residents at such time as their long term care needs require such placement. A contingency and condition has been placed on this project to assure that the transfer of operations will only occur if the Article 46 Certificate of Authority application is approved and that the Article 28 license will continue to operate under the Article 46 Certificate of Authority post transaction.

In December of 2015, Westchester Meadows CCRC was placed in Chapter 11 Bankruptcy with the intent to facilitate a sale through the Bankruptcy proceeding. This application is the result of a motion by the Bankruptcy Court to authorize Bethel Methodist Home to file all necessary applications to receive the statutory approvals required to transfer all CCRC licenses to the new operator. Bethel Methodist Home will pay a cash consideration of approximately \$16.1 million to the Court which will be used to settle current CCRC debts through the bankruptcy process. In exchange the Court will transfer the facility and real property free and clear of any debt to be operated as a CCRC, subject to statutory licensing approvals. The Court has established a deadline of October 31, 2016 for Bethel Methodist Home to obtain all approvals required, establish final financing, and close on the facility thereby effectuating operational control.

The CCRC will be operated as Bethel Methodist Home after operations have been transferred. No changes in the program or physical environment are proposed in this application.

Conclusion

No negative information has been received concerning the character and competence of the proposed board members. 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, contingent approval is recommended.

Financial Analysis

Agreement of Sale

The applicant has submitted a draft asset purchase agreement to acquire substantially all of the "Seller" or the "Debtor" business assets, effective with approval of the PHHPC and the "Final Order" from the Bankruptcy Court for the Southern District of New York, Manhattan Division (Case 15-13264-MEW). The terms are summarized below:

Date:	TBD
Seller/Debtor:	Hebrew Hospital Senior Housing, Inc., d/b/a Westchester Meadows (Bankruptcy Case No. 15-13264-MEW)
Purchaser:	The Bethel Methodist Home, Inc. or its designee
Assets Transferred:	All rights, title and interest in the debtor's business assets pursuant to Bankruptcy Code Sections 363 and 365 of Title 11 of the United States Bankruptcy Code transferred free and clear. Included assets: all inventories, owned equipment, real property, assignable permits, business intellectual property (including goodwill), documents, telephone and remote access portals, purchase deposits, insurance policies, operating licenses, amended resident contracts, purchase receivables, real property tax refunds, and fixtures.
Excluded Assets:	Cash and equivalents, escrowed entrance fees, corporate records, capital stock, former resident contracts, leases, benefit plans, third party claims, and insurance benefits,
Assumed Liabilities:	Obligations and liabilities under amended resident contracts.
Purchase Price:	\$16,114,000
Payment:	\$330,000 escrow deposit (paid July 20, 2016) \$15,784,000 due at closing.

The purchase price will be paid via the issuance of Series 2016 Revenue Bonds to be issued through the Westchester County Local Development Corporation.

Under the terms of the Bankruptcy Court Order for the Sale, the applicant is not responsible for any outstanding Medicaid Assessment liabilities.

Operating Budget

The applicant has submitted the Article 28 operation's current year results for 2014 (2015 data is not presently finalized), and the projected first and third year operating budgets, in 2016 dollars, as summarized below:

	<u>Current (2014)</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	\$207.65	\$69,149	\$169.19	\$222,149	\$169.12	\$241,002
Medicare	\$589.09	458,312	\$450.02	771,781	\$450.11	837,648
Private Pay	\$180.91	900,569	\$449.96	1,375,082	\$449.99	1,543,464.
Other Operating		1,047		85,488		107,597
Non- Operating		0		19,743		53,265
Total Revenues		\$1,429,077		\$2,474,243		\$2,782,976

<u>Expenses</u>			
Operating	\$1,993,366	\$1,981,232	\$2,130,234
Capital	<u>6,768</u>	<u>192,268</u>	<u>154,568</u>
Total Expenses	\$2,000,134	\$2,173,500	\$2,284,802
Net Income/Loss)	<u>(\$571,057)</u>	<u>\$300,743</u>	<u>\$498,174</u>
Patient Days	6,089	6,084	6,716
Utilization %	83.41%	83.34%	92%

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

- The current year reflects the facility's 2014 RHCf inpatient revenues and expenses. The applicant indicated that they have not obtained data from Westchester Meadow that will allow a break out of the ADHCP; accordingly, they netted the 35-slot ADHCP out of the financial model. However, they indicated that the ADHCP is a breakeven program that generates \$1.8 million of revenues per year, 98% of which is from Medicaid, with the balance being private pay.
- The increase in the per diem private pay rate is related to the following three factors:
 - Westchester Meadows does not currently admit residents directly to the RHCf from the external community. Rather, residents transfer from the CCRC's IL or EH settings. Currently all residents at Westchester Meadows are under a Lifecare (Type A) or Modified Lifecare (Type B) residency agreement, under which they pay a reduced per diem private rate of \$181 per day for life (Type A) or for a period of 60 days (Type B).
 - For an initial period of seven years, Bethel/Westchester Meadows expects to admit residents both via internal transfer from the IL and/or EH settings and directly from the outside community. Those coming from outside the CCRC will pay a \$450 daily rate, which the applicant says is reasonable for Westchester County.
 - Going forward, Bethel/Westchester Meadows intends to offer only Modified Lifecare (Type B) and Fee-For-Service (Type C) residency agreements. No Lifecare (Type A) residency agreements will be offered. Therefore, over time the residents in the RHCf will be paying the higher private per diem rate.
- 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 and the forecasted rate is based on the applicant's experience.
- Other Operating income includes extra meals for residents and guests, parking fees, transportation services and other miscellaneous items.
- Non-operating income includes an allocation of investment income from accumulation of cash and other reserves from the entire CCRC operation. Investment income is assumed at a rate of 1% for short-term cash and 3% for longer-term investments.
- Expenses and staffing assumptions were based on the current year expenses and then adjusted for financing.
- Projected utilization for Year One and Year Three is 83.34% and 92%, respectively. Utilization for 2011-2014 has averaged around 89.17%; however, occupancy was 55% as of June 8, 2016.
- The expected increase in Medicare and Medicaid utilization is related to:
 - Direct admissions to the RHCf from the outside community, a portion of which are assumed to be Medicare and/or Medicaid residents;
 - Upon closing of the acquisition, Bethel/Westchester Meadows intends to aggressively market the entire Community, including the marketing the CCRC's EH and RHCf services. The applicant has longstanding relationships in the market with discharge planners and other referral sources and intends to leverage those relationships in an effort to increase occupancy in the EH and RHCf.
- The Private Pay days reduce over time due to the classification of residents.

- 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>
Medicaid	5.47%	21.58%	21.22%
Medicare	12.78%	28.19%	27.71%
Private Pay	<u>81.75%</u>	<u>50.23%</u>	<u>51.07%</u>
Total	100%	100%	100%

- The breakeven utilization is project at 73.2% for the first year.

Capability and Feasibility

There are no project costs associated with this application. The acquisition price for CCRC facility, inclusive of the Article 28 assets, is \$16,114,000. No amount has been specifically identified or determined as allocated to the purchase of the Article 28 assets of the CCRC. The proposed funding for the CCRC project totals \$28,514,000 to accommodate additional funds needed for capital expenditures, reserve requirements, working capital and cost of issuance fees. Financing consists of \$26,514,000 from 2016 revenue bonds, comprised of the following:

- \$8,514,000 Series A, tax-exempt, 7% fixed rate, 30-year term and 36-months interest only;
- \$8,500,000 Series B taxable, 7.5% fixed rate, 30-year term and 36-months interest only; and
- \$9,500,000 Series C taxable, 6.5% unspecified as to fixed or variable rate, 7-year term with repayment from a sweep of days cash on hand in excess of 200 days quarterly.

The proposed project term sheet list Cross Point Capital LLC as the underwriter, with Hamlin Capital Management LLC as the bond purchaser, Hamlin Capital Advisors, LLC as a special purpose financial advisor, and Westchester County Local Development Corporation as the bond issuer. The remaining \$2,000,000 will be funded via equity from The Bethel Methodist Home.

The applicant states the funds will be used as follows: \$16,114,000 to acquire Westchester Meadows CCRC; \$6,000,000 for capital expenditures (held in a trustee account for approved purposes); \$4,000,000 for working capital (the CCRC is currently operating at a deficit); \$500,000 for a liquid reserve fund that the New York State Department of Financial Services requires; and \$1,900,000 to cover the cost of issuance.

The working capital requirement for the Article 28 RHCF operation is estimated at \$362,250 based on two months of the first year RHCF operating expenses. The Bethel Methodist Home will fund half of the working capital requirement via proceeds from its bond offering and the remaining half from equity. BFA Attachment B shows that The Bethel Methodist Home has sufficient liquid resources to meet this requirement, provided that the "Due from related parties" amount is included in the calculation. These inter-company receivables relate to administrative and management services provided by the applicant to the other Bethel entities, recorded on a cost-to-provide basis.

To prevent any adverse effects upon the other Article 28 entities currently within the Bethel Homes corporate structure, the Department is requiring that all financial and/or other support provided to the CCRC, including the CCRC's Article 28 component, must come originally and directly from the proposed owner, The Bethel Methodist Home, and not via a repayment of outstanding inter-company debt owed by the current Bethel Homes Article 28 entities to The Bethel Methodist Home.

Westchester Meadows' Article 28 operation projects the first and third years will show a surplus of \$300,743 and \$498,174, respectively. The budget appears reasonable provided that their marketing efforts, utilization expectations and payor assumptions bear out over time. The Department's request for the pro forma balance sheet for the Article 28 operation remains outstanding.

BFA Attachment C is Westchester Meadows' financial forecast, which provides cautionary projections for the applicant entering into a highly leveraged transaction, incurring deficits in 2016 and 2017, and achieving close to breakeven in 2018. If the losses are greater or persist longer than forecasted, serious financial jeopardy exists. The applicant plans to reposition the facility's place in the market by offering only Modified Lifecare Type B contracts and more moderately priced Type C fee-for-service contracts to its residents, instead of the current higher priced Lifecare Type A. Type C contracts will provide guaranteed access to the health center (enhanced living services and skilled nursing services), but will not provide residents with an explicit healthcare benefit. Specific healthcare services will be billed to the

resident as incurred. The applicant believes this will give them a competitive advantage as no other providers in Westchester County offer CCRC services within this particular cost space. Highlights of the applicant's business plan include repositioning the price point and contracts, rebranding the campus, investing in marketing, investing in the physical plant, reducing operating costs, enhancing services offered to residents and restructuring to promote long-term stability.

BFA Attachment B is The Bethel Methodist Home's 2014 - 2015 certified financial statements. For the period shown, the management company/proposed owner of the CCRC had positive working capital, positive net assets and generated an average surplus of \$71,995.

BFA Attachment D is Hebrew Hospital Senior Housing, Inc.'s 2013-2014 financial summary for their Article 28 assets (from cost reports), which shows negative working capital, negative net assets and negative operating income, with an average occupancy of 87.9%.

BFA Attachment E is the financial summary of current Bethel Homes affiliated nursing homes for the period 2013-2015, which shows the entities had negative working capital, negative net assets and average operating surplus.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	The Bethel Homes Corporation Organization Chart – Pre and Post Closing
BFA Attachment B	Financial Summary, Bethel Methodist Home Inc., 2014 and 2015 certified financial statements
BFA Attachment C	Financial Projections – Westchester Meadows (partial 2016 and Forward)
BFA Attachment D	Hebrew Hospital Senior Housing, Inc., 2013-2014 certified financial statements
BFA Attachment E	Financial Summary, Bethel Affiliated Nursing Homes

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 6th day of October, 2016 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish The Bethel Methodist Home, Inc. as the new operator of the 20-bed residential health care facility which is part of a Continuing Care Retirement Community located at 55 Grasslands Road, Valhalla currently operated as Westchester Meadows, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

162141 E

The Bethel Methodist Home

APPROVAL CONTINGENT UPON:

1. Submission of an Article 46 Certificate of Authority application to transfer ownership of the CCRC to Bethel Methodist Home. [LTC]
2. Submission of revised by-laws for The Bethel Methodist Home which provides for a Board of Directors comprised of seven directors, consistent with the overall management structure. [LTC]
3. Submission of the consulting and service agreement between Bethel Methodist Home and SK Advisors. [LTC]
4. Submission of a copy of the “Final Order” from the Bankruptcy Court for the Southern District of New York (Case 15-13264-MEW), acceptable to the Department of Health. [BFA]
5. Submission documentation of approval by the New York State Department of Financial Services of the financial feasibility of the Article 46 Continuing Care Retirement Community, which includes the Article 28 skilled nursing home operation. [BFA]
6. Submission of an executed asset purchase agreement, acceptable to the Department of Health. [BFA]
7. Submission of a bond resolution, acceptable to the Department. Included with the submitted bond resolution must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
8. Submission of documentation verifying the source of the required \$2 million equity contribution for the acquisition of the Article 46 Continuing Care Retirement Community, acceptable to the Department of Health. [BFA]
9. Submission of documentation verifying the source of the working capital equity requirement for the Article 28 facility, acceptable to the Department of Health. [BFA]
10. Submissions of an executed policy statement, acceptable to the Department of Health, that The Bethel Methodist Home is the only entity within the Bethel organization that will provide financial support to the Continuing Care Retirement Community currently known as Westchester Meadows. [BFA]
11. Submission of an executed policy statement, acceptable to the Department of Health, that The Bethel Methodist Home’s ownership and operation of the Continuing Care Retirement Community, currently known as Westchester Meadows, will not negatively impact the financial status of any other Article 28 entity currently within the Bethel organization. [BFA]
12. Submission of a photocopy of a signed Certificate of Amendment of the Certificate of Incorporation of the Applicant, which is acceptable to the Department. [CSL]
13. Submission of a photocopy of the Applicant’s Bylaws which are acceptable to the Department. [CSL]
14. Submission of a photocopy of a signed Certificate of Amendment of the Certificate of Incorporation of BMH, Inc., which is acceptable to the Department. [CSL]
15. Submission of a photocopy of BMH, Inc.’s Bylaws which are acceptable to the Department. [CSL]
16. Submission of a photocopy of the updated and signed Asset Purchase Agreement, which is acceptable to the Department. [CSL]

17. Submission of photocopies of all Administrative Services Agreements, Consulting Agreements, etc. which the Applicant is or will be a party to. [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. The Article 28 license must operate as part of an Article 46 Continuing Care Retirement Community with a valid Certificate of Authority. [LTC]
3. Receipt of all necessary approvals from the Bankruptcy Court for the transfer of the Article 28 license from Westchester Meadows to Bethel Methodist Home. [LTC]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.

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 62nd 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 20th 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 or 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 Internacional 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.

A

The State Bar of Georgia 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: 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 5th 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 163rd Street, 2nd 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.
--	--

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"> • Riverdale Home Care Agency • Riverdale Manor Home for Adults
Jacob Elefant, Member – 9.6% Retired Affiliations: <ul style="list-style-type: none"> • Riverdale Home Care Agency • Riverdale Manor Home for Adults 	Rivka Dagim, Member – 9.6% Retired Affiliations: <ul style="list-style-type: none"> • Riverdale Home Care Agency • Riverdale Manor Home for Adults
George T. Waldner, Member – 9.6% Retired Affiliations: <ul style="list-style-type: none"> • Riverdale Home Care Agency • Riverdale Manor Home for Adults 	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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 6th day of October, 2016, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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


<u>NUMBER:</u>	<u>FACILITY:</u>
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)
- 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)



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 10020-6000
Tel: 212 647 5000
Fax: 212 647 5001
www.sheppardmullin.com

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 "NPCI"). 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.¹

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 NPCI, "[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
Connecticut State Department of Health
600 Capitol Blvd
Hartford, CT 06103

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.



Under Section 402 of the Not-for-Profit Corporation Law

A290459

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

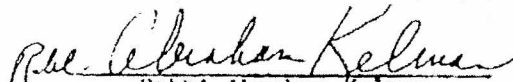
by law is:

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 26th day of JANUARY, 1976.


Rabbi Abraham Kelman
Incorporator
31 Maple Street
Brooklyn, New York 11225

STATE OF NEW YORK)
COUNTY OF New York) ss.:

On this 26th 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 
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: 

7

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
Jacob J. Schwartzwald

Jacob J. Schwartzwald
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

OF (corporation name)	ON (date filed)
PROSPECT PARK NURSING HOME, INC.	January 20, 1976
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

Martin Mulino
Secretary of State

NAME AND ADDRESS OF FILER	Cadwalader 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.

R662-518 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

W. J. ...
Secretary of State

P. J. ...
Hy 20

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 11230

* 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
My Comm. Exp. [illegible]
No. [illegible]
[illegible]**

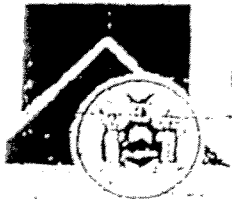
CONSENT TO AMENDMENT OF CERTIFICATE OF INCORPORATION
OF PROSPECT PARK NURSING HOME, INC.
BY COMMISSIONER OF HEALTH

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

KENNETH G. JOHNSON, M.D.
JAMES A. ALLEN
MORTON P. HYMAN
ROBERT J. COLLINS, M.D.
THOMAS H. JOWLING
NEER CHARLES F. FAWCETT

JOSEPH R. FONTANETTA, M.D.
WILLIAM LEE FROST
MORTON P. HYMAN
JEANNE E. JOHNS
MARY E. MC LAUGHLIN, M.D.
ROBERT H. HANDLER, M.D.

HOWARD A. RUIK, M.D.
KENNETH S. BOGDANSKI, M.D.
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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OFFICE OF THE
COMMISSIONER OF MENDMENT
CORRECTION

STATE OF NEW YORK

NEW YORK 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, 14th 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 21st 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 STATISTICAL NOTICE, AND RECEIVED 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


RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 6th day of October, 2016, approves the filing of the Certificate of Amendment of Certificate of Incorporation of Prospect Park Nursing Home, Inc., dated June 22, 2016.



MEMORANDUM

To: Public Health and Health Planning Council

From: Richard J. Zahnleuter 
General Counsel

Date: September 14, 2016

Subject: Change of Corporate Name of United Cerebral Palsy & Handicapped Persons Association of the Utica Area Inc. to Upstate Cerebral Palsy, Inc.

United Cerebral Palsy & Handicapped Persons Association of the Utica Area Inc. seeks Public Health and Health Planning Council approval of its new corporate name, Upstate Cerebral Palsy, Inc.

The applicant informs that their current operating certificate lists its name as "UCP & Handicapped Persons of Utica Area Inc." and they seek approval of the name change so that the operating certificate lists the corporate name as Upstate Cerebral Palsy, Inc. The corporation informs that they cannot revalidate their Medicaid application until the operating certificate lists the new name.

The applicant additionally informs that the corporate name change was desired so it is clear from their name that they have no affiliation with any national cerebral palsy associations.

PHHPC approval of the corporate name change is required pursuant to 10 NYCRR § 600.11(a)(1), Not-for-Profit Corporation Law § 804(a), and 404(o) and (t).

There is no legal objection to the corporate name change, and the Restated Certificate of Incorporation is in legally acceptable form.

Attachments.

September 13, 2016

Colleen Leonard
Corning Tower
Room 1805
Albany, NY 12237

Re: Provider ID #00474180, NPI 1578623617, Tracking ID 150860203

Dear Colleen:

As per our phone conversation, please be advised that we are in the process of revalidating our Article 28 NYS Medicaid Clinic. The deadline for Medicaid Revalidations is September 26, 2016. Therefore, we are requesting a special hardship, and are requesting that this be processed as quickly as possible. We were informed that we cannot revalidate our Medicaid application without an updated DOH Operating Certificate bearing our new name. This is strictly a name change from our original incorporation date of May 23, 1950. Our current Certificate shows: UCP & Handicapped Persons of Utica Area Inc. we need to have this changed to show our current name: Upstate Cerebral Palsy, Inc.

Included with this letter are copies of our original Certificate of Incorporation and copies of our Restated Certificate of Incorporation showing the name change. I have also included a copy of our Filing Receipt and other justifying documents for your review.

Please feel free to contact me if you need additional information.

Sincerely,



Geno DeCondo,
Executive Vice President

MF/Encs.

everyday miracles...

It's Who We Are, It's How We Work, It's How Much We Care!

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF

THE UNITED CEREBRAL PALSY AND HANDICAPPED PERSONS
ASSOCIATION OF THE UTICA AREA, INC.
(Under Section 803 of the Not-for-Profit Corporation Law)

WE, GARY GILDERSLEEVE and LOUIS B. TEHAN, being respectively the President and Secretary of The United Cerebral Palsy and Handicapped Persons Association of the Utica Area, Inc., hereby certify:

1. The name of the corporation is the United Cerebral Palsy and Handicapped Persons Association of the Utica Area, Inc. It was formed under the name The Utica Cerebral Palsy and Handicapped Children Association, Inc.

2. The Certificate of Incorporation was filed by the Department of State on May 23, 1950, pursuant to the Membership Corporations Law.

3. The corporation is a corporation as defined in Section 102 (a) 5 of the Not-for-Profit Corporation Law; the corporation is a type "B" corporation under Section 201 of the Not-for-Profit Corporation Law; the corporate purposes are enlarged as hereinafter set forth, but shall not change or alter the type corporation under Section 201 of the Not-for-Profit Corporation Law.

4. The post office address of the corporation is the United Cerebral Palsy and Handicapped Persons Association of the Utica

Area, Inc., R.D. #2, Gage Road, Barneveld, New York, Oneida County. The Secretary of State is hereby designated as agent for service of process and may mail any such process to this address.

5. The amendment to be added, as set forth below, is the underlined language to follow at Paragraph 2(a) of the Certificate of Incorporation:

To promote, foster, and improve the general welfare of any individuals handicapped by cerebral palsy; to provide, equip, and maintain a clinic and educational facility for their training, education, social, and physical betterment; to aid by clinical study, laboratory research, publication and teaching the prevention and treatment of cerebral palsy and other kindred handicaps; to establish, operate, and maintain residential facilities, including community residences and/or intermediate care facilities for clinical, social, and habilitative betterment of those individuals with cerebral palsy and other developmental disabilities; and to own, lease, establish, operate, and maintain one or more outpatient facilities for the mentally disabled, as such terms are defined in the Mental Hygiene Law.

6. The undersigned have been authorized to execute and file this Certificate of Amendment by the concurring vote of a majority of the members of said corporation present at a meeting held upon due notice pursuant to Section 605 of the Not-For-Profit Corporation Law as more fully appears by the affidavit of the undersigned of the undersigned hereto annexed.

7. Approval of a Justice of the Supreme Court for the Fifth Judicial District, with notice to the Attorney General and approval of the Commissioner of the Office of Mental Retardation and Developmental Disabilities were endorsed and annexed to the Certificate of Incorporation, and such approvals are required herein. Prior to delivery of the Certificate of Amendment to the Department of State for filing, such notice shall be given and said approvals shall be annexed thereto or endorsed thereon.

IN WITNESS WHEREOF, the undersigned have made, subscribed,
and acknowledged this Certificate this 30th day of April, 1987,
and affirm the contents to be true under the penalties of
perjury.

Gary Gildersleeve
GARY GILDERSLEEVE, President
Louis B. Tehan
LOUIS B. TEHAN, Secretary

STATE OF NEW YORK)
COUNTY OF ONEIDA) ss.:

On this 30th day of April, 1987, before me
personally came GARY GILDERSLEEVE and LOUIS B. TEHAN, to me known
to be the persons described in and who executed the foregoing
Certificate and they thereupon duly acknowledged to me that they
executed the same.

Sancy Corliti
NOTARY PUBLIC

VERIFICATION

STATE OF NEW YORK)
COUNTY OF ONEIDA) ss.:

GARY GILDERSLEEVE and LOUIS B. TEHAN, being duly sworn,
depose and say, and each for himself deposes and says, that he,
GARY GILDERSLEEVE and LOUIS B. TEHAN, is the President of The
United Cerebral Palsy and Handicapped Persons Association of the
Utica Area, Inc., and that he, LOUIS B. TEHAN, is the Secretary
thereof; that they have been duly authorized to execute and file
the foregoing Certificate by the concurring vote of a majority of
the members of the Corporation present at a special meeting held
on the 30th day of April, 1987, upon notice pursuant to Section
605 of the Not-for-Profit Corporation Law.

Gary Gildersleeve
GARY GILDERSLEEVE, President
Louis B. Tehan
LOUIS B. TEHAN, Secretary

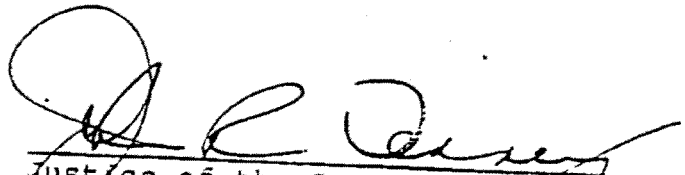
Sworn to before me this 30th
day of April, 1987.

Sancy Corliti
NOTARY PUBLIC

SANCY CORLITI
Notary Public in the State of New York
Qualified in Oneida County
Exp. Date: March 31, 1990
10000

I, HON. JOHN R. TENNEY, a Justice of the Supreme Court of the State of New York in the Fifth Judicial District, do hereby approve the foregoing Certificate of Amendment of Incorporation of The United Cerebral Palsy and Handicapped Persons Association of the Utica, Area, Inc., and consent that the same be filed.

DATED: May 7, 1987.


Justice of the Supreme Court
of the State of New York, Fifth
Judicial District.

CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION OF

THE UNITED CEREBRAL PALSY AND HANDICAPPED PERSONS
ASSOCIATION OF THE UTICA AREA, INC.

(Under Section 803 of the Not-for-Profit Corporation Law)

WE, GARY GILDERSLEEVE and EVELYN AIELLO, being respectively the President and Secretary of The United Cerebral Palsy and Handicapped Persons Association of the Utica Area, Inc., hereby certify:

1. The name of the corporation is the United Cerebral Palsy and Handicapped Persons Association of the Utica Area, Inc. It was formed under the name The Utica Cerebral Palsy and Handicapped Children Association, Inc.

2. The Certificate of Incorporation was filed by the Department of State on May 23, 1950, pursuant to the Membership Corporations Law.

3. The corporation is a corporation as defined in Section 102 (a) 5 of the Not-for-Profit Corporation Law; the corporation is a type "B" corporation under Section 201 of the Not-for-Profit Corporation Law; the corporate purposes are enlarged as hereinafter set forth, but shall not change or alter the type corporation under Section 201 of the Not-for-Profit Corporation Law.

4. The post office address of the corporation is the United Cerebral Palsy and Handicapped Persons Association of the Utica Area, Inc., R.D. #2, Gage Road, Barneveld, New York, Oneida County. The Secretary of State is hereby designated as agent for service of process and may mail any such process to this address.

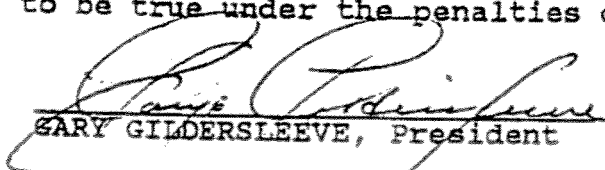
5. The amendment to be added, as set forth below, is the underlined language to follow at Paragraph 2(a) of the Certificate of Incorporation:

To promote, foster, and improve the general welfare of any individuals handicapped by cerebral palsy; to provide, equip, and maintain a clinic and educational facility for their training, education, social, and physical betterment; to aid by clinical study, laboratory research, publication and teaching the prevention and treatment of cerebral palsy and other kindred handicaps; to establish, operate, and maintain residential facilities, including community residences and/or intermediate care facilities for clinical, social, and habilitative betterment of those individuals with cerebral palsy and other developmental disabilities and individuals with mental disabilities; and to own, lease, establish, operate, and maintain one or more outpatient facilities for the mentally disabled, as such terms are defined in the Mental Hygiene Law.

6. The undersigned have been authorized to execute and file this Certificate of Amendment by the concurring vote of a majority of the members of said corporation present at a meeting held upon due notice pursuant to Section 605 of the Not-For-Profit Corporation Law as more fully appears by the affidavit of the undersigned of the undersigned hereto annexed.

7. Approval of a Justice of the Supreme Court for the Fifth Judicial District, with notice to the Attorney General and approval of the Commissioner of the Office of Mental Health were endorsed and annexed to the Certificate of Incorporation, and such approvals are required herein. Prior to delivery of the Certificate of Amendment to the Department of State for filing, such notice shall be given and said approvals shall be annexed thereto or endorsed thereon.

IN WITNESS WHEREOF, the undersigned have made, subscribed, and acknowledged this Certificate this 16th day of February, 1988, and affirm the contents to be true under the penalties of perjury.


GARY GILDERSLEEVE, President


EVELYN AIELLO, Secretary

STATE OF NEW YORK)
COUNTY OF ONEIDA) ss.:

On this 16th day of February, 1988, before me personally came GARY GILDERSLEEVE and EVELYN AIELLO, to me known to be the persons described in and who executed the foregoing Certificate and they thereupon duly acknowledged to me that they executed the same.

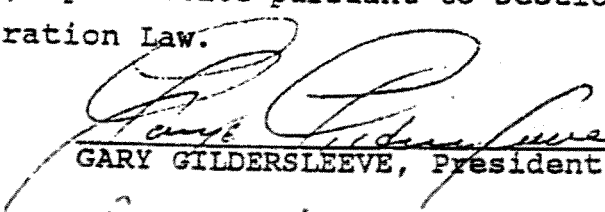


NOTARY PUBLIC

VERIFICATION

STATE OF NEW YORK)
COUNTY OF ONEIDA) ss.:

GARY GILDERSLEEVE and EVELYN AIELLO, being duly sworn, depose and say, and each for himself deposes and says, that he, GARY GILDERSLEEVE, is the President of The United Cerebral Palsy and Handicapped Persons Association of the Utica Area, Inc., and that she, EVELYN AIELLO, is the Secretary thereof; that they have been duly authorized to execute and file the foregoing Certificate by the concurring vote of a majority of the members of the Corporation present at a special meeting held on the 16th day of February, 1988, upon notice pursuant to Section 605 of the Not-for-Profit Corporation Law.



GARY GILDERSLEEVE, President



EVELYN AIELLO, Secretary

Sworn to before me this 16th
day of February, 1988.

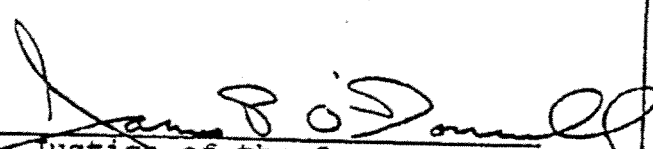


NOTARY PUBLIC
NANCY CORELLI

Notary Public in the State of New York
Appointed in Oneida County
My Commission Expires March 30, 1989
4/45063

I, HON. James P. O'Donnell, a Justice of the Supreme Court of the State of New York in the Fifth Judicial District, do hereby approve the foregoing Certificate of Amendment of Incorporation of The United Cerebral Palsy and Handicapped Persons Association of the Utica, Area, Inc., and consent that the same be filed.

DATED: ~~February~~ 15th, 1988.
March


Justice of the Supreme Court
of the State of New York, Fifth
Judicial District.

STATE OF NEW YORK - OFFICE OF MENTAL HEALTH
ALBANY, NEW YORK

KNOW ALL MEN BY THESE PRESENTS:

Pursuant to the provisions of Section 31.22 of the Mental Hygiene Law and subdivision (q) of Section 404 of the Not-For-Profit Corporation Law, approval is hereby given to the filing of the annexed Certificate of Amendment of the Certificate of Incorporation of

UNITED CEREBRAL PALSY AND HANDICAPPED PERSONS ASSOCIATION OF THE
UTICA AREA, INC.

This approval shall not be construed as an approval of the

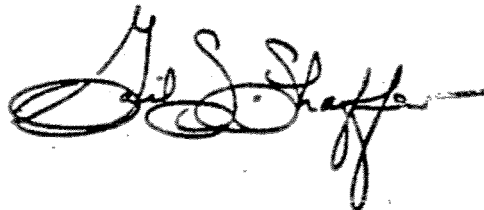
State of New York }
Department of State } ss:

052169

I hereby certify that I have compared the annexed copy with the original document filed by the Department of State and that the same is a correct transcript of said original.

Witness my hand and seal of the Department of State on

AUG 02 1988



Secretary of State

STATE OF NEW YORK
OFFICE OF MENTAL HEALTH
ALBANY, NEW YORK

KNOW ALL MEN BY THESE PRESENTS:

Pursuant to the provisions of Section 31.22 of the Mental Hygiene Law and subdivision (q) of Section 404 of the Not-For-Profit Corporation Law, approval is hereby given to the filing of the annexed Certificate of Amendment to the Certificate of Incorporation of

UNITED CEREBRAL PALSY AND HANDICAPPED PERSONS ASSOCIATION OF THE

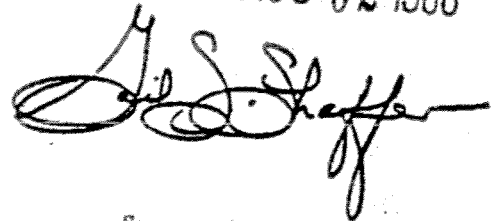
State of New York }
Department of State } ss:

052172

I hereby certify that I have compared the annexed copy with the original document filed by the Department of State and that the same is a correct transcript of said original.

Witness my hand and seal of the Department of State on

AUG 02 1988



Secretary of State

NYS DEPARTMENT OF STATE

FILING RECEIPT

CHANGE OF S/S & PURPOSES & POWERS

CORPORATION NAME

UNITED CEREBAL PALSY AND HANDICAPPED PERSONS ASSOCIATION OF THE UTICA AREA, INC.

DATE FILED 08/02/88	DURATION & COUNTY CODE ONEI	FILM NUMBER B669416-6	CASH NUMBER 222339
NUMBER AND KIND OF SHARES		LOCATION OF PRINCIPAL OFFICE	

TYPE: B

ADDRESS FOR PROCESS S/S: THE CORPORATION R.D. #2, GAGE ROAD BARNEVELD NY	REGISTERED AGENT
---	------------------

FEES AND/OR TAX PAID AS FOLLOWS:

AMOUNT OF CHECK \$ 00050.00	AMOUNT OF MONEY ORDER \$ _____	AMOUNT OF CASH \$ _____
\$ 6.00 DOLLAR FEE TO COUNTY	\$ 030.00 FILING TAX	\$ 20.00 CERTIFIED COPY CERTIFICATE
FILER NAME AND ADDRESS ANTONIO FAGA, ESQ. ONE HOPPER STREET UTICA, NY, 13501-3575	TOTAL PAYMENT \$ 000050.00	REFUND OF \$ _____
		TO FOLLOW

380604-003 (8/84)

GAIL S SHAFFER - SECRETARY OF STATE

RESTATED CERTIFICATE INCORPORATION
OF
THE UNITED CEREBRAL PALSY AND HANDICAPPED
PERSONS ASSOCIATION OF THE UTICA AREA, INC.

Under Section 805 of the Not-for-Profit Corporation Law

The undersigned, being the President of The United Cerebral Palsy and Handicapped Persons Association of the Utica Area, Inc. (the "Corporation"), hereby certifies:

1. The name of the Corporation is: The United Cerebral Palsy and Handicapped Persons Association of the Utica Area, Inc. The name under which the Corporation was formed is: The Utica Cerebral Palsy and Handicapped Children Association, Inc.

2. The Corporation's Certificate of Incorporation was filed by the Department of State on May 23, 1950, pursuant to the Membership Corporation Law.

3. The Corporation's Certificate of Incorporation, as previously amended from time to time, is hereby further amended, without any change in purposes or powers, to effect the following amendments:

- (a) to change the name of the Corporation to: Upstate Cerebral Palsy, Inc.;
- (b) to add specific provisions that confirm that the Corporation shall operate in compliance with applicable requirements of the Not-for-Profit Corporation Law and the Internal Revenue Code;
- (c) to provide for the appointment of the Corporation's chief executive officer;
- (d) to provide for the distribution of the Corporation's assets upon dissolution;
- (e) to delete unnecessary provisions regarding the territory in which the Corporation's operations are principally to be conducted, the city in which the office of the Corporation is to be located, the size and identity of the initial board of directors, and the qualifications of the subscribers of the Certificate of Incorporation;
- (f) to substitute references to the Not-for-Profit Corporation Law for references to the Membership Corporation Law; and
- (g) to change the post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him

4. The text of the Certificate of Incorporation, as amended, is hereby restated to read as hereinafter set forth in full.

1. The name of the Corporation is: Upstate Cerebral Palsy, Inc. (hereinafter, the "Corporation").

2. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law, in that it is not formed for pecuniary profit or financial gain, and no part of the assets, income or profit of the Corporation shall be distributable to, or inure to the benefit of, its member(s), directors, officers or any other private person.

3. The purposes of the Corporation are:

(a) To promote, foster, and improve the general welfare of any individuals handicapped by cerebral palsy or any other individuals, whether handicapped or not, within the community, to provide, equip and maintain a clinic and educational facility for their training, education, social, and physical betterment to aid by clinical study, laboratory research, publication and teaching the prevention and treatment of cerebral palsy and other kindred handicaps; to establish, operate and maintain residential facilities, including community residences and/or intermediate care facilities for clinical, social and habilitative betterment of those individuals with cerebral palsy and other developmental disabilities and individuals with mental disabilities; to own, lease, establish, operate, and maintain one or more outpatient facilities for the mentally disabled as such terms are defined in the Mental Hygiene Law; to establish, operate and maintain day care centers for children in Oneida, Herkimer and Lewis Counties, provided, however, that no such day care center shall be established, operated or maintained without first having received prior written approval of the New York State Department of Social Services.

(b) In connection with and for the fulfillment of its purposes, to solicit, collect and otherwise raise money; to expend, disburse and otherwise handle and dispose of such money; to receive by gift, will or otherwise money or other property, and to hold the same in trust or otherwise, and to disburse, invest and reinvest it as may be deemed best for the promotion of its purposes.

(c) In connection with and for the fulfillment of its purposes, to borrow money, and from time to time to make, accept, endorse, execute and issue bonds, debentures, promissory notes, bills of exchange and other obligations of the Corporation for moneys borrowed, or in payment for property acquired or for any other objects or purposes of the Corporation and to secure payment of any such obligation by mortgage, pledge, deed, indenture, agreement or other instrument of trust or other lien upon, assignment of or agreement in regard to all or any part of the property, rights, or privileges of the Corporation wherever situated, whether now owned or hereafter to be acquired.

(d) To purchase, lease or otherwise acquire, and to sell, mortgage or lease real property, wherever situated and whether improved or unimproved, or any interest therein.

(e) To exercise all of the powers conferred by law on a corporation organized under the Not-for-Profit Corporation Law for the purposes above stated.

(f) To perform and do any and all other things necessary or proper in connection with or incidental to any of the foregoing.

4. In furtherance of its corporate purposes, the Corporation shall have all the general powers enumerated in Section 202 of the Not-for-Profit Corporation Law, together with the power to solicit and receive grants, bequests, and contributions from public and private sources.

5. In addition to the other rights and powers of membership prescribed by New York law, this Certificate of Incorporation and/or the Bylaws of the Corporation, the power to appoint the chief executive officer of the Corporation, regardless of title, shall be reserved to the member(s), if any, of the Corporation.

6. The Corporation is a Type B corporation under Section 201 of the Not-for-Profit Corporation Law.

7. Notwithstanding any other provision of this Certificate, the Corporation is organized and shall be operated exclusively for charitable, religious, scientific and educational purposes as specified in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and shall not carry on any activities not permitted to be conducted by an organization exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or by an organization contributions to which are deductible under Section 170(c)(2) of such Code.

8. No part of the assets, income, profits or earnings of the Corporation shall inure to the benefit of any member, trustee, director or officer of the Corporation, or any other private person, except that reasonable compensation may be paid for services rendered to or for the Corporation affecting one or more of its purposes, and no member, trustee, director or officer of the Corporation, or any other private person, shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation.

9. No substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation, except as otherwise provided by Section 501(h) of the Internal Revenue Code of 1986, as amended; and the Corporation shall not participate in, or intervene in, including the publication or distribution of statements, any political campaign on behalf of any candidate for public office.

10. In the event of dissolution, all the remaining assets and property of the Corporation shall, after necessary expenses thereof, be distributed to one or more of the not-for-profit affiliates of the Corporation, provided that the distributee(s) shall then qualify under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, subject to an order of a Justice of the Supreme Court of the State of New York. If none of the Corporation's not-for-profit affiliates shall so qualify at the time of dissolution, the distribution shall be made to such other organization or organizations that are organized and operated exclusively for religious, charitable, educational or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, subject to an order of a Justice of the Supreme Court of the State of New York. For the purpose of this paragraph, an "affiliate" shall mean any not-for-profit organization that controls, is controlled by or is under common control with the Corporation, and any other not-for-profit organization that expressly and specifically includes among its purposes the benefit or support of the Corporation.

11. In any taxable year in which the Corporation is a private foundation as defined by Section 509 of the Internal Revenue Code of 1986, as amended, the Corporation shall:

(a) not engage in any act of self dealing that is subject to tax under Section 4941 of the Code;

(b) not distribute its income for each taxable year at such time and in such manner as to subject the Corporation to tax on undistributed income under Section 4942 of the Code;

(c) not retain any excess business holdings in such manner as to subject the Corporation to tax under Section 4943 of the Code;

(d) not make any investments in such a manner as to subject the Corporation to tax under Section 4944 of the Code; and

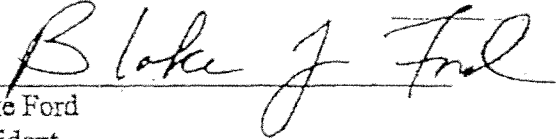
(e) not make any taxable expenditures that are subject to tax under Section 4945 of the Code.

12. The office of the Corporation shall be located in the County of Oneida, State of New York.

13. The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any such process is: 1020 Mary Street, Utica, New York 13501.

5. This Restated Certificate of Incorporation and the foregoing amendments of the Certificate of Incorporation were authorized by the affirmative vote of a majority of the members of the Corporation entitled to vote thereon, with said vote being at least equal to a quorum.

IN WITNESS WHEREOF, the undersigned has subscribed this Certificate of Amendment this 23 day of March, 2010.



Blake Ford
President



STATE OF NEW YORK
OFFICE OF MENTAL HEALTH
ALBANY, NEW YORK

KNOW ALL PERSONS BY THESE PRESENTS;

Pursuant to the provisions of Section 31.22 of the Mental Hygiene Law and subdivision (q) of Section 404 of the Not-For Profit Corporation Law, approval is hereby given to the filing of the annexed Certificate of Incorporation of

United Cerebral Palsy and Handicapped Persons Association of the Utica Area, Inc.

to change the corporation's name to

Upstate Cerebral Palsy, Inc.

This approval shall not be construed as an authorization for the corporation to engage in any activity for which the provisions of Article 31 of the Mental Hygiene Law requires an Operating Certificate issued by the Office of Mental Health unless said corporation has been issued such Operating Certificate; nor shall it be construed to eliminate the need for the said corporation to meet any and all of the requirements and conditions precedent set forth in Article 31 of such law and the regulations promulgated there under for the issuance of said Operating Certificate.

IN WITNESS WHEREOF this instrument is executed and the Seal of the Department of Mental Hygiene is affixed this 2nd day of November 2010:

Michael F. Hogan, Ph.D. Commissioner
NYS Office of Mental Health

By:

Michael W. Holley, Acting Director
Bureau of Inspection and Certification





David A. Paterson, Governor
Max E. Chmura, Acting Commissioner

Executive Office

44 Holland Avenue
Albany, NY 12229-0001

TEL: 518-473-1997
FAX: 518-473-1271
TTY: 856-933-4889

www.omc.state.ny.us

November 3, 2010

Eric Stonehill, Esq.
Harris Beach PLLC
99 Garnsey Road
Pittsford, NY 14534

Re: United Cerebral Palsy and Handicapped Persons Association of the Utica Area, Inc., d/b/a
Upstate Cerebral Palsy; Mohawk Valley Handicapped Services, Inc., Cerebral Palsy
Association of the Mohawk Valley, Inc.

Dear Mr. Stonehill:

I am in receipt of your recent letter requesting a no action letter for the above referenced corporations pertaining to the recent change in the law. On July 15, 2010, the New York State Legislature amended Section 16.07 of the New York State Mental Hygiene Law and Sections 404(a) and 804(a)(i) of the Not-For-Profit Corporation Law, which discontinues the requirement that Certificates of Incorporation be approved by the Commissioner of OPWDD. See Chapter 198 of the Laws of 2010. Therefore, the approval of this office is no longer required before you file your Certificate with the Department of State.

However, please be aware that should your agency wish to perform services that will require an Operating Certificate pursuant to the provisions of Article 16 of the Mental Hygiene Law, it must meet any and all of the requirements and conditions set forth in Article 16 of the Mental Hygiene Law, and the regulations promulgated thereunder. Further OPWDD review may also be required if the agency seeks funding for proposed Home and Community Based Waiver Services, and when OPWDD enters into contracts with providers for the provision of services. In these cases, providers may be asked to provide a copy of their certificate of incorporation as part of their Waiver approval or contract approval process.

For further assistance with OPWDD procedures, services, and funding available to your agencies, please contact the Central New York Developmental Disability Service Office Liaison Bill Bird at (315) 336-2300. The Central New York Developmental Disability Service Office is located at 101 West Liberty Street, Rome, NY 13442.

Thank you for your consideration in this matter.

Very truly yours,

Donna L. Mackey
Assistant Counsel

Encl: Chapter 198 of the Laws of 2010

CHAPTER 198

AN ACT to amend the not-for-profit corporation law, in relation to approval of certificates of incorporation by the commissioner of mental retardation and developmental disabilities; and repealing section 16.07 of the mental hygiene law relating thereto

Became a law July 15, 2010, with the approval of the Governor.
Passed by a two-thirds vote.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 16.07 of the mental hygiene law is REPEALED.

§ 2. Paragraph (q) of section 404 of the not-for-profit corporation law, as amended by chapter 431 of the laws of 1993, is amended to read as follows:

(q) Every certificate of incorporation which includes among its corporate purposes or powers the establishment, or operation of a facility for which an operating certificate from the commissioner of mental health [~~or mental retardation and developmental disabilities~~] is required by article thirty-one [~~or sixteen~~] of the mental hygiene law, or the solicitation of contributions for any such purpose, shall have endorsed thereon or annexed thereto the approval of the commissioner of mental health [~~or mental retardation and developmental disabilities~~].

§ 3. Subparagraph (i) of paragraph (a) of section 804 of the not-for-profit corporation law, as amended by chapter 139 of the laws of 1993, is amended to read as follows:

(i) 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 endorsed thereon or annexed thereto, unless such consent or approval is no longer required or is endorsed on or annexed to the certificate of amendment.

§ 4. This act shall take effect immediately.

The Legislature of the STATE OF NEW YORK enacts:

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

MALCOLM A. SMITH
Temporary President of the Senate

SHELDON SILVER
Speaker of the Assembly

EXPLANATION--Matter in italics is new; matter in brackets [-] is old law to be omitted.

STATE OF NEW YORK
SUPREME COURT ONEIDA COUNTY

In the Matter of

THE UNITED CEREBRAL PALSY AND
HANDICAPPED PERSONS ASSOCIATION
OF THE UTICA AREA, INC.

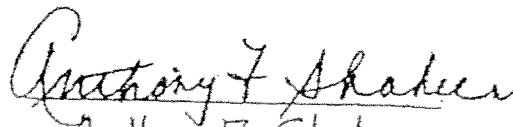
Petitioner

ORDER

For an Order Approving the Filing of a
Restated Certificate of Incorporation with
the Department of State Pursuant to Section
805 of the Not-for-Profit Corporation Law.

IT IS HEREBY ORDERED, pursuant to Section 804(a)(ii) of the Not-for-Profit
Corporation Law, that the Restated Certificate of Incorporation of The United Cerebral
Palsy and Handicapped Persons Association of the Utica Area, Inc. is approved and that
the New York Department of State is authorized to file the Restated Certificate under
Section 805 of the Not-for-Profit Corporation Law.

Dated: June 23, 2011


Anthony F. Shaheen
Justice, Supreme Court
Oneida County

110701000 353

RESTATED CERTIFICATE OF INCORPORATION
OF
THE UNITED CEREBRAL PALSY AND HANDICAPPED
PERSONS ASSOCIATION OF THE UTICA AREA, INC.

Under Section 805 of the Not-for-Profit Corporation Law

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STATE OF NEW YORK
DEPARTMENT OF STATE

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HARRIS BEACH PLLC
99 Gamsey Road
Pittsford, New York 14534

Customer Ref. # 37028

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FILING RECEIPT

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ENTITY NAME: UPSTATE CEREBRAL PALSY, INC.

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP) COUNTY: ONEI
PURPOSES PROCESS NAME PROVISIONS RESTATED

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FILED:07/01/2011 DURATION:***** CASH#:110701000393 FILM #:110701000353

FILER:

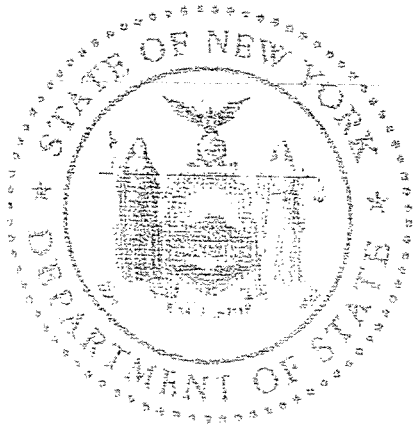
HARRIS BEACH PLLC
99 GARNSEY ROAD

PITTSFORD, NY 14534

ADDRESS FOR PROCESS:

THE CORPORATION
1020 MARY STREET
UTICA, NY 13501

REGISTERED AGENT:



=====

SERVICE COMPANY: LIBERTY CORPORATE SERVICES, INC. - AL SERVICE CODE: AL

FEES	65.00	PAYMENTS	65.00
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FILING	30.00	CASH	0.00
TAX	0.00	CHECK	0.00
CERT	0.00	CHARGE	0.00
COPIES	10.00	DRAWDOWN	65.00
HANDLING	25.00	OPAL	0.00
		REFUND	0.00

37028

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 6th day of October, 2016, approves the filing of the Restated Certificate of Incorporation of The United Cerebral Palsy and Handicapped Persons Association of the Utica Area, Inc. dated March 23, 2010.



**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), an Article 36 Certified Home Health Agency (CHHA), and an Article 36 Licensed Home Care Services Agency (LHCSA). 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);
- 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; and
- At Home Care Partners, Inc., a voluntary NFP, LHCSA with two offices: one located at 25 Elm Street, Oneonta (Otsego County), that serves Chenango, Delaware, Herkimer, Otsego and Schoharie counties, and one located at 500 West Albany Street, Herkimer (Herkimer County) that serves Herkimer and Otsego 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., which in turn will remain the sole corporate member of At Home Care Partners, 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 the current 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/co-operator 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)
- At Home Care Partners, Inc. (LHCSA)

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.

Attachments

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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 6th day of October, 2016 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Bassett Healthcare Network as the active parent of six (6) hospitals, a residential health care facility, a certified home health agency, and a licensed home care services agency, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

162036 E

Bassett Healthcare Network

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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



Project # 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
Total		21,554	20,846

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%
Total	1,513	100.0%	1,620	100.0%

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).

Proposed Operator	Northern Westchester Facility Project, LLC
Doing Business As	Northern Westchester Regional Surgery Center
Site Address	2651 Strang Boulevard Yorktown Heights, New York (Westchester County).
Surgical Specialties	Multi-Specialty, to include: Otolaryngology; and Orthopedic Surgery
Operating Rooms	4 (Class C)
Procedure Rooms	0
Hours of Operation	Monday through Friday from 8:00 am to 6:00 pm (Extended as necessary to accommodate patient needs)
Staffing (1st Year / 3rd Year)	18.0 FTEs / 18.0 FTEs
Medical Director(s)	George Pazos, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Westchester County Medical Center 15.8 miles / 17 minutes
On-call service	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>Payor:</u>	<u>Year One</u>		<u>Year Three</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
47% Main site	<u>Ambulatory</u> Not Indicated	<u>Inpatient</u> Not Indicated	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.

Per the certified financial statements in 2014 and 2015 Putnam Hospital has maintained positive operating margins, working capital position, and net asset position. During 2014 and 2015 the hospital achieved net income of \$11,383,000 and \$6,802,000 respectively, had an average net asset position of \$92,941,000, and had an average positive working capital position of \$66,276,000. Putnam Hospital also 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.

Attachments

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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 6th day of October, 2016 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a multi-specialty ambulatory surgery center to be located at 2651 Strang Boulevard, Yorktown Heights, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

152377 B

FACILITY/APPLICANT:

Northern Westchester Facility Project, LLC
d/b/a Northern Westchester Regional Surgery
Center

APPROVAL CONTINGENT UPON:

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

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission 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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



**Project # 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:

Current Operator

Hyde Park Nursing Home, Inc.

Members

Raphael Yenowitz	45.5%
Barbara Hurwitz	45.5%
Jack Koschitzki	9.0%

Proposed Operator

Renaissance Healthcare Group, LLC

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.

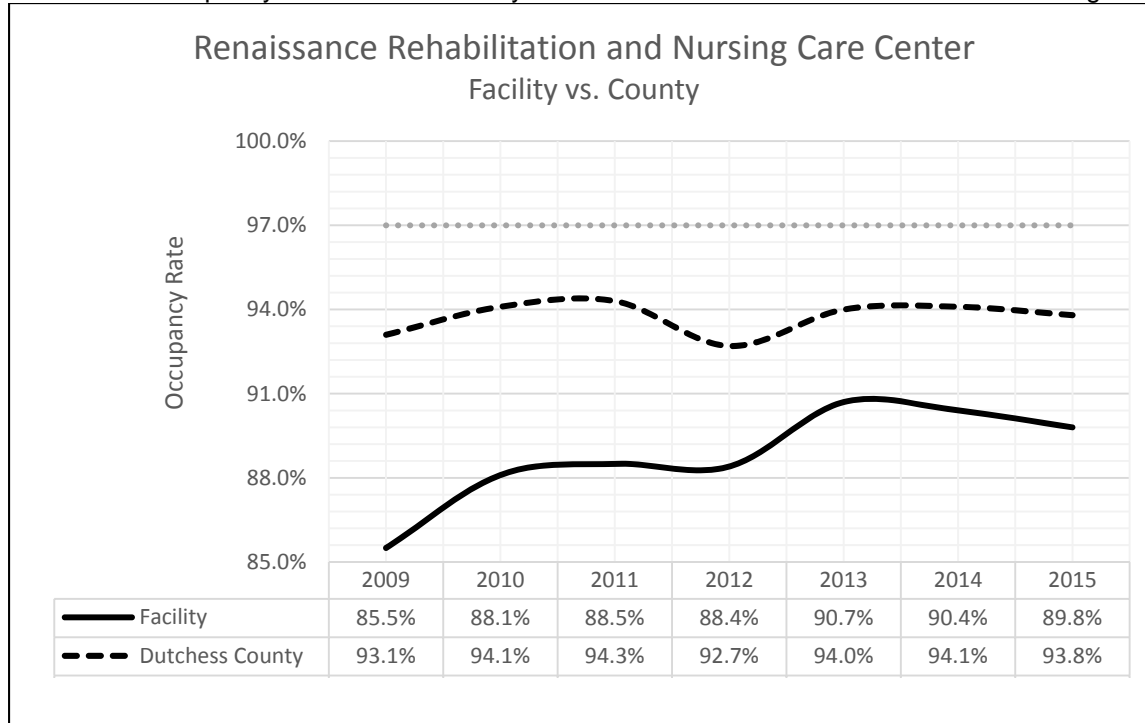
Analysis

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
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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 15th 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 st 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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 6th day of October, 2016 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Renaissance Healthcare Group, LLC as the new operator of Renaissance Rehabilitation and Nursing Care Center, a 120-bed residential health care facility, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

161156 E

Renaissance Rehabilitation and Nursing
Care Center

APPROVAL CONTINGENT UPON:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - 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)

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



**Project # 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 five 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.
3. HCR/HCR Home Care in Oneonta – serving Delaware, Otsego and Schoharie Counties.
4. HCR/HCR Home Care in Plattsburgh – serving Clinton, Essex, Franklin, Hamilton, St. Lawrence, Warren and Washington Counties.
5. HCR/HCR Home Care in East Syracuse – serving Cayuga, Cortland, Jefferson, Madison, Onondaga, and Oswego 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:

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

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

Louise Woerner Chief Executive Officer
Duane E. Tolander, CPA (Iowa) 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:

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

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

Mary Elizabeth Zicari, RN 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
Suzanne L. Turchetti 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 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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 6th day of October, 2016, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to acquire and merge HCR/HCR Home Care, Hudson Falls Certified Home Health Agency and Long Term Home Health Care Program and add Washington County and Personal Care service to the existing operating certificate, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER

APPLICANT/FACILITY

161393 E

HCR/HCR Home Care

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 CONDITIONED UPON:

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

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



**Project # 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 five 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.
3. HCR/HCR Home Care in Oneonta – serving Delaware, Otsego and Schoharie Counties.
4. HCR/HCR Home Care in Plattsburgh – serving Clinton, Essex, Franklin, Hamilton, St. Lawrence, Warren and Washington Counties.
5. HCR/HCR Home Care in East Syracuse – serving Cayuga, Cortland, Jefferson, Madison, Onondaga, and Oswego 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:

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

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

Louise Woerner Chief Executive Officer
Duane E. Tolander, CPA (Iowa) 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:

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

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

Mary Elizabeth Zicari, RN 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
Suzanne L. Turchetti 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

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>
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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 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 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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 6th day of October, 2016, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to acquire and merge HCR/HCR Home Care, Delhi Certified Home Health Agency and Long Term Home Health Care Program, and add Delaware County and add Audiology service to the existing operating certificate, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER

APPLICANT/FACILITY

161394 E

HCR/HCR Home Care

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 CONDITIONED 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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



**Project # 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 five 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.
3. HCR/HCR Home Care in Oneonta – serving Delaware, Otsego and Schoharie Counties.
4. HCR/HCR Home Care in Plattsburgh – serving Clinton, Essex, Franklin, Hamilton, St. Lawrence, Warren and Washington Counties.

5. HCR/HCR Home Care in East Syracuse – serving Cayuga, Cortland, Jefferson, Madison, Onondaga, and Oswego 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:

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

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

Louise Woerner Chief Executive Officer
Duane E. Tolander, CPA (Iowa) 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:

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

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

Mary Elizabeth Zicari, RN 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
Suzanne L. Turchetti 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
- 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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 6th day of October, 2016, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to acquire and merge HCR/HCR Home Care, Homer Certified Home Health Agency and add Cortland County to the existing operating certificate, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER

APPLICANT/FACILITY

161397 E

HCR/HCR Home Care

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 CONDITIONED 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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: 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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 6th day of October, 2016, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER:

FACILITY:

152124 E

Core Care, LLC
(Bronx, Queens, Kings, Richmond, Nassau and
New York Counties)

STATE OF NEW YORK : DEPARTMENT OF HEALTH

-----X

IN THE MATTER :

OF :

THE PROPOSED DISAPPROVAL BY THE PUBLIC :
HEALTH AND HEALTH PLANNING COUNCIL : ORDER
OF AN APPLICATION FOR ESTABLISHMENT :
AND CONSTRUCTION :

By :

UTICA PARTNERS, LLC, d/b/a :
DIALYSIS CENTER OF ONEIDA :

Application No. 142183-B :

Petitioner :

-----X

A Notice of Hearing dated October 15, 2015, was served on Utica Partners, LLC, d/b/a Dialysis Center of Oneida ("Petitioner") to review the proposed disapproval by the Public Health and Health Planning Council ("PHHPC") of Petitioner's establishment and construction Certificate of Need ("CON") application on the basis of lack of public need for a dialysis center in Petitioner's planning area pursuant to the need methodology of 10 NYCRR 709.4. Petitioner requested an administrative hearing pursuant to PHL § 2801-a(2) on the issue of the PHHPC's proposed disapproval of its CON application. Pursuant to 10 NYCRR 51.11(c), the scope of the hearing included public need, financial feasibility, character and competency, and "such other matters" deemed pertinent under Public Health Law § 2801-a(3).

The hearing was held at the Department of Health's Albany office in Menands, New York, on February 2, 3, and 5, 2016, before Dawn MacKillop-Soller, Administrative Law Judge. The Department of Health appeared by Tina Marriner, Esq., and Craig Anderson, Esq. The Petitioner appeared by Henry M. Greenberg, Esq., and Stephen M. Buhr, Esq. Faxton St. Luke's Healthcare

("Faxton"), as the intervening party, was represented by Karl J. Sleight, Esq., and Joan P. Sullivan, Esq.

Evidence was received and witnesses were sworn and examined. A transcript of the proceedings was made. On June 10, 2016, the Administrative Law Judge issued her Report and Recommendations.

NOW, on reading and filing the Notice of Hearing, the Record herein and the Administrative Law Judge's Report, we hereby adopt the Report of the Administrative Law Judge as our own; and

IT IS HEREBY ORDERED:

1. Petitioner's application to establish and construct a renal dialysis facility meets the requirements of Public Health Law § 2801-a(3) and 10 NYCRR 709.4 and is hereby approved.
2. This Order shall be effective upon service on the Petitioner by personal service or by certified or registered mail.

DATED: Albany, New York
June 10, 2016

THE PUBLIC HEALTH COUNCIL
OF THE STATE OF NEW YORK

By: _____

TO: New York State Department of Health
Tina Marriner, Esq.
Craig Anderson, Esq.
Corning Tower, Room 2412
Empire State Plaza
Albany, New York 12237

Faxton St. Luke's Healthcare
Karl J. Sleight, Esq.
Joan P. Sullivan, Esq.
Harris Beach PLLC
677 Broadway, Suite 1101
Albany, New York 12207

Utica Partners, LLC
d/b/a Dialysis Center of Oneida
Henry M. Greenberg, Esq.
Stephen M. Buhr, Esq.
Greenberg Traurig, LLP
54 State Street, 6th Floor
Albany, New York 12207

STATE OF NEW YORK : DEPARTMENT OF HEALTH

-----X
IN THE MATTER :
OF :
THE PROPOSED DISAPPROVAL BY THE PUBLIC :
HEALTH AND HEALTH PLANNING COUNCIL :
OF AN APPLICATION FOR ESTABLISHMENT : Report and
AND CONSTRUCTION : Recommendation
By :
UTICA PARTNERS, LLC, d/b/a :
DIALYSIS CENTER OF ONEIDA :
Application No. 142183-B :
Petitioner :
-----X

To: The New York State Public Health Council
Department of Health, State of New York

Hearing Before: Dawn MacKillop-Soller, Administrative Law Judge

Held at: The Department of Health
150 Broadway
Riverview Center
Menands, New York 12204
February 2, 3, and 5, 2016
Record closed April 11, 2016

Parties: New York State Department of Health Faxton St. Luke's Healthcare
Tina Marriner, Esq. Karl J. Sleight, Esq.
Craig Anderson, Esq. Joan P. Sullivan, Esq.
Corning Tower, Room 2412 Harris Beach PLLC
Empire State Plaza 677 Broadway, Suite 1101
Albany, New York 12237 Albany, New York 12207

Utica Partners, LLC
d/b/a Dialysis Center of Oneida
Henry M. Greenberg, Esq.
Stephen M. Buhr, Esq.
Greenberg Traurig, LLP
54 State Street, 6th Floor
Albany, New York 12207

JURISDICTION

Pursuant to Public Health Law (“PHL”) § 2801-a(1), Utica Partners, LLC d/b/a Dialysis Center of Oneida (“Petitioner”) submitted a Certificate of Need (“CON”) application to the Department of Health (“Department”) for written approval to establish a renal disease dialysis center in Oneida, New York.¹ The Establishment and Project Review Committee (“EPRC”), a subcommittee of the Public Health and Health Planning Council (“PHHPC”), charged with initially reviewing the application, reviewed Petitioner’s application competitively with a construction application submitted by Faxton St. Luke’s Healthcare (“Faxton”) for a similar renal dialysis facility in Madison County, and without making a recommendation, moved the applications to the PHHPC for full review. [Ex. 52A; EPRC 35-36, PHHPC 1, 5; T. 63-64].

At the PHHPC meeting held April 16, 2015, the Department recommended approval of Faxton’s application and disapproval of Petitioner’s application on the basis of costs. The PHHPC could not attain the required number of votes to approve Faxton’s CON application and voted to disapprove Petitioner’s CON application. Pursuant to PHL § 2801-a(2), Petitioner requested a “public hearing” on the issue of the PHHPC’s proposed disapproval of its CON application. Pursuant to the Department’s Notice of Hearing dated October 15, 2015, the PHHPC’s proposal was to disapprove Petitioner’s application on the basis of lack of public need for a dialysis center in Petitioner’s planning area pursuant to the need methodology of 10 NYCRR 709.4. The hearing, which was held at the Department’s offices in Albany, New York, provided this Administrative

¹ References in brackets refer to exhibits [“Ex.”], hearing transcript pages [“T.”], and minute page numbers from the EPRC and PHHPC meetings.

Law Judge “ALJ” with the “opportunity to do a more thorough vetting...a different level of fact finding.”² [PHHPC 8, 14, 29, 33, 39-41, 47-49].

HEARING RECORD

Petitioner witnesses: Emile Wassel, M.D., Nephrologist
 Joseph Carlucci, CEO and Chairman, American Renal Associates
 Ginny Grogan, Vice President, Education and Quality, American
 Renal Associates
 Kenneth Maier, C.P.A., M Group Consulting LLC and
 Maier, Markey & Justice LLP

Petitioner exhibits: Petitioner 1-69

1. Notice from Faxton to Department referencing dialysis center closure.
 - 1a. Quality and assurance data.
 - 1b. Cost data.
2. July 2014 letter from Faxton to dialysis center patients.
3. July 2014 press release regarding dialysis center closure.
4. July 10, 2014 letter from Faxton to Anthony Picente.
5. July 13, 2014 newspaper article regarding dialysis center closure.
6. July 15, 2014 newspaper article regarding dialysis center closure.
7. July 14, 2014 letter to dialysis patients.
8. July 24, 2014 letter from the Department to Faxton regarding closure plan.
9. November 4, 2014 letter from the Department to Petitioner.
10. November 7, 2014 letter from the Department to Petitioner.
11. Responses from Petitioner to the Department’s questions.
12. November 25, 2014 letter from Faxton to former dialysis patients.
13. December 4, 2014 letter from the Department to Petitioner
14. 11 Letters from Faxton to the Department.
15. December 5, 2014 press release.
16. Email correspondence - Department and Petitioner.
17. Email correspondence - Department and Petitioner.
18. December 19, 2014 letter from the Department to Petitioner.
19. December 22, 2014 letter from the Madison County Board of Health to the Department.
20. December 22, 2014 letter from Faxton to the Department.
21. December 26, 2014 NYS Electronic CON (“NYSE-CON”) documents.
22. January 20, 2015 letter from the Department to Faxton.
23. January 21, 2015 NYSE-CON documents.
24. January 28, 2015 NYSE-CON documents.
25. January 23, 2015 letter from Assemblyman Bill Magee to Faxton.

² At the time of a telephone conference on December 4, 2015, and consistent with the PHHPC members’ determination, the ALJ ruled that the scope of the hearing would include public need, financial feasibility, and character and competency. [Ex. A, 52A; PHHPC 48; January 20, 2016 pre-hearing conference T. 11-12].

26. January 26, 2015 letter Oneida Healthcare's President to Mohawk Valley Health System.
27. January 28, 2015 NYSE-CON document.
28. Email correspondence dated February 12, 2015 – the Department and Petitioner.
29. January 29, 2015 NYSE-CON documents.
30. January 30, 2015 letter from the Department to Faxton.
31. February 5, 2015 NYSE-CON documents.
32. Email correspondence dated February 2015 – the Department and Petitioner.
33. February 18, 2015 letter from Deborah Anderson-Gaiser to the Department.
34. February 18, 2015 NYSE-CON documents.
35. Department's internal analysis – the Petitioner's CON application.
36. February 23, 2015 NYSE-CON documents.
37. Department's internal analysis – Faxton's CON application.
38. February 26, 2015 NYSE-CON documents.
39. December 26, 2014 NYSE-CON documents.
40. Email correspondence dated February 26, 2015 – the Department and Petitioner.
41. February 27, 2015 Email correspondence and attachments.
42. March 2 and 4, 2015 email correspondence – the Department and Petitioner.
43. March 2015 letter from Assemblyman Bill Magee to the Department.
44. March 2015 email correspondence:
 - a. Nine pages - the Department and Petitioner.
 - b. One page - the Department and Petitioner.
45. March 17, 2015 letters from the Department to Faxton and the Department to Petitioner advising of the date of the EPRC meeting.
46. Department Memo dated March 17, 2015 to EPRC.
47. Email correspondence – the Department and Petitioner.
48. Email correspondence dated March 18, 2015 – the Department and Petitioner.
49. Email correspondence dated March 18, 2015 – the Department and Petitioner.
50. Email correspondence dated March 20, 2015 – the Department and Petitioner.
51. Email correspondence:
 - a. Email dated March 20, 2015 with an attached letter – the Department and Petitioner.
 - b. Letter dated March 23, 2015 from Faxton to the PHHPC.
52. Letters and transcript:
 - a. Letter dated March 25, 2015 from Petitioner to the Department.
 - b. Transcripts – EPRC and PHHPC meetings and quality data chart.
53. Email correspondence dated March 26, 2015 – the Department and Petitioner.
54. Formal write-up the Department submitted to PHHPC.
 - a. Formal write-up for the Petitioner's CON application, prepared by the Department.
 - b. PHHPC agenda.
 - c. Formal write-up for Faxton's CON application, prepared by the Department and submitted to PHHPC.
55. April 3, 2015 NYSE-CON documents dated April 3, 2015.
56. April 10, 2015 NYSE-CON documents dated April 10, 2015 – the Department and Faxton – 2013 cost report and letter to PHHPC members.
57. Email correspondence dated April 8, 2015 – the Department and Petitioner and letter to PHHPC dated April 10, 2015.
58. Email correspondence dated April 15, 2015 – the Department and Faxton.

59. Email correspondence dated April 21, 2015 – the Department and Petitioner.
60. Letter dated April 22, 2015 – the Department and Petitioner.
61. Letter dated April 29, 2015 –Faxton to the Commissioner and attachments.
62. Letter dated May 4, 2015 from the Department to Petitioner.
63. Letter dated May 6, 2015 from Petitioner to the Department.
64. Drawing depicting Faxton’s dialysis locations.
65. Petitioner’s CON application.
66. Faxton’s CON application.
- 67a. Benchmark data from the 2014 Medicare cost report.
- 67b. Chart quality data.
- 67c. 2013 Faxton - Institutional Cost Report (“ICR”).
68. Petitioner’s cost chart showing utilization projections.
69. Letter from Faxton to Office of Pharmacy Affairs.

Department witnesses: Charles Abel, Deputy Director, the Department’s Center for Healthcare Facility Planning, Licensure and Finance

Department exhibits: Department A-K

- A. Notice of Hearing dated October 15, 2015.
- B. ALJ assignment letter dated October 23, 2015.
- C. ALJ scheduling letter dated December 8, 2015.
- E. Petitioner’s CON application 142183-B, application schedule 1, undated.
- F. Petitioner’s CON application 142183-B, application schedule 5, undated.
- G. Petitioner’s CON application 142183-B, executive summary, November 4, 2014.
- H. Faxton’s CON application 142261-C, application schedule 1, undated.
- I. Faxton’s CON application 142261-C, application schedule 5, undated.
- J. Faxton’s CON application 142261-C, executive summary, dated January 20, 2015.
- K. Comparison chart – analysis of the two CON applications.

Faxton’s witnesses: Louis Aiello, Chief Fiscal Officer (“CFO”), Faxton

PROCEDURAL HISTORY

1. On December 4, 2015, on the consent of all parties and pursuant to Title 10, Section 51.11(c), of the New York Codes, Rules and Regulations (“NYCRR”), Faxton’s petition to intervene as a party was granted. [January 20, 2016 T. 10-11].

2. On January 20, 2016, a pre-hearing conference was held with all parties at the Department’s offices located at 150 Broadway, Menands, New York. At that time, exhibits were

marked for identification and witnesses were identified. A transcript of the proceedings was made. [January 20, 2016, T. 1-89].

3. At the time of the hearing on February 2, 3, and 5, 2016, a transcript of the proceedings was made. [T. 1-1108].

4. Each party submitted two post hearing briefs.

5. On April 19, 2016, the Petitioner submitted a motion to strike portions of the Department's rebuttal brief dated April 11, 2016. On April 26, 2016, the Department submitted an opposition letter, and on April 29, 2016, Petitioner submitted a reply letter. On April 29, 2016, the ALJ granted the portions of Petitioner's motion requesting removal from the record the Department's arguments made for the first time in its rebuttal brief.

SUMMARY OF FACTS

1. A renal disease dialysis center is considered a diagnostic and treatment center certified under Article 28 of the PHL and requires approval following the submission of a CON application to operate. Applicants proposing to operate as a certified facility or agency are required to submit a CON application for approval to construct, establish, or otherwise renovate or acquire a healthcare facility or agency. A competitive review of two or more CON applications involves a public need methodology that takes into account patient access and the need for the services in a particular planning region. [EPRC 3, PHHPC 5; T. 58, 60, 70-71].

2. Nephrology "is a field of medicine that specialize(s) in the management of kidney disease and hypertension and dialysis." Dialysis is a "division of nephrology" and a patient with end-stage renal disease requires "dialysis support to...maintain life." The three types of dialysis treatments are in-unit, home hemodialysis, and home peritoneal. Approximately four to eight

percent of patients receiving dialysis treatments receive them at home. [Ex. 3, 5, 6; T. 204-207, 742].

3. Petitioner applied for a CON in July 2014, to establish and construct a 12-station freestanding, renal dialysis center at 2142 Glenwood Plaza, Oneida, New York, located in Madison County.³ Petitioner is a limited liability company, d/b/a Dialysis Center of Oneida, and its members are American Renal Associates, LLC (“ARA, LLC”) and Emile Wassel, M.D.⁴ ARA, LLC is a subsidiary of American Renal Holdings, Inc. (“ARA”), a national provider of renal dialysis services. As a subsidiary of American Renal Associates Holding, Inc. (“ARAH”), ARA currently owns and operates 192 dialysis clinics in 24 states – five in New York are located upstate – in Massena, Plattsburgh, Malone, Amsterdam and St. Elizabeth. [Ex. 35, 65, E; PHHPC 1-2; Petitioner’s brief, p. 6; T. 72, 471, 476, 1004-1006].

4. Emile Wassel, M.D. is board-certified in Internal Medicine and Nephrology, practicing medicine in Utica, New York, and a member of Utica Partners. On September 14, 2014, he formed an LLC with ARA, LLC. [Petitioner’s brief, p. 6; T. 224, 239, 246, 283-284].

5. In December of 2014, Faxton submitted its CON application to construct an extension clinic renal dialysis center at 131 Main Street, Suite 101, Oneida, New York. Mohawk Valley Health Systems (“MVHS”) is a not-for-profit organization that contains as its affiliates Faxton, Faxton Hospital and St. Elizabeth’s Medical Center. It operates out of 52 physical locations, inclusive of the two hospitals and outpatient facilities. Faxton operates six dialysis centers in upstate New York, located in Herkimer, Hamilton, Rome, St. Luke’s campus in Utica,

³ As a result of the Department’s need methodology analysis, Petitioner agreed to revise its CON application to reflect a request to establish and construct an eight-station renal dialysis center, as opposed to a facility containing 12 stations. [T. 80-81, 224].

⁴ The ownership percentages are ARA, LLC at 51% and Emile Wassel, M.D. at 49%. [Ex. 35, 65].

and at St. Luke's and Masonic nursing homes. [Ex. 66, H; Faxton's brief p. 10 and reply brief p. 2; T. 74, 297, 837-840, 851-861].

6. Over the timeframe of approximately 13 years and until its closure effective August 1, 2014, Faxton was the only operating dialysis facility in the county of Madison. [T. 852].

7. In the Fall of 2013, Faxton learned of the expiration of its lease agreement with Oneida Hospital ("Oneida") at the space it rendered dialysis services, 221 Broad Street, Oneida, New York. At that time, Faxton began to make month-to-month rental payments. [T. 852-853, 855, 915, 933].

8. Although Faxton's plan was to renegotiate its lease or expand the leased space, Oneida served Faxton with an eviction notice. On June 27, 2014, Faxton provided the Department with a copy of the eviction notice and a closure plan.⁵ As part of its closure plan, Faxton stated it would temporarily close on July 31, 2014, decline accepting new patients as of June 27, 2014, notify the 32 patients affected by the closure, and "continue to dialyze patients" until July 30, 2014, at which point the patients affected by the closure would be "relocated to other facilities within [Faxton's] system." [Ex. 1, 52A; PHHPC 11, 13, 16; T. 81-82, 852-862].

9. As part of its closure plan, Faxton did not submit relocation information.⁶ [T. 459-460].

10. In letters dated June 30 and July 1, 2014, Faxton notified the Oneida dialysis patients of the closure and the need to transfer their dialysis care. At the time of the closure, those patients lived approximately "two blocks or one block...at the most...five to ten miles" away from the Oneida clinic. [Ex. 1-6, 28; T. 82, 216-220, 855, 856].

⁵ The closure plan was accepted by the Department effective August 1, 2014. [Ex. 8; T. 82].

⁶ Approximately 90 days post-closure, Faxton secured a new space for the extension clinic. [T. 862].

11. The closure resulted in longer commute times of approximately 40-50 miles for mostly “sick and fragile” and chronically ill patients receiving dialysis treatments three times per week, for approximately “three to four hours” per visit. The population of patients receiving dialysis treatments suffer from “multiple medical problem(s).” [Ex. 1, 2, 5, 6, 28; PHHPC 11, 13, 17; T. 216-221].

12. In an email correspondence dated July 1, 2014, to a patient affected by the closure, Gene Morreale, CEO of Oneida, stated that for a timeframe of “over a year,” efforts had been made to work with Faxton “to relocate the dialysis program in [the Oneida] community” and “work out a deal” to avoid eviction. Mr. Morreale explained that Oneida required the space to accommodate an expanding “ENT practice.” Despite Faxton having this information “for over a year,” Mr. Morreale stated that it “failed to decide on a local presence.” [Ex. 28; T. 927-934].

13. In a press article dated July 9, 2014, Lila Studnicka, Faxton’s Executive Director, stated that “[e]ven with advanced notice from the owners of the building, [Faxton] was unable to find an appropriate new space for the service.” In that statement, Faxton apologized “for any inconvenience [the closure] is causing [its] patients and their families.” [Ex. 3, 6; T. 932].

14. At the EPRC meeting, Robert Schoffield, Senior Vice President of Operations for MVHS, stated: “(f)rom a lease perspective, we received notice from the building owner that they had a tenant in the office...we received more than 30 days’ notice, yes, we received three months’ notice prior to that.” With regard to the closure, Mr. Schoffield added: “[Oneida] discontinued our lease, but we in all earnest attempted to find other locations to place our program.” [EPRC 27-28].

15. As part of the CON competitive review process, the Department uses a

“surveillance system” to review dialysis providers at least one time in three years, a ten-year look back period for new operators to review disclosure forms pertaining to a history of employment and compliance for out-of-state healthcare operations. In the case of established providers, the Department confirms substantial compliance with any plans of corrections, statements of deficiencies and “all Department [regulations] and statutes and guidelines.” [T. 84-87, 90, 1004-1005; EPRC 14, PHHPC 6-9; PHL §§ 2802(3)(e), 2801-a(3)].

16. According to Ginnie Grogan, Vice President of Education and Quality for ARA, quality is measured “using quality metrics designed by the Center for Medicaid and Medicare Services” [“CMS”] and the data collected includes reports from Medicare claims and dialysis facilities. This results in a “rating,” which is “compiled where each dialysis facility is compared to all other dialysis facilities in the country.” Once CMS produces the data, it is analyzed “to see how each individual dialysis facility is performing in relation to national standards,” resulting in the “star rating system.” The quality incentive program (“QIP”) is “another system or another method of measuring quality among dialysis clinics” and “dialysis clinics are graded on essentially the same metrics [as the star system].” [T. 664-680].

17. Faxton’s total revenues are approximately “five hundred and twenty million dollars on an annual basis.” In 2015, ARA generated approximately “six hundred...million” dollars, with a profit margin, from its 192 renal facilities and physician and institutional partners. [Faxton’s brief, p. 10; T. 476, 839].

18. Beginning in July of 2014, Faxton qualified for participation in the federal government’s 340b pharmaceutical program, which allows Faxton, through its affiliation with the hospital, a not-for-profit entity, to purchase outpatient drugs at a significant discount. Dialysis drugs, such as Epogen, have been on the list of qualifying 340b drugs, which is subject to change.

The savings on the drugs is variable, currently at 57 percent below the Group Purchase Price for hospitals. [Faxton's brief, p. 10-11, 26; T. 844-852, 884, 979].

19. The Department's deciding factor to recommend Faxton's application for approval was cost per unit of service ("cost per treatment") for a projected year three. The calculation is performed by finding the sum total of all operating costs and dividing that number by the total number of treatments. In Petitioner's case, this resulted in a cost per treatment of \$287.98.⁷ The calculation for Faxton resulted in a total projected cost per treatment of \$156.26.⁸ [Ex. 46, 65, 66; Faxton's brief, p. 12, Petitioner's brief, p. 15; T. 164-166, 167-176].

20. Operating costs include costs projected to be incurred by the renal facility, such as salaries and wages, employee benefits, professional fees, medical and surgical supplies, utilities, other direct expenses, depreciation and rent, and purchased services. [Ex. 65, 66; T. 167-170].

21. The total projected treatments for year three are the sum of all treatments, which include in-facility renal dialysis, home hemodialysis, and peritoneal dialysis treatments. [66, 65; T. 170-171].

22. In a competitive CON review, the Department expects "similar utilization proposed by both facilities." In an effort to be fair, it is the intention of the Department to use the same utilization numbers in a competitive review. [Ex. 65, 66; T. 88, 194-195, 373].

23. Faxton used five for its number reflecting units of service per week for home hemodialysis and seven for its projected home weekly peritoneal treatments. Petitioner, on the

⁷ These numbers were derived from adding the total operating costs or \$1,712,061 (1,308,761 (projected year one expenses) added to 403,300 (projected year three expenses)) and dividing it by 5,945 (the projected total number of treatments or 307 (home hemodialysis treatments) added to 459 (home peritoneal dialysis treatments) and 5,179 (renal dialysis treatments)). [Ex. 65; T. 168-172].

⁸ This number was the result of dividing Faxton's projected operating costs projected at \$1,530,009 divided by 9,792 (projected number of treatments). [Ex. 66; T. 174-176, 308-310, 746-748].

other hand, used the number three. Because Faxton used the numbers five and seven in the home utilization calculations as part of its CON application, its projected number of total treatments was higher than Petitioner's – Faxton projected 2,304 home treatments while Petitioner projected a total of 766 home treatments.⁹ [Ex. 66, 68; T. 183-187, 199, 200-201].

24. The United States Renal Dialysis System and the majority of renal dialysis centers in the country use the number three as their home utilization number in calculating treatments.”¹⁰ It is an “industry convention” to convert “to three times a week” the home treatments. [T. 501-502, 508-509, 791; Department's brief, p. 17, Petitioner's brief, p. 19-21].

25. In its initial CON application, Faxton projected a total cost per treatment of \$156.21. Since the Department viewed Faxton's total cost per treatment number as “very low,” it undertook a sensitization process of Faxton's budget. [Ex. 37, 54b, 66, 68; T. 92-94, 176-178, 460, 464-465].

26. The Department adjusted Faxton's “line-item expense budgets...for reduced utilization...to have...a more apples-to-apples comparison between [Faxton] and [Petitioner].”¹¹ [Ex. J, 46, 68; T. 92-94, 176, 193, 460].

27. Since Faxton's total number of treatments was viewed by the Department as overly excessive for the planning region, the Department adjusted it by applying its own capacity utilization formula, to determine in-unit treatments.¹² It deemed each of the eight stations in the

⁹ Faxton's numbers were calculated by taking 28 (7 home peritoneal treatments per week multiplied by Faxton's projected number of four patients), multiplied by four (or four weeks), multiplied by 12 (a complete year) to total 1,344. For home hemodialysis, Faxton took 20 (5 home hemodialysis treatments per week multiplied by four patients), and multiplied it by four (or four weeks), multiplied by 12 (a complete year), to total 960 home hemodialysis treatments. Petitioner, using the number 3, projected 459 home peritoneal dialysis treatments and 307 home hemodialysis treatments. [Ex. 32, 34, 61, 66; T. 182-189, 199, 501-502, 639-642, 742-745].

¹⁰ This calculation involves taking the number of days for home treatment and converting it back to a normalized number of three. [T. 743-745].

¹¹ All adjustments were made to Faxton's year three projected costs per treatment.

¹² This calculation involved converting the in-unit utilization to 702 treatments per year. [T. 748].

renal facility to provide 702 treatments per year, which resulted in adjusting Faxton's total number of projected in-facility treatments from 7,488 to 5616 or a difference of 1,872 treatments. Petitioner's projected in-unit treatments were never sensitized and remained at 5,179, which was 437 projected treatments less than Faxton's anticipated treatments. [Ex. 46, 68, J; T. 92-94, 185-186, 191-192, 743-750].

28. The Department's sensitization process resulted in a change to Faxton's total treatments from 9,792 to 7,930 and reduced operating costs for Faxton by \$172,946 or to a total of \$1,357,153. This resulted in the Department adjusting Faxton's cost per treatment from \$156.26 to \$171.36.¹³ [Ex. J, 46, 51A, 68; T. 307-308].

29. On March 17, 2015, the Department submitted a memorandum to the members of the EPRC, projecting costs per treatment for Petitioner at \$287.98 and Faxton at \$171.36. [Ex. 46; T. 298-302].

30. In further review of its operating expenses, on March 23, 2015, in a letter to PHHPC council members, Faxton amended the total cost per treatment to include pharmacy and laboratory expenses previously omitted from the total operating costs in the initial CON application by "\$18.71 and \$11.50," respectively, which changed the cost per treatment total to \$201.57. [Ex. 51A; 66; T. 303-308, 760].

31. At the EPRC meeting March 26, 2015, the Department recommended approving Faxton's application and disapproving Petitioner's application on the basis of public need. In recommending Faxton, the Department stated that it had a "lower per unit cost in their proposal than [Petitioner]." The Department also factored in economies of scale and Faxton as a sustainable

¹³ This calculation is performed by dividing the total costs of \$1,357,153 by the total number of treatments of 7,920. [Ex. G, J, 46, 68; T. 309-310, 748-750].

healthcare provider. After voting, the EPRC members moved the applications to the PHHPC without making a recommendation. [Ex. G, J; EPRC 3-4, 35-36; T. 318].

32. At the direction of Yvonne Lavoy, the Department's Director of the Bureau of Financial Analysis ("BFA"), and prior to the PHHPC meeting, the Department's staff analyzed Faxton's 2013 ICR, which is typically used to analyze fiscal data and Medicaid rates, which resulted in a projected cost per treatment of \$398.20. [Ex. 56, 67c; T. 322-324].

33. In a letter to the PHHPC members dated April 10, 2015, Faxton amended its total cost per treatment to \$196.08. Faxton specified omitted expenses totaling \$127.47 per service, such as fees related to maintenance and repairs, operation, laundry and housekeeping, medical records, pharmacy, laboratory, bio-medical, and administration, as incurred and absorbed by the hospital.¹⁴ [Ex. K, 56, 67c; T. 326, 336-338].

34. In a comparison chart, the Department projected Faxton's cost per treatment number to be \$221.88, which included \$30.00 of previously omitted "purchased service cost(s)."¹⁵ [Ex. K; T. 105-106, 354-358].

35. Prior to the PHHPC meeting, the Department had "concerns that the costs for [Faxton's] could be...as high as another fifty dollars per treatment" above the "two twenty-one, two twenty-six range" but still "at least ten percent lower" than Petitioner's costs. [Ex. K; T. 357-359].

36. At the PHHPC meeting, the Department represented that there may be "sixty dollars per unit of service that remains not accounted for" in Faxton's proposed costs. The applications were reviewed competitively by the PHHPC at the time of the meeting held April 16, 2015, in

¹⁴ In the letter, Faxton estimated the total marginal costs as incurred by the hospital at \$127.47. [Ex. 56, 66; T. 336-342, 767-768].

¹⁵ Mr. Abel explained that the costs omitted "came from [an] American Renal letter, which...gave a chart of costs that were...either understated or omitted." [Ex. K; T. 356-357].

accordance with the procedures set forth in PHL § 2801-a(1). At that time, the members were incapable of meeting a necessary majority and on motion 15-3, voted to disapprove Petitioner's application to "afford the applicant the availability of moving through the appeals process." [Ex. 52A; PHHPC 14, 44-51; T. 361].

37. Kenneth Maier, C.P.A., M Group Consulting and Maier Markey & Justic LLP, estimated that after including the home utilization treatments, Faxton's cost per treatment number increased to \$235.88. After factoring in excluded operating costs and considering industry benchmarks, which identify the cost per treatment for hospital-based dialysis systems at \$341.00, Mr. Maier estimated Faxton's cost per treatment to be approximately \$300.00. [Ex. 68; T. 724, 750-754, 780-781].

38. At hearing, the Department estimated Faxton's cost per treatment to be "between two fifty-seven and two sixty-seven" and possibly "as high as in...the two seventy" range. [T. 366-369].

APPLICABLE LAW

1. PHL § 2801-a(1) provides that "(n)o hospital...shall be established except with the written approval of the public health and health planning council."
2. PHL § 2802(2) provides that "(t)he construction of a hospital, whether public or private, incorporated or not incorporated, shall require the prior approval of the commissioner."
3. PHL § 2801-a(2) affords an applicant subject to disapproval the right to request a hearing. It states:

If the public health and health planning council proposes to disapprove the application it shall afford the applicant an

opportunity to request a public hearing. The public health and health planning council may hold a public hearing on the application on its own motion. Any public hearing held pursuant to this subdivision may be conducted by the public health and health planning council, or by any individual designated by the public health and health planning council.

4. According to PHL § 2801-a(3), the PHHPC shall not approve an application for establishment unless it is satisfied as to:

(a) the public need for the existence of the institution...(b) the character, competence, and standing in the community, of the proposed incorporators, directors, sponsors, stockholders, members or operators...(c) the financial resources of the proposed institution and its sources of future revenues; and (d) such other matters as it shall deem pertinent.

5. The purpose in evaluating public need for dialysis stations is explained in 10 NYCRR 709.4(a):

It is the intent of the State Hospital Review and Planning Council that this methodology, when used in conjunction with the planning standards and criteria set forth in section 709.1 of this Part, become a statement of basic principles and planning/decision making tools for guiding and directing the development of dialysis stations for end stage renal disease services throughout the State. Additionally, it is intended that the methodology will provide the health systems agencies and potential applicants with sufficient flexibility to consider the unique characteristics of their respective areas in determining need. The goals and objectives of the methodology expressed herein are expected to ensure that an adequate supply of dialysis stations are available to provide access to care to all those in need of in-facility dialysis.

6. The methodology to be utilized in evaluating applications for establishment or construction of renal dialysis centers is set forth at 10 NYCRR 709.4. The factors to be considered in determining public need “shall include, but not be limited to, the following:”

(1) evidence that the proposed dialysis services capacity proposed will be utilized sufficiently to be financially feasible as demonstrated by a five-year analysis of projected costs and revenues associated with the program;

- (2) evidence that the proposed service or additional capacity will enhance access to services by patients including members of medically underserved groups which have traditionally experienced difficulties in obtaining equal access to health services (for example, low-income persons, racial and ethnic minorities, women, and handicapped persons), and/or appropriate rural populations;
- (3) evidence that the facility's hours of operation and admission policies will promote the availability of services which are acceptable to those in need of such services, in particular, operational hours that permit individuals in dialysis to continue employment;
- (4) the facility's willingness and ability safely to serve dialysis patients; and
- (5) when an existing provider proposes to add 12 or more stations, evidence, derived from analysis of factors including but not necessarily limited to both existing patient referral and use patterns and projected referral and use patterns which would result from addition of the proposed stations, indicating that approval of such stations will not jeopardize the quality of service provided at or the financial viability of other existing dialysis facilities or services within the applicant's planning area. However, a finding that the proposed facility would jeopardize the financial viability of such existing facilities will not, of itself, require a recommendation of disapproval of the application.

7. 10 NYCRR 709.4(c) provides that “(p)ublic need for a proposed facility or station shall be deemed to exist when review and consideration of evidence concerning each of the five factors...results in an affirmative finding.”

8. 10 NYCRR 401.3(g) provides that “(n)o medical facility shall discontinue operation or surrender its operating certificate unless 90 days' notice of its intention to do so is given to the commissioner and his written approval obtained.”

9. PHL § 2802(3)(e) provides that the Commissioner, in approving a construction application, “shall take into consideration” the following:

Whether the facility is currently in substantial compliance with all applicable codes, rules and regulations, provided, however, that the commissioner shall not disapprove an application solely on the basis that the facility is not currently in substantial compliance, if the

application is specifically: (i) to correct life safety code or patient care deficiencies.

ISSUE

Has the Petitioner established that its CON application should be recommended for approval by the PHHPC on the basis of economics and character and competence?

DISCUSSION

The minutes and video from the PHHPC meeting held April 16, 2015, demonstrate the PHHPC's acceptance of the Department's reports recommending approval of Faxton's CON application and disapproval of Petitioner's application. The basis of the Department's recommendation of Faxton's application was cost efficiency and a lower cost per treatment number. Charles Abel, Deputy Director, Center for Healthcare Facility Planning, Licensure and Finance, on behalf of the Department, explained to the PHHPC that "(a)ll other factors being comparable, the element that we focused on... is that the [Faxton] application proposes a more-cost efficient proposal, and as a result...we recommend approval based on that metric." The PHHPC accepted the Department's reports and after failing to meet a necessary majority, voted to disapprove Petitioner's application, which triggered Petitioner's administrative appeal.¹⁶ [Ex. 52A; PHHPC 8, 14, 44-51].

Pursuant to 10 NYCRR 51.11(d)(6) and the State Administrative Procedure Act § 306(1), the Petitioner had the burden of proof at the hearing to establish under PHL § 2801-a(3) that its CON application should be recommended for approval based on public need, character,

¹⁶ Of note, the PHHPC members were unable to come to a consensus; Faxton's projected costs and the closure of its renal dialysis facility were discussed prior to the votes. [PHHPC 8, 13, 16-18].

competence, financial resources, and such “other matters” as deemed pertinent. The “other matters” relevant here included the cost per treatment for a patient receiving in-facility and home treatment dialysis services and cost efficiency. Although the evidence remains unclear whether Petitioner’s total cost per treatment is less than Faxton’s, after consideration of the entire record and from the perspective of character and competence and based on economies of scale, Petitioner’s CON application should be recommended to the PHHPC for approval. [PHL § 2801-a(3), *See also* 10 NYCRR 709.4].

I. Public Need

Uncontroverted at hearing was the Department’s evidence that there exists a public need for an eight-station dialysis center in Madison County. The need was described to exist by the Department’s witness, Mr. Abel, under the following circumstances:

Competing applications are...two or more applications that...are requesting a...service that is limited in...a need-methodology. So, we have public need methodologies that dictate certain service, maximum number of resources. So, for...in the case of dialysis, we try to project out what – how many dialysis stations are needed in a particular planning region, to meet the need of the residents within that region. [T. 70-71].

The need was confirmed to exist here in Mr. Abel’s testimony that in the planning area of Madison County, “the need was established as – eight stations.” It was determined, he explained, in the following manner:

It’s calculated, based on the number of patients in need of renal dialysis...requiring renal dialysis and...we take the number...of patients in an area and then we...take a look to see...the methodology, as it’s been utilized, projections that there are seven hundred and two treatments that can occur during the year...for each station and...operating two and a half shifts per day, six shifts per week. Those are all assumptions that we use in our...need calculation. Annual...treatments is seven hundred and eightyish. We say ninety percent utilization yields the seven hundred and two

figure. And we...assume that in outpatient renal facilities, we can accommodate...four and a half patients per week, per station. [Ex. J; T. 78-79].

The parties do not dispute that the CON applications of Petitioner and Faxton reflect proposals to satisfy the public need for a renal dialysis facility in Madison County. Petitioner is proposing to establish and construct an eight-station dialysis center at 2142 Glenwood Plaza in Oneida and Faxton is seeking to construct an eight-station dialysis extension clinic at 131 Main Street, in the same planning region. Mr. Abel agreed that both applicants “were now proposing eight stations...which would...fill the need for...that planning region.” [10 NYCRR 709.4(b) and 709.4(c); Ex. 65, 66, E, H; T. 90].

II. Character and Competence

a. Faxton’s Closure

Faxton’s argument that as an established provider and construction CON applicant, its character and competence is not at issue in this proceeding is misplaced. The Department’s competitive review process for established providers involves confirming substantial compliance with “all Department [regulations] and statutes and guidelines,” one of which Faxton violated here. Although the Department found Faxton compliant with “all Department rules and regulations” at the PHHPC meeting, the evidence confirmed Faxton’s failure to comply with a regulation requiring it to provide the Commissioner of Health with at least 90 days’ notice of its proposed closure date. [EPRC 14; PHHPC 6, 29; 10 NYCRR 401.3(g), PHL §§ 2802-a[1] and 2802(3)(e)].

The Department argues that “although filed late,” Faxton’s closure plan “was substantially compliant with regulations and met the needs of the Department and Faxton St. Luke’s patients.” Although Faxton admits to its non-compliance with the regulation, it argues the error was harmless since the Department never issued a statement of deficiency. Indeed, Mr. Abel’s testimony was

that the regulation is not strictly enforced since it is not always “needed.” Unreconciled with this, however, is Mr. Abel’s testimony that the regulation has as a purpose the protection of patients, which suggests that under the circumstances of the closure here, which involved 32 sickly patients required to commute longer distances to receive dialysis treatments, the regulatory timeframe should have been enforced. [10 NYCRR 401.3(g); PHHPC 6, 29; Petitioner’s brief, p. 8, Faxton’s brief, p. 2, 4-7, Department’s brief, p. 13-14; T. 84-90, 131-145, 1004-1005].

In improperly allowing its lease to expire and failing to account for a relocation plan in its closure plan filed with the Department, Faxton rendered itself inoperable to the detriment of its patients required to travel distances for dialysis treatments and in doing so, violated 10 NYCRR 401.3(g) by not giving the Commissioner 90 days’ notice of its intent to close. Although Faxton secured a lease for its proposed dialysis facility approximately 90 days post-closure, this corrective action does not render it substantially complaint since it occurred after Petitioner filed its CON application and six months following the filing of its closure plan with the Department. Even if Faxton had identified a relocation site as part of its closure plan, it waited until four months after the closure, towards “the end of 2014,” to file its CON application and the facility remains closed today. [PHL § 2802(3)(e), 10 NYCRR 401.3(g); Ex. 1, 66; T. 72-74, 82, 86-87, 851-862].

While it is true that 31 of the 32 dialysis patients affected by the closure were transferred to Faxton’s other dialysis facilities, the patients were not notified of the need to transfer their dialysis care until the closure was imminent. Louis Aiello, CFO, Faxton, characterized the treatments received by these patients as “life or death.” He described the patients receiving these treatments as “near death” and “kind of...ready to die” and as having “a lot of comorbidities that go along with their dialysis issues.” In order to meet the dialysis needs of these patients at Faxton’s other clinics, the patients were required to travel an additional 40-50 minutes, at least three times

per week, for dialysis sessions lasting three to four hours each. [Ex. 1, 3, 5, 6; Department's brief, p. 13-14; T. 81-82, 131-145, 847-852, 855-860, 915, 932-933].

Faxton's argument that the closure occurred when "the program's lease agreement was not renewed, causing the dialysis center to close" and that in not renegotiating its lease or finding other suitable space, it had no choice but to close, unpersuasively suggests a closure that was unavoidable or unforeseen. Mr. Aiello, however, admitted to Faxton's knowledge of the lease expiration in the Fall of 2013, which was approximately ten months prior to the closure. Consistent with this was the evidence from Oneida's Chief Executive Officer, Gene Morreale, stating that Faxton knew "for over a year" that it would need to relocate its space. Despite efforts to assist Faxton in relocating to a different space or to "work out a deal," Mr. Morreale stated that Faxton "failed to respond." Lila Studnicka, Executive Director for MVHS and Robert Schoffield, Senior Vice President of Operations for MVHS, confirmed Faxton's months of advance notice "from the owners of the building." [Ex. 2, 3, 6, 28; Faxton's brief, p. 2, 4; T. 855, 916-935].

Mr. Aiello testified that simultaneous with the expiration of Faxton's lease, Faxton began to make "month-to-month" lease payments, which should have signaled to Faxton not only the expiration of its lease but the right to stay, at most, one additional month. At the PHHPC meeting, concerns were raised regarding Faxton's decision "to close...even though they [knew] they were running out on their lease," and the harm caused to the patients by the closure, which required them "to travel about 50-60 miles to get dialysis." Troubling is Faxton's decision to wait to advise its dialysis patients of its decision to close, despite making month-to-month rent payments for almost one year, amid efforts by the landlord to work with them to secure a new space. The evidence confirmed that Faxton chose to close its doors in lieu of good faith negotiations to

renegotiate the lease agreement or secure new space. [Ex. 1, 2, 3, 4; *See* New York Real Property Law § 232-b; EPRC 28, PHHPC 11-17; T. 460, 854-855, 933-935].

b. Quality of Care

As part of the quality review in the competitive review process, the Department used the Federal Centers for Medicare & Medicaid Services (“CMS”) star ratings, a five-star rating system, to compare renal facilities. Petitioner argues that quality data from the CMS and Quality Incentive Program (“QIP”) show that it will render a “superior” performance to Faxton and will provide “higher quality renal dialysis services to the City of Oneida and surrounding areas.” The Department challenges the star rating system as unreliable. The evidence supports the Department’s position that there are “significant flaws” and problems in the data reported, which results in inaccuracies in the rating system results. [Petitioner’s brief, p. 13-14, Faxton’s brief, p. 3, Department’s brief, p. 10; T. 83].

The evidence showed that the star rating system data is “self-reported” and dependent upon “self-evaluations” and information reported by individual renal facilities nationwide. While the data may assist dialysis patients to make “informed decisions about where they receive dialysis services,” as suggested by Petitioner, the star ratings are the result of a facility’s submission of incorrect data and “the makeup of the patient population.” Similarly, the QIP system, which is a “pay for performance program where dialysis clinics are graded on essentially the same metrics [as the star system],” is mostly self-serving and therefore, not a reliable measure of performance. [Ex. 67b; Department’s brief, p. 10-11, Faxton’s brief, p. 20-21, Petitioner’s brief, p. 13-14; T. 83, 85, 90, 661-665, 674-683, 714-171].

Problems related to the rating systems were discussed at the EPRC meeting, such as data accounting for all mortalities caused by deaths unrelated to renal dialysis care and higher mortality

rates in states with significant physical and mental health problems, including obesity and alcoholism. Even though the reports from both systems show Petitioner scoring higher, the potential for skewed data is high and the evidence established that it should not be relied upon exclusively in evaluating quality in the CON process. [Ex. 67; EPRC 9-10; Faxton's brief, p. 3; T. 83-85, 90, 661-663, 674-680, 714-171].

c. Compliance

In an attempt to attack Petitioner's character, Faxton argues that Mr. Abel, in his review of Petitioner's CON application, was unaware that "ARA had entered into a consent decree in 2007, that prohibits them from operating dialysis centers in certain areas of Rhode Island and that this would have been information he would have considered had it been disclosed by [Petitioner]." Faxton argues that "[Petitioner] failed to disclose important information concerning dialysis facilities in Rhode Island" in its CON application. In support of this argument, Faxton relies on a Securities and Exchange Commission document not in evidence in this proceeding.¹⁷ Petitioner argues that it was "under no legal obligation to make any such disclosure, and neither Faxton nor the Department points to any regulatory requirement to suggest otherwise." [Ex. 65, Schedule 3B; Faxton's brief, p. 21 and reply brief, p. 1, 4-5; Petitioner's brief, p. 13; T. 87, 480-481, 984, 998].

Faxton's argument assumes that as a separate legal entity, there is a nexus between Petitioner and ARA's out-of-state conduct. The evidence, however, showed that Petitioner's member, ARA, LLC is a subsidiary of American Renal Holdings, Inc. ("ARA"), a national provider of renal dialysis services. As a subsidiary of American Renal Associates Holding, Inc. ("ARAH"), ARA is the national provider responsible for the ownership and operation of dialysis clinics in 23 states, including Rhode Island, and not Petitioner. Mr. Abel shed light on this issue at

¹⁷ At hearing, the ALJ ruled that the document was not relevant to the proceeding. [T. 993].

the PHHPC meeting when he explained that his staff brought in “other American Renal Associate affiliates within New York State” as part of its quality review but he specified that “they are separate legal entities from [Petitioner].” Even assuming a legal connection between the subsidiary companies and the parent company or ARA, the conduct of ARA in Rhode Island, as ruled by this ALJ at hearing, is not relevant to this proceeding. [Ex. 28, 35, 65, 67; PHHPC minutes, p. 9; Faxton’s brief, p. 21, 27, Petitioner’s brief, p. 13-14; T. 222-223, 470-474, 540-542, 563-572, 983-985].

II. Financial Feasibility

The Department’s reports to the PHHPC recommended Faxton on the basis that Petitioner’s projected total cost per treatment for dialysis services is “significantly more costly.” The Department correctly points out that “(t)he cost at which dialysis services can be provided to patients in Madison County was a significant, if not deciding, factor for the Department in its recommendation to PHHPC that Petitioner be disapproved” and costs were “prominently considered by PHHPC.” While the Department’s “prime deciding factor” between the applications was their respective “year 3” cost per “unit of treatment” calculations, the evidence established that the Department’s reports to the PHHPC did not account for similar treatment utilization projections and allocation of expenses between the applications in the presentation of the cost per treatment numbers. [Ex. 52A; Department’s brief, p. 15 and rebuttal brief, p. 2-3; T. 90-92].

a. Cost per treatment

The cost per treatment calculation is performed by finding the sum total of all costs and dividing that number by the total number of treatments. Significant in the calculation in arriving at the total cost per treatment number are the projected number of in-facility, home hemodialysis,

and home peritoneal dialysis treatments. [Ex. 45, 46, 52A, 65, 66; EPRC 3-4, 35-36; T. 90-92, 164-176, 299-300, 740-742].

i. Home treatment utilizations

Petitioner argues that the Department's recommendation to the PHHPC members of Faxton's application was based on Faxton's use of higher utilization rates in their home treatment calculations, which resulted in a "significantly higher" number of treatments and a lower cost per treatment total. While the Department admits that the BFA's comparative analysis "is not completely accurate" since it used "different methods in arriving at their home dialysis utilization projections," it argues that the error is insignificant since home treatments "constitute less than a quarter of its total third year utilization projections." This argument downplays the impact of using higher utilization numbers in the calculation of home treatments on the total cost per treatment number. [Ex. 68; Department's brief, p. 15, 17; Petitioner's brief, p. 18-19].

The evidence established that the majority (73%) of renal dialysis companies normalize their home treatment numbers to three times per week in-patient. Instead of using the number of three as part of its home treatment calculations, Faxton projected home peritoneal dialysis services to eight patients with four receiving home peritoneal treatments seven days per week and four receiving home hemodialysis five days per week, or an annual total of 1,344 home peritoneal treatments and 960 home hemodialysis treatments. As a result of using the number three in its calculations, Petitioner's projected home treatment numbers were lower at 459 home peritoneal dialysis treatments and 307 home hemodialysis treatments annually. [Ex. 32, 34, 51A, 61, 66, 68; T. 91-94, 182-189, 199, 465, 495-498, 501-509, 639-642, 742-747, 791].

Mr. Abel admitted that had the Department recognized or known, as part of the competitive review process, of Petitioner's use of the number three in its home treatment utilization

calculations, “that would seem to me, to be sensitized.” Mr. Abel confirmed that an equal and fair comparison of the applicants involves using “the same formulas to determine what the home treatments are,” which did not occur here. Mr. Abel explained on cross-examination that “for each home-visit patient, if we used seven and five for one application and three for the other application, that would drive a distinct difference.” [Ex. 34, 68; T. 191-192, 200-201, 724, 750-754].

In the opinion of Kenneth Maier, C.P.A., M Group Consulting and Maier, Markey & Justice LLP, had the number three been used to calculate Faxton’s utilization for home treatments, Faxton’s cost per treatment would increase to \$235.88. Similarly, Mr. Abel explained that when the same utilization rates for home treatments are applied to Faxton’s numbers, Faxton’s cost per treatment rises approximately “thirty-seven” dollars. [T. 363, 753].

ii. In-facility treatments

The Department sensitized or adjusted Faxton’s in-facility treatments, which were viewed as “overly aggressive or ambitious.” This involved applying a “capacity utilization norm formula,” deeming each of the eight stations in-unit to provide 702 treatments per year, which reduced Faxton’s projected total number of in-facility treatments from 7,488 to 5616 while Petitioner’s remained at 5,179. The Department admits that the sensitization process resulted in reducing the “comparative cost per unit of treatment to [Faxton’s] advantage” but argues that it was necessary to reflect a “reduced and accurate utilization.” [Department’s brief, p. 16-18].

Petitioner argues that by adjusting Faxton’s in-facility treatment number by 437 more treatments, the Department “failed to accomplish their goal of using ‘similar utilization’ projections for both Utica partners and Faxton when calculating cost per treatment,” which contributed to driving down Faxton’s cost per treatment number. According to Mr. Maier, a higher treatment number accounts for a lower cost per treatment average. Mr. Abel agreed. He stated:

As you might presume...if you are proposing to provide a larger number of services...to a population...or produce a larger number of widgets in a factory, your unit cost is going to go down. Your per-unit cost is going to go down, so that's called economies of scale and that holds true for dialysis, just as it does for boxes of cereal, or manufacturing shot glasses, or anything else you want to sell. [Petitioner's brief, p. 17-19; T. 92-93, 746-747].

In addition to making adjustments to Faxton's in-facility treatments as part of the sensitization process, the Department made changes to Faxton's projected costs. Despite the inequity in using different utilization projections, the Department maintains that Faxton "can still provide the services at a lower cost per unit." To support this argument in its universality, it is necessary to look at Faxton's cost per treatment number, which has fluctuated and remains unclear. The fact that the Department was required to sensitize Faxton's treatments and budget multiple times suggests their own uncertainty in Faxton's total cost per treatment number. [Department's brief, p. 15; Petitioner's brief, p. 18; Ex. G, J, 32, 35, 37, 46, 51A, 65, 66, 68; T. 91-95, 166-176, 185, 193-195, 460, 465, 748-750].

iii. Total cost per treatment

Prior to sensitization, Faxton's initial projected cost per treatment was \$156.26 or the result of the projected total costs of 1,530,099 divided by 9,792 total treatments.¹⁸ As a result of the Department's adjustment to Faxton's in-facility treatments and operating costs, which were reduced to \$1,357,153, Faxton's cost per treatment number was changed to \$171.36. To account for previously omitted pharmacy and laboratory expenses, the Department further adjusted

¹⁸ Notably, in a letter to the Commissioner dated April 29, 2015, President and CEO for MVHS, Scott Perra, estimated Faxton's annual total number of treatments as "averaging over 4,000." Also, in Schedule 13, attachment #13 as part of its CON application, Faxton noted 4,559 treatments in 2013. Nonetheless, Faxton projected 9,792 total number of treatments due to its anticipation of operating an in-center dialysis center at full capacity "with 48 patients and a total of eight home therapy patients." [Ex. 34, 61, 65, 66].

Faxton's operating costs to 1,596,434, resulting in an increase to Faxton's projected cost per treatment number to \$201.57. After learning the results of Faxton's 2013 ICR, which identified the cost per treatment at \$398.20, and in reaction to discussions by the members at the EPRC meeting regarding Faxton's costs, Department staff changed the number to \$196.08 to reflect "reduced utilization and associated reduced variable costs."¹⁹ Petitioner's cost per treatment was never subject to sensitization and remained at \$287.98, which was the result of the total costs of 1,712,061 divided by 5,945 total treatments. [Ex. G, J, K, 46, 51A, 65, 66, 68; EPRC 5-7; T. 91-94, 104-106, 176, 193, 307-314, 350-357, 742-750].

Prior to the PHHPC meeting, the Department had "concerns that the costs for [Faxton's] could be...as high as another fifty dollars per treatment" above the "two twenty-one, two twenty-six range" but still "at least ten percent lower" than Petitioner's costs. At the PHHPC meeting, the Department estimated "perhaps sixty dollars per unit of service that remains not accounted for" resulting from omissions on the "expense side" of Faxton's budget. At hearing, Mr. Abel testified that Faxton's cost per treatment "could be as high as in...the two seventy" range. [Ex. K, 51A, 52A, 56, 66, 67c, 68; PHHPC 14, 44-51; T. 104-106, 305-314, 326-338, 354-366, 760].

After accounting for home treatment utilization, Mr. Maier testified that Faxton's cost per treatment amounts to \$235.88. The Department argues that even if correct, "there is still significant room in the budget - \$52.10 worth," suggesting that Faxton can still provide a "lower cost per treatment than Petitioner." This argument does not take into account Mr. Abel's testimony that fifty to sixty dollars could be added on the expense side of Faxton's budget. Also, the Department's arguments do not account for home treatment utilization projections equal to Petitioner's, which

¹⁹ In a letter to the PHHPC members dated April 10, 2015, Faxton stated that costs totaling \$127.47 are not included in this number since they are marginal as incurred by the hospital, such as biomedical, medical waste, billing, human resources, maintenance and repairs, laundry, housekeeping, and information technology. [Ex. 56; T. 342, 767-768].

is questionable in light of Mr. Abel's testimony that without making any changes to home utilization projections, Faxton's total cost per treatment number could be as high as "two fifty-seven" or "two sixty-seven," which would increase Faxton's cost per treatment to a number greater than Petitioner's. [Department brief, p. 18-20; T. 357-362, 460-462, 753].

In Mr. Maier's opinion, once Mr. Abel's estimate for omitted expenses (approximately \$50.00-\$60.00) and the home utilization projections (approximately \$30.00) are added to Faxton's cost per treatment number at approximately \$201.00, Faxton's total cost per treatment changes to "[t]wo [hundred] ninety-four, two [hundred] ninety-five" dollars. Mr. Maier estimated that based on his experience, which includes participation in a joint study with the New York Presbyterian Group to analyze whether a hospital-based clinic can render dialysis services to eight clinics at a cost per treatment below \$399.00, and benchmark standards reported by the National Renal Administrator Association for hospital facilities showing \$341.00 as a cost per treatment, Faxton's lowest cost per treatment is approximately \$300.00. [Ex. 67a, 68; T. 90-91, 362, 753, 768-771, 778-781].

b. Other Policy Considerations

i. DSRIP²⁰

At the PHHPC meeting, a member questioned what the Department's position would be if the costs projected by the two applicants "were the same." In response, Mr. Abel stated:

Well, it would certainly make it difficult for the Department to reach a decision based solely on the three statutory criteria. I think we'd have to move to something like sustainability of care or continuity of care or established providers and, as I mentioned at the Establishment and Project Review Committee Meeting, selecting Faxton St. Luke's as the approved project between the two applications would seem to me to be consistent with the principles of DSRIP and I believe our recommendation would hinge on those

²⁰ Delivery System Reform Incentive Payment System.

factors. [Ex. 52A; PHHPC minutes, p. 19; *See also* Faxton's brief, p. 27; T. 439].

Faxton argues that the purpose of DSRIP is to "improve the healthcare system by creating efficiencies and reducing costs, particularly focusing on the Medicaid and the uninsured populations." Similarly, the Department argues that Faxton would "operate its dialysis center in alignment with...DSRIP, which emphasizes efficiency, cost reduction, quality, and accessibility within New York State's health care systems." Mr. Abel explained at hearing that even though it is not a primary consideration in the CON process, DSRIP is a reinforcing factor. [Ex. 52A; PHHPC minutes, p. 19-20; Faxton's brief, p. 9-10, Department's rebuttal brief, p. 9-10; T. 112].

Notwithstanding the extensive testimony at hearing about the DSRIP program, the critical question of how the DSRIP initiative is furthered by the CON applications here remains unanswered. The Department stated at the EPRC meeting that "in a DSRIP world it makes sense to approve [Faxton]." The Department and Faxton argue that a factor contributing to Faxton's cost efficiency and lower cost per treatment is Faxton's participation in the federal government's 340b plan, which provides pharmaceuticals at a significant discount. Faxton argues that through its association with the hospital, it is eligible to receive Epogen, a drug frequently used to treat dialysis patients, "at a discount" and it has economies of scale through operational cost savings. [Faxton's brief, p. 6, 15 and reply brief, p. 8, Department's brief, p. 20-21; T. 110-117, 314-318, 358-359, 434-450].

While repeatedly touting Faxton's ability to operate on a cost-efficient basis, unsubstantiated was a specific discount amount or a cost per treatment number reflecting a discount. Faxton states that the Department applied a "25% discount...to calculate cost per treatment" while the evidence demonstrated a discount for an eligible drug as high as 57%. Without identifying a specific discount amount and explaining how it would affect the cost per treatment

number, Faxton argues that “[t]his factor alone is sufficient to establish [it] has the lower cost.” Although the 340b program undoubtedly provides savings to Faxton St. Luke’s campus and contributes to its cost-effectiveness, Mr. Aiello explained that the list of eligible drugs fluctuates, as does the discount percentage. Even if a specific discount amount had been reflected in a cost per treatment number at hearing, Mr. Aiello expressed concerns regarding potential changes to the federal program, which could affect Faxton’s eligibility to receive future pharmaceutical savings. [Ex. K, 56, 51A, 67, 68, 69; Faxton’s brief, p. 26 and reply brief, p. 8, Petitioner’s brief, p. 29; T. 346-347, 842-847, 883-884, 952-955].

In its calculation of the cost per treatment number following the ICR, which resulted in Faxton changing its cost per treatment number to \$196.08, Faxton argues that it “‘steps down’ costs that are not utilized in dialysis,” such as “accounting, financing, human resources, marketing, defection prevention, and purchasing expenses,” since these costs are absorbed by the hospital. The evidence showed, however, that Faxton omitted “true costs” directly related to the on-site operation of a dialysis center including, “biomedical, laundry, housekeeping services, medical records, [and] pharmacy.” While Mr. Abel explained that the hospital would incur these costs “regardless of whether [the] new clinic were opened or not,” many of the excluded costs, as explained by Mr. Maier, are provided at the clinic, “from the morning through the evening,” and cannot be excluded. The evidence also showed that these expenses, which total \$127.47, were never verified by the Department as definitively absorbed by the hospital on behalf of the outpatient dialysis clinic. [Ex. K, 56, 67c; Faxton’s brief, p. 16; T. 493, 495-497, 767-772].

At the PHHPC meeting, the discussion among the members concerning DSRIP evolved into “what would serve the community best?” Undisputed is Faxton as the sole provider of dialysis facilities in Madison County. At the PHHPC meeting, Mr. Abel confirmed this when he stated:

“Faxton...is the sole provider...of dialysis facilities in the county.” Also uncontroverted is Faxton’s reputation as an “established provider of dialysis services” and an “experienced and well-known dialysis provider in the Oneida community for the past 13 years.” Faxton’s extensive experience aside, the PHHPC members discussed the benefits of having “more choices” for renal dialysis care, and “competition” in the rendering of dialysis services. Indeed, Mr. Abel admitted to consideration given by his team in the review process to “consumer choice.” [Ex. 46, 52A; PHHPC 11-14, 20; Faxton’s brief, p. 3, 19-20, Faxton’s reply brief, p. 3, 11; T. 208-210, 437, 451].

ii. Faxton’s loss of revenue to the hospital

Faxton argues that the revenue from the dialysis facility “helps to pay for those [Faxton] units that lose money, such as the [emergency room].” Even assuming a profit is turned around to the benefit of the hospital from the operation of an outpatient renal dialysis facility, financial benefit to affiliate facilities is not a statutory criteria under consideration. The argument also suggests that absent CON approval to construct an outpatient dialysis facility, Faxton’s hospital will suffer financially, an argument discounted by the Department at the PHHPC meeting when Mr. Abel stated that he did not believe “that not approving [Faxton’s] application [would] substantially change the financial picture for the hospital.” [Ex. 52A; PHHPC 12; Faxton’s brief, p. 10; T. 898].

Conclusion

The Department’s goal in the competitive review CON process is “for the...healthcare system to become more effective and efficient.” In 2007, in its approval of a bill introduced at the request of the Department of Health, the Legislature included corporations under PHL § 2801-a(15) to operate diagnostic or treatment centers “established exclusively to provide end stage renal

disease services,” which was expanded further in 2011 to limited liability companies. In addition to the factors set forth under PHL § 2801-a(3), private companies are required to demonstrate to the satisfaction of the PHHPC “sufficient experience and expertise in delivering high quality end stage renal disease care,” which Petitioner established it can accomplish. [L. 2007, Ch. 315, L. 2011, Ch. 492, PHL §§ 2801-a(15) and 2801-a(3); T. 90].

The evidence does not confirm the Department’s characterization of Faxton’s costs as “at least ten percent lower” based on cost efficiencies. Notwithstanding the extensive evidence regarding Faxton, as a safety-net provider, benefiting through its eligibility to participate in the federal government’s 340b program and economies of scale similar to Petitioner’s, which include, according to Mr. Abel, American Renal Associates as operating with “five clinics in the state of New York” and performing “H.R., billing, [and] admissions” for their dialysis clinics,” the evidence never clearly established Faxton’s cost per treatment number.²¹ [Ex. 68, K; Department’s rebuttal brief, p. 3, Petitioner’s reply brief, p. 10; T. 357-361, 757-781].

Petitioner’s cost per treatment number has remained unchanged since the filing of its CON application in July of 2014. At \$287.88, although higher than the 2014 benchmark information reported by the National Renal Administrator Association representing a cost per treatment of \$257.48,²² the total includes economies of scale and is a number that can be relied upon. While remaining unclear, Faxton’s last total cost per treatment number projected at \$196.08 does not include adjustments based on home treatment utilizations and omitted expenses. If \$235.88 is used, as projected by Mr. Maier after adding home treatment utilizations, and omitted costs are added, which the evidence established could be as high as \$60.00, Faxton’s cost per treatment would be

²¹ Additional economies of scale for Petitioner include compliance and collections. [T. 474-475].

²² According to Medicare cost report data, the number accounts for an average, mid-size facility with “approximately 16 stations and eighty-five or ninety patients” or double the size of the project here.

higher than Petitioner's. If \$221.88 is used as Faxton's total cost per treatment number, as proposed by the Department, the total is driven upwards to a number comparable to Petitioner's, after adding excluded expenses and home treatment utilizations. [Ex. 56, 67a, 67c, 68, K; T. 105-106, 314-317, 322-324, 354-361, 474, 757-781].

The evidence does not support Faxton's suggestion that Petitioner, as a for-profit company, would operate to "reduce access" to low income populations. Like Faxton, Petitioner operates renal dialysis clinics in rural areas in upstate New York, rendering care to patients with private insurance and Medicaid. Faxton argues that as a "safety-net provider," it is "in the best position to serve the underserved in [Madison county], [a rural community]." Simply because a provider is designated "safety-net" does not make it better suited to provide care to low income individuals. In fact, the "safety-net" designation in the statute merely identifies a not-for-profit hospital capable of demonstrating its participation in the Medicaid program and "a significant percentage of... visits...by uninsured individuals." Consistent with this was Mr. Aiello's testimony that the designation applies to Faxton since it is a not-for-profit hospital rendering care to at least 11.5 percent Medicaid patients. [Faxton's brief, p. 25; PHL § 2801-a(16)(iv)(c); *See* L. 2009, Ch. 58; T. 316, 470-476, 480, 846].

Despite receiving Petitioner's CON application in July of 2014 when Faxton had yet to satisfy deficiencies, including securing a new location for its dialysis facility or expediting the submission of its CON application, the Department decided not to recommend Petitioner's application for approval. Instead, upon receiving Faxton's CON application towards the end of December in 2014, the Department commenced a competitive review. While it would have made sense from an economic and cost efficiency standpoint to consider Faxton's application competitively with Petitioner's had Faxton produced the lowest cost per treatment number, that


scenario did not occur here. Faxton's initial total cost per treatment, although lower than Petitioner's, was proven unreliable and inaccurate. At the outset, the Department should have recommended Petitioner's CON application for approval. [T. 72-74, 82, 86-87].

Even assuming equal or comparable costs per treatment between the applicants, incorporated into PHL § 2800 under "(d)eclaration of policy and statement of purpose," is the goal of the Department to promote health-related services that are of the "highest quality, efficiently provided and properly utilized." Consistent with this was Mr. Abel's testimony that the "goal of the Health Department [is] to ensure equal access to healthcare services." Faxton's decision to close the only renal dialysis center in the county rendered dialysis services unavailable to the detriment of the community and to the patients forced to seek treatment at distant venues. Faxton's emphasis on a continued and exclusive presence in the area is ironic given that it is that very factor which exposed its patients to hardship when it abruptly closed its doors. The infusion of the competition it seeks to prevent would actually benefit the community by preventing a similar situation from reoccurring, promoting healthy competition, and improving quality of care. [T. 386].

Petitioner's general practice in reviewing leases pertaining to renal facilities, "at least eighteen months ahead of time," would prevent the element of surprise and hardship experienced by the patients subjected to Faxton's 2014 closure. The evidence showed Petitioner's parent company, American Renal Associates, operating 192 dialysis clinics nationwide, rendering "nearly 2,000,000 treatments a year" to "over 13,000 dialysis patients," and generating revenue in excess of \$600,000,000 without a lease ever expiring to the detriment of its patients. [Ex. 28; Petitioner's brief, p. 6; T. 476, 485-486].

RECOMMENDATION: The evidence does not support the Department's recommendation to the PHHPC to disapprove Petitioner's CON application. Petitioner's CON application should be recommended to the PHHPC for approval.

DATED: Albany, New York
June 10, 2016


Dawn MacKillop-Soller
Administrative Law Judge

RESOLUTION OF APPROVAL

WHEREAS, the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, has considered any advice offered by any applicable Regional Health Systems Agency, the staff of the New York State Department of Health and the Establishment Committee of this Council; and

WHEREAS, on April 16, 2015, this Council proposed to disapprove the following application for establishment and construction of an eight (8)-station chronic renal disease dialysis center at 2142 Glenwood Shopping Plaza, Oneida, New York 13421; and

WHEREAS, following the applicant's request for a public hearing pursuant to said Section 2801-a, such a hearing was held before an Administrative Law Judge, and the Administrative Law Judge has, by her Report and Recommendation dated June 10, 2016 recommended approval of the application; and

WHEREAS, the Public Health and Health Planning Council has considered the record of said hearing and Report and Recommendation; it is hereby

RESOLVED, that this Council, after due deliberation, on this 6th day of October, 2016 hereby proposes to approve the following application for the establishment and construction eight (8)-station chronic renal disease dialysis center, with the conditions and contingencies specified below; and be it further

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

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

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

RESOLVED, that upon submission of the documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by the Department of Health, to satisfy

the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

APPLICATION NUMBER:

142183

FACILITY/APPLICANT:

Utica Partners, LLC, d/b/a
Dialysis Center of Oneida
(Madison County)

APPROVAL CONTINGENT UPON

1. Submission of an executed intercompany loan commitment, acceptable to the Department of Health.
2. Submission of an executed intercompany working capital loan commitment, acceptable to the Department of Health.
3. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital.
4. Submission of an executed Medical Director Agreement, acceptable to the Department.
5. Submission of an executed Administrative Services Agreement, acceptable to the Department.

Documentation submitted to satisfy the above-referenced contingencies should be submitted to the Department of Health within sixty (60) days.

RESOLUTION OF DISAPPROVAL

WHEREAS, the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, has considered any advice offered by any applicable Regional Health Systems Agency, the staff of the New York State Department of Health and the Establishment Committee of this Council; and

WHEREAS, on April 16, 2015, this Council proposed to disapprove the following application for establishment and construction of an eight (8)-station chronic renal disease dialysis center at 2142 Glenwood Shopping Plaza, Oneida, New York 13421; and

WHEREAS, following the applicant's request for a public hearing pursuant to said Section 2801-a, such a hearing was held before an Administrative Law Judge, and the Administrative Law Judge has, by her Report and Recommendation dated June 10, 2016 recommended approval of the application; and

WHEREAS, the Public Health and Health Planning Council has considered the record of said hearing and Report and Recommendation; it is hereby

RESOLVED, that this Council, after due deliberation, and for reasons stated on the record at the meeting of this Council, on this 6th day of October, 2016 hereby adopts all 38 numbered Summary of Facts set forth in said Report and Recommendation except those numbered Summary of Facts specifically rejected on the record at the meeting of this Council; and be it further

RESOLVED, that this Council, after due deliberation, and for the reasons stated on the record at its meeting of this Council, of this 6th day of October, 2016 hereby rejects the Conclusions set forth in said Report and Recommendation; and be it further

RESOLVED, that this Council, on this 6th day of October, 2016 hereby disapproves the following application for the establishment and construction of an eight (8)-station chronic renal disease dialysis center.

APPLICATION NUMBER:

142183

FACILITY/APPLICANT:

Utica Partners, LLC, d/b/a
Dialysis Center of Oneida
(Madison County)



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Acting Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

NEW YORK STATE DEPARTMENT OF HEALTH CENTER FOR HEALTH CARE FACILITY PLANNING, LICENSURE AND FINANCE

MEMORANDUM

TO: Members of the Establishment and Project Review Committee
Public Health and Health Planning Council

FROM: Charles P. Abel ^{CFA}
Deputy Director
Center for Health Care Facility Planning, Licensure and Finance

DATE: March 17, 2015

SUBJECT: CON #142261 Faxton St. Luke's Healthcare
CON #142183 Utica Partners, LLC

The Department has received two applications to provide ESRD services in Madison County. Because both applications were received within the six-month batch period of July 1, 2014 to December 31, 2014, they may be considered concurrently, as set forth in 10 NYCRR Section 710.11. Each application also proposes to operate a total of eight dialysis stations, the number equal to the unmet need for dialysis stations in Madison County. Because it would be neither economical nor efficient to operate fewer than eight stations, only one application may be approved. Therefore, the two applications have been reviewed on a competitive basis.

Services and Operations

There are no significant differences in the services each proposed facility would offer, nor in their staffing and operations.

- Both facilities would be located in the city of Oneida, with proposed locations less than one mile apart.
- Each facility would run three shifts per day, six days per week by the third year of operation.
- Duration of treatment at each facility would be four hours, on average.
- Each facility would be adequately staffed with registered nurses and patient care technicians and run with appropriate medical supervision.

- Each facility would employ a registered dietitian and provide individualized nutritional guidance to patients at least once a month.
- Both facilities would offer in-center hemodialysis, home peritoneal dialysis training and support, and home hemodialysis training and support.
- There are no significant differences in the Dialysis Facility Compare “Star” ratings for dialysis operations of Faxton-St. Luke’s Healthcare and those for the New York State sites of American Renal Associates, the proposed corporate member of Utica Partners, LLC.

Costs

The Faxton-St. Luke’s Healthcare (FSLH) proposal and the Utica Partners proposal differ mainly in their projected costs. The FSLH application projects a cost of \$171.36 per treatment compared to \$287.98 at the Utica Partners facility.

The expense and utilization assumptions supporting the lower per treatment cost at the proposed FSLH facility are based on the historical experience of the hospital in operating other Article 28 chronic renal dialysis clinics in the Oneida and Madison counties. The lower projected cost per treatment likely reflects the fact that FSLH is an established provider of dialysis services in the area, with advantages in terms of start-up costs for the proposed site. These would include staff already trained in dialysis who could be deployed from other FSLH sites, as well as established administrative and treatment protocols and approved policies and procedures for dialysis care. The lower cost per treatment would also include efficiencies gained from the larger scale of FSLH dialysis operations and improvements made in operations and management over the years.

Conclusion

As an established provider of dialysis services in Oneida and Madison counties, Faxton-St. Luke’s Healthcare has both the experience and the patient base to operate an ESRD treatment facility, and to do so at a lower cost than the proposed Utica Partners, LLC facility under consideration. Approval of the Faxton-St. Luke’s Healthcare application is recommend.



Public Health and Health Planning Council

Project # 142183-B

Utica Partners, LLC d/b/a Dialysis Center of Oneida

Program: Diagnostic and Treatment Center **County:** Madison
Purpose: Establishment and Construction **Acknowledged:** November 4, 2014

Executive Summary

Description

Utica Partners, LLC d/b/a Dialysis Center of Oneida (Utica Partners), an existing New York State limited liability company, requests approval for the establishment and construction of an 8-station freestanding Article 28 chronic renal dialysis center. The center will provide the following services: chronic renal dialysis, home hemodialysis training and support, home peritoneal dialysis training and support, nutrition, and social work services. The center will be housed in leased space located at 600 Old County Road, Suite 435, Oneida (Madison County). The leased space is also known as 2142 Glenwood Shopping Plaza.

The proposed members of Utica Partners and their ownership percentages are as follows:
American Renal Associates, LLC (ARA) at 51% and Dr. Emile Wassel at 49%.

ARA is a subsidiary of American Renal Holdings, Inc. (ARH), a national provider of renal dialysis centers. ARH, a subsidiary of American Renal Associates Holding, Inc. (ARAH), owns and operates 154 dialysis clinics in 22 states and the District of Columbia. As a subsidiary of ARH, ARA does not have separate certified financial statements. Therefore, ARA has provided the 2012 and 2013 certified financial statements of ARH to show their financial feasibility. ARH's certified statements are provided as BFA Attachment C.

ARA currently co-operates the following New York State chronic renal dialysis centers:

- Mohawk Valley Dialysis Center, Inc. (opened 9/1/2012);
- Plattsburgh Dialysis, LLC (acquired 12/1/2013).
- Elizabethtown Center, LLC (acquired 4/1/2014);
- Plattsburgh Associates, LLC d/b/a Hastings Hemodialysis Center (acquired 8/1/2014); and
- Massena Center, LLC (acquired 1/1/2015).

OPCHSM Recommendation

Disapproval on the basis of Need

Need Summary

Although the applicant has demonstrated that it could meet the need for eight additional dialysis stations in Madison County, this application has been reviewed competitively with that of CON 142261, submitted by Faxton-St. Lukes's Healthcare (FSLH), also proposing to operate an eight-station dialysis facility in the city of Oneida. The FSLH project has been selected for approval, which will fulfill the remaining need for eight dialysis stations in Madison County. Therefore, there is no need for the eight stations requested by Utica Partners, LLC.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Disapproval on the basis of Need

Council Action Date

April 16, 2015

Need Analysis

Background

Utica Partners, LLC, dba Dialysis Center of Oneida, is an existing limited liability company seeking approval to establish an 8 station free-standing chronic dialysis facility to be located at 2142 Glenwood Shopping Plaza, Oneida, NY 13421 in Madison County.

Need Summary

Due to the recent closure of an eight-station facility in Madison County, a projected need of eight stations has been created. Desirable treatment slots will be available to residents in the area upon approval of the CON. Residents who have been traveling outside of the county for treatment will also be able to return. The facility will add eight operating stations with two shells. Should the need arise, the facility will submit an additional CON for approval by the department to activate the shell stations.

Analysis

The primary service area for the new facility will be Madison County, which had a population estimate of 72,382 for 2013. The percentage of the population aged 65 and over was 15.5%. The nonwhite population percentage was 4.9%. These are the two population groups that are most in need of end stage renal dialysis service. Comparisons between Madison County and New York State are listed below.

	<u>Madison County</u>	<u>State Average</u>
Age 65+	15.5%	14.4%
NonWhite	4.9%	29.1%

Source: U.S. Census 2014

Capacity

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

- One free standing station represents 702 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 $[(2.5 \times 6) \times 52 \text{ weeks}] = 780$ 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 $[(2 \times 6) \times 52 \text{ weeks}] = 624$ 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 8 free standing chronic dialysis stations operating in Madison County and there are 0 stations in pipeline for a total of 8 stations.
- Based upon DOH methodology, the 8 existing free standing stations in Madison County could treat a total of 36 patients annually.

Projected Need

	2013		2017	
	Total Patients Treated	Total Residents Treated	*Projected Total Patients Treated	*Projected Residents Treated
	50	70	52	73
Free Standing Stations Needed	11	16	12	16
Existing Stations	8	8	8	8
Total Stations (Including Pipeline)	8	8	8	8
Net new stations from this project	8	8	8	8
Unmet Need With Approval	-5	0	-4	0

*Based upon an estimate of a one percent annual increase

The data in the first row, "Free Standing Stations Needed," comes from the DOH methodology of each station being able to treat 4.5 patients, and each hospital station being able to treat three patients annually. The data in the next row, "Existing Stations," comes from the Department's Health Facilities Information System (HFIS). "Unmet Need" comes from subtracting needed stations from existing stations. "Total Patients Treated" is from IPRO data from 2013.

A one percent growth rate was used based on the lack of need in surrounding counties for additional stations, the decreasing trend in population, the lack of minority groups within the county and the above state average of elderly patients.

The recent closure of dialysis stations in Madison County created a need for 8 dialysis stations in the area. Adding this new facility will add options for residents and desirable time slots may be more readily available.

Conclusion

Although the applicant has demonstrated that it could meet the need for eight additional dialysis stations in Madison County, this application has been reviewed competitively with that of CON 142261, submitted by Faxton-St. Lukes's Healthcare (FSLH), also proposing to operate an eight-station dialysis facility in the city of Oneida. The FSLH application projects a cost of \$171.36 per treatment compared to \$287.98 at the Utica Partners facility. The expense and utilization assumptions supporting the lower per treatment cost at the proposed FSLH facility are based on the historical experience of the hospital in operating other Article 28 chronic renal dialysis clinics in the Oneida and Madison counties. The lower projected cost per treatment likely reflects the fact that FSLH is an established provider of dialysis services in the area, with advantages in terms of start-up costs for the proposed site. These would include staff already trained in dialysis who could be deployed from other FSLH sites, as well as established administrative and treatment protocols and approved policies and procedures for dialysis care. The lower cost per treatment would also include efficiencies gained from the larger scale of FSLH dialysis operations and improvements made in operations and management over the years. Based on the foregoing, the FSLH project has been selected for approval, which will fulfill the remaining need for eight dialysis stations in Madison County. Therefore, there is no need for the eight stations requested by Utica Partners, LLC.

Recommendation

From a need perspective, disapproval is recommended.

142183 B
Utica Partners, LLC d/b/a Dialysis Center of
Oneida

No Attachments



Public Health and Health Planning Council

Project # 142261-C Faxton-St Lukes Healthcare St Lukes Division

Program: Hospital
Purpose: Construction

County: Madison
Acknowledged: January 20, 2015

Executive Summary

Description

Faxton-St. Luke's Healthcare (FSLH), an existing 370-bed, Article 28 not-for-profit, acute care hospital located at 1656 Champlain Ave, Utica, NY (Oneida County), requests approval for a new eight-station chronic renal dialysis center. The center will be located in leased space at 131 Main Street, Suite 101, Oneida, NY (Madison County). The leased space is also known as Oneida Plaza. The center will provide chronic renal dialysis services and both home hemodialysis and home peritoneal dialysis training and support.

FSLH is part of the Mohawk Valley Health System (MVHS), a not-for-profit healthcare organization which serves as the active parent of FSLH, St. Elizabeth Medical Center (SEMC), and several other health care entities providing senior care, nursing home, and home care services in the geographic area of Oneida, Herkimer, and Madison Counties.

FSLH currently provides dialysis services to 428 patients in Utica and the surrounding communities. For more than 13 years the hospital also operated an eight-station dialysis unit in Oneida at 221 Broad Street. However, the site's lease agreement was not renewed and the dialysis clinic closed effective August 1, 2014. The applicant indicated that, at the time of closure, there were 31 patients being treated at the Oneida facility with an additional 17 patients on a waiting list. FSLH further indicated that they intended to reopen a dialysis unit in Oneida once suitable space could be located. The proposed eight-station unit would be able to accommodate the 48 patients over three shifts, six days per week. FSLH is also proposing to add home therapy services to this unit, which would include both home hemodialysis and home peritoneal dialysis

training and support. Having home therapy services available in Oneida would allow patients the opportunity for treatment options closer to home and reopening a FSLH dialysis unit in Oneida would provide continuity of care.

OPCHSM Recommendation Contingent Approval

Need Summary

Due to the recent closure of Faxton St. Luke's dialysis facility in Madison County, a projected need of 8 stations has been created. Faxton St. Luke's had operated an eight-station dialysis center in Utica until July 2014, when they were unable to negotiate a lease extension. Desirable treatment slots will be available to residents in the area upon approval of the CON. Residents who have been traveling outside of the county for treatment due to the recent loss of capacity will be able to return.

Program Summary

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

Financial Summary

Project costs of \$1,404,954 will be met via equity from FSLH's current operations.

The projected budget based on the applicant's utilization assumption of close to 100% is as follows:

Budget:	Revenues	\$2,754,482
	Expenses	\$ 1,530,099
	Net Income	\$1,224,383

The Department has sensitized the budget to reflect utilization assumptions consistent with Part 709.4 of Title 10 NYCRR renal dialysis capacity expectations. The methodology projects 702 treatments per freestanding station per year (90% utilization) based on operating 2.5 patient shifts per day, 6 days per week, for 52 weeks per year. The sensitized budget is as follows:

Sensitized Budget:	Revenues	\$ 2,227,890
	Expenses	<u>\$1,357,153</u>
	Net Income	\$870,737

The applicant's and sensitized budgets demonstrate the capability to proceed in a financially feasible manner, and approval is recommended.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The applicant is required to submit Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction for record purposes. [AES]
7. Per 710.9 the applicant shall notify the appropriate Regional Office at least two months in advance of the anticipated completion of construction date to schedule any required pre-opening survey. Failure to provide such notice may result in delays affecting both the pre-opening survey and authorization by the Department to commence occupancy and/or operations. [AES]
8. Compliance with all applicable sections of the NFPA 101 Life Safety Code (2000 Edition), and the State Hospital Code during the construction period is mandatory. This is to ensure that the health and safety of all building occupants are not compromised by the construction project. This may require the separation of residents, patients and other building occupants, essential resident/patient support services and the required means of egress from the actual construction site. The applicant shall develop an acceptable plan for maintaining the above objectives prior to the actual start of construction and maintain a copy of same on site for review by Department staff upon request. [AES]
9. The applicant must adhere to the Construction Completion Date (09/04/2015). The Department understands that unforeseen circumstances may delay the start and completion of the project. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AES]

Council Action Date

April 16, 2015

Need Analysis

Project Description

Faxton St. Luke's Healthcare, with Mohawk Valley Health System as its active parent, is an existing integrated delivery system operating two Hospitals and five Renal Dialysis extension clinics. Faxton St. Luke's Healthcare is seeking approval to establish an eight-station free-standing chronic dialysis facility to be located at 131 Main Street, Oneida, NY 13421 in Madison County.

Analysis

The primary service area for the new facility will be Madison County, which had a population estimate of 72,382 for 2013. The percentage of the population aged 65 and over was 15.5%. The nonwhite population percentage was 4.9%. These are the two population groups that are most in need of end stage renal dialysis service. Comparisons between Madison County and New York State are listed below.

	<u>Madison County</u>	<u>State Average</u>
Age 65+	15.5%	14.4%
NonWhite	4.9%	29.1%

Source: U.S. Census 2014

Capacity

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

- One free standing station represents 702 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 $[(2.5 \times 6) \times 52 \text{ weeks}] = 780$ 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 $[(2 \times 6) \times 52 \text{ weeks}] = 624$ 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 8 free standing chronic dialysis stations operating in Madison County and there are 0 stations in pipeline for a total of 8 stations.
- Based upon DOH methodology, the 8 existing free standing stations in Madison County could treat a total of 36 patients annually.

Projected Need

	2013		2017	
	Total Patients Treated	Total Residents Treated	*Projected Total Patients Treated	*Projected Residents Treated
	50	70	52	73
Free Standing Stations Needed	11	16	12	16
Existing Stations	8	8	8	8
Total Stations (Including Pipeline)	8	8	8	8
Net new stations from this project	8	8	8	8
Unmet Need With Approval	-5	0	-4	0

*Based upon an estimate of a one percent annual increase

The data in the first row, "Free Standing Stations Needed," comes from the DOH methodology of each station being able to treat 4.5 patients, and each hospital station being able to treat three patients annually. The data in the next row, "Existing Stations," comes from the Department's Health Facilities Information System (HFIS). "Unmet Need" comes from subtracting needed stations from existing stations. "Total Patients Treated" is from IPRO data from 2013.

A one percent growth rate was used based on the lack of need in surrounding counties for additional stations, the decreasing trend in population, the lack of minority groups within the county and the above state average of elderly patients. The recent closure of dialysis stations in Madison County created a need for eight additional dialysis stations in the area. Adding this new facility will add options for residents and desirable time slots may be more readily available.

Conclusion

This project will result in eight net new chronic dialysis stations to be located in Madison County. Currently there is documented unmet need, and the addition of these stations will help to provide the necessary resources and absorb remaining need. As an established provider in the county, the applicant has both the experience and the patient base required to successfully operate an ESRD treatment facility.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

Faxton St. Luke's Healthcare (FSLH) seeks approval to establish and construct an eight station chronic renal dialysis center at 131 Main Street in Oneida.

Proposed Operator	Faxton St. Luke's Healthcare
Doing Business As	Faxton St. Luke's Healthcare—Oneida Dialysis Center
Site Address	131 Main Street, Suite 101 Oneida (Madison County)
Approved Services	Chronic Renal Dialysis (8 Stations) and Home Hemodialysis Training & Support Home Peritoneal Dialysis Training & Support
Shifts/Hours/Schedule	Three (3) shifts, six (6) days per week Monday through Saturday, 5 am to 9 pm

Staffing (1st Year / 3rd Year)	8.6 FTEs increasing to 12.0 FTEs by the 3 rd year
Medical Director(s)	Charles Eldredge, MD Ahmad Mian, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Faxton-St. Luke's Healthcare 21.2 miles / 33 minutes

Character and Competence

The applicant has identified Drs. Charles Eldredge and Ahmad Mian to serve as Medical Directors of the proposed center. Both physicians completed nephrology fellowships, are active in private practice and are board-certified in Internal Medicine with subcertifications in Nephrology.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas and employment history. These licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database

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

Star Ratings - Dialysis Facility Compare (DFC)

The Centers for Medicare and Medicaid Services (CMS) and the University of Michigan Kidney Epidemiology and Cost Center have developed a methodology for rating each dialysis facility which may be found on the Dialysis Facility Compare website as a "Star Rating." The method produces a final score that is based on quality measures currently reported on the DFC website and ranges from 1 to 5 stars. A facility with a 5-star rating has quality of care that is considered 'much above average' compared to other dialysis facilities. A 1- or 2- star rating does not mean that a facility provides poor care. It only indicates that measured outcomes were below average compared to other facilities. Star ratings on DFC are updated annually to align with the annual updates of the standardized measures.

The DFC website currently reports on 9 measures of quality of care for facilities. The measures used in the star rating are grouped into three domains by using a statistical method known as Factor Analysis. Each domain contains measures that are most correlated. This allows CMS to weight the domains rather than individual measures in the final score, limiting the possibility of overweighting quality measures that assess similar qualities of facility care.

To calculate the star rating for a facility, each domain score between 0 and 100 by averaging the normalized scores for measures within that domain. A final score between 0 and 100 is obtained by averaging the three domain scores (or two domain scores for peritoneal dialysis-only facilities). Finally, to recognize high and low performances, facilities receive stars in the following way:

- Facilities with the top 10% final scores were given a star rating of 5.
- Facilities with the next 20% highest final scores were given 4 stars.
- Facilities within the middle 40% of final scores were given 3 stars.
- Facilities with the next 20% lowest final scores were given 2 stars.
- Facilities with the bottom 10% final scores were given 1 star.

The applicant disclosed interest in the following facilities whose Star Ratings are provided below:

Facility Name	Address	Star Rating
Faxton-St. Lukes Healthcare	1676 Sunset Ave, Utica, NY	★ ● ● ● ●
Faxton-St. Lukes Healthcare - Hamilton	10 Eaton Street, Suite 102, Hamilton, NY	★ ★ ★ ● ●
Faxton-St. Lukes Healthcare - Herkimer	201 East State Street, Herkimer, NY	★ ★ ★ ● ●
Faxton-St. Lukes Healthcare - Masonic	2150 Bleeker Street, Utica, NY	★ ● ● ● ●
Faxton-St. Lukes Healthcare - Rome	91 Perimeter Rd - Griffiss Park, Rome, NY	★ ● ● ● ●
FSLH-St. Lukes Home Renal Dialysis	1650 Champlin Avenue, Utica, NY	Not enough quality measure data to calculate Star Rating.

Source: <http://www.medicare.gov/dialysisfacilitycompare>

Recommendation

From a programmatic perspective contingent approval, is recommended.

Financial Analysis

Lease Rental Agreement

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

Date:	November 24, 2014
Premises:	131 Main Street, Oneida, NY (approximately 6,139 sq. ft.)
Lessor:	COSBROS Properties, LLC
Lessee:	Faxton St. Luke's Healthcare
Term:	10 years with (1) additional 5 year renewal options
Rental:	<ul style="list-style-type: none"> • From 12/1/2014 - 5/31/2015 is the tenant's free rent period • From 6/1/2015 and continuing until tenant's receipt of certificate of occupancy, annual rent is \$39,166.80 (\$3,263.90 monthly or \$6.38 per sq. ft.) • From the 1st of the month following tenant's receipt of certificate of occupancy: <ul style="list-style-type: none"> ○ Years 1-5 annual rent is \$78,272.28 (\$6,522.69 monthly or \$12.75 per sq. ft.) ○ Years 6-10 annual rent is \$81,341.75 (\$6,778.48 monthly or \$13.25 per sq. ft.)
Provisions:	The lessee shall be responsible for maintenance and utilities

The applicant has indicated that the lease arrangement is an arm's length lease. The applicant has submitted letters from 2 NYS licensed realtors attesting to the rent reasonableness.

Total Project Cost and Financing

Total project cost, which is for renovation and demolition and the acquisition of movable equipment, is estimated at \$1,404,954, further broken down as follows:

Renovation and Demolition	\$740,446
Design Contingency	\$9,593
Construction Contingency	\$74,044
Architect/Engineering Fees	\$95,933
Movable Equipment	\$417,759
Telecommunications	\$60,983
CON Fee	\$2,000
Additional Processing Fee	<u>\$4,196</u>
Total Project Cost	\$1,404,954

Project costs are based on a construction start date of May 6, 2015, and a five-month construction period.

The applicant's financing plan appears as follows:

Equity from FSLH	\$1,404,954
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Operating Budget

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

	<u>Year 1</u>	<u>Year 3</u>
Revenues		
Medicare Fee- For- Service	\$1,155,336	\$1,439,424
Medicaid Fee- For- Service	93,456	\$140,018
Commercial Fee- For- Service	<u>\$897,000</u>	<u>\$1,175,040</u>
Total Revenues	\$2,145,792	\$2,754,482
	<u>Year 1</u>	<u>Year 3</u>
Expenses		
Operating	\$1,008,882	\$1,340,827
Capital	<u>\$189,272</u>	<u>\$189,272</u>
Total Expenses	\$1,198,154	\$1,530,099
Net Income	<u>\$947,638</u>	<u>\$1,224,383</u>
Utilization (Treatments)	7,176	9,792
Percent Occupancy	82.14%	98.08%
Cost Per Treatment	\$166.97	\$156.26

Utilization broken down by payor source for Years 1 and 3 is as follows:

	<u>Year 1</u>		<u>Year 3</u>	
	<u>Treatments</u>	<u>% Utilization</u>	<u>Treatments</u>	<u>% Utilization</u>
Medicare Fee-For-Service	5,023	70%	6,855	70%
Medicaid Fee- For-Service	718	10%	979	10%
Commercial Fee-For-Service	<u>1,435</u>	<u>20%</u>	<u>1,958</u>	<u>20%</u>
Total	7,176	100%	9,792	100%

Treatments broken down by Category for Years 1 and 3 are as follows:

	<u>Year 1</u> <u>Treatments</u>	<u>Year 3</u> <u>Treatments</u>
Chronic Renal Dialysis	6,024	7,488
Home Hemodialysis training and support	480	960
Home Peritoneal Dialysis training and support	672	1,344
Total	7,176	9,792

Projected FTEs for years 1 and 3 are 8.6 FTEs and 12.0 FTEs, respectively.

Breakeven utilization is projected at 4,007 treatments for year 1 (45.87%) and 5,440 treatments for year 3 (54.49%).

The methodology for evaluating chronic renal dialysis capacity is specified in Part 709.4 of Title 10 NYCRR. The Department's methodology projects that 1 freestanding station represents 702 treatments per year (at 90% utilization) based on the expectation that the center will operate 2.5 patient shifts per day, 6 days per week, for 52 weeks per year. The applicant's total treatments for the 8 stations would be as follows for both Years 1 and 3: 702 treatments * 8 stations = 5,616 treatments. FSLH's projected utilization is significantly higher than the total 5,616 treatments expected for an 8 station chronic renal dialysis clinic. Therefore, the applicant's Years 1 and 3 budgets have been sensitized to reflect utilization expectations consistent with the Department's methodology. The sensitized treatments, FTEs, and budgets are shown below.

Sensitized treatments broken down by Category for Years 1 and 3 are as follows:

	<u>Year 1</u> <u>Sensitized</u>	<u>Year 3</u> <u>Sensitized</u>
Chronic Renal Dialysis	5,616	5,616
Home Hemodialysis training and support	480	960
Home Peritoneal training and support	672	1,344
Total	6,768	7,920

Sensitized FTEs for Years 1 and 3 are 8.11 FTEs and 9.71 FTEs, respectively, based on the following:

- Total Projected Treatments / Total Projected FTEs = Number of Treatments per FTE
- Sensitized Treatments / Number of Treatments per FTE = Sensitized Number of FTEs

The sensitized year 1 and year 3 budgets are as follows:

	<u>Year 1</u>	<u>Year 3</u>
Revenues		
Medicare Fee- For- Service	\$1,089,648	\$1,164,240
Medicaid Fee- For- Service	88,142	113,250
Commercial Fee- For- Service	<u>846,000</u>	<u>950,400</u>
Total Revenues	2,023,790	\$2,227,890
Expenses		
Operating	\$969,383	\$1,167,881
Capital	<u>\$189,272</u>	<u>\$189,272</u>
Total Expenses	1,158,654	1,357,153
Net Income	<u>\$865,136</u>	<u>\$870,737</u>
Utilization (Treatments)	6,768	7,920
Percent Occupancy	77.47%	79.33%
Cost Per Treatment	\$171.20	\$171.36

Expense and utilization assumptions are based on the historical operating experience of the applicant in operating other Article 28 chronic renal dialysis clinics in the area.

Capability and Feasibility

Project costs of \$1,404,954 will be met entirely through equity from FSLH.

Working capital requirements are estimated at \$255,017 which is equivalent to two months of Year 3 expenses. The working capital requirement will be entirely funded through equity from FSLH.

BFA Attachment B is the 2012 and 2013 certified financial statements of Faxton-St. Luke's Healthcare, which indicates sufficient liquid assets to cover all of the equity requirements associated with this CON. The facility has maintained both average positive working capital and net asset positions for the period. Additionally, the facility averaged a \$901,203 net loss during this period. The 2013 loss of (\$5,921,019) is due to the following items: decrease in patient volume, increase in local competition, and reduction in overall reimbursement. In order to rectify these issues the facility has implemented several cost savings initiatives, the main initiative being the affiliation of FSLH with Mohawk Valley Health Systems, which allowed the facility to eliminate unnecessary redundant expenses.

BFA Attachment C is the internal financial statements of Faxton-St. Luke's Healthcare for the period 1/1/2014 through 12/31/14. The entity generated both positive working capital and net asset positions, and had a net loss of (\$1,996,943) for the period. The loss is due to the following items: decrease in patient volume, increase in local competition and reduction in overall reimbursement. As stated earlier, the facility is now affiliated with MVHS and is in the process of implementing several initiatives in order to eliminate unnecessary redundant expenses within the system. These initiatives have already allowed the facility to reduce their overall loss by over \$3.9 million dollars by the end of 2014.

The submitted budget indicates a net income of \$947,638 and \$1,224,383 will be generated during Years 1 and 3, respectively. Revenues are based on the current reimbursement methodologies for dialysis services. The submitted budget does not reflect utilization expectations per the Department's need methodology for freestanding end stage renal dialysis clinics and has been sensitized accordingly. The Department's sensitized budget indicates a net income of \$865,136 and \$870,737 will be generated during Years 1 and 3, respectively. Revenues are based on the current reimbursement methodologies for dialysis services. The sensitized budget appears reasonable.

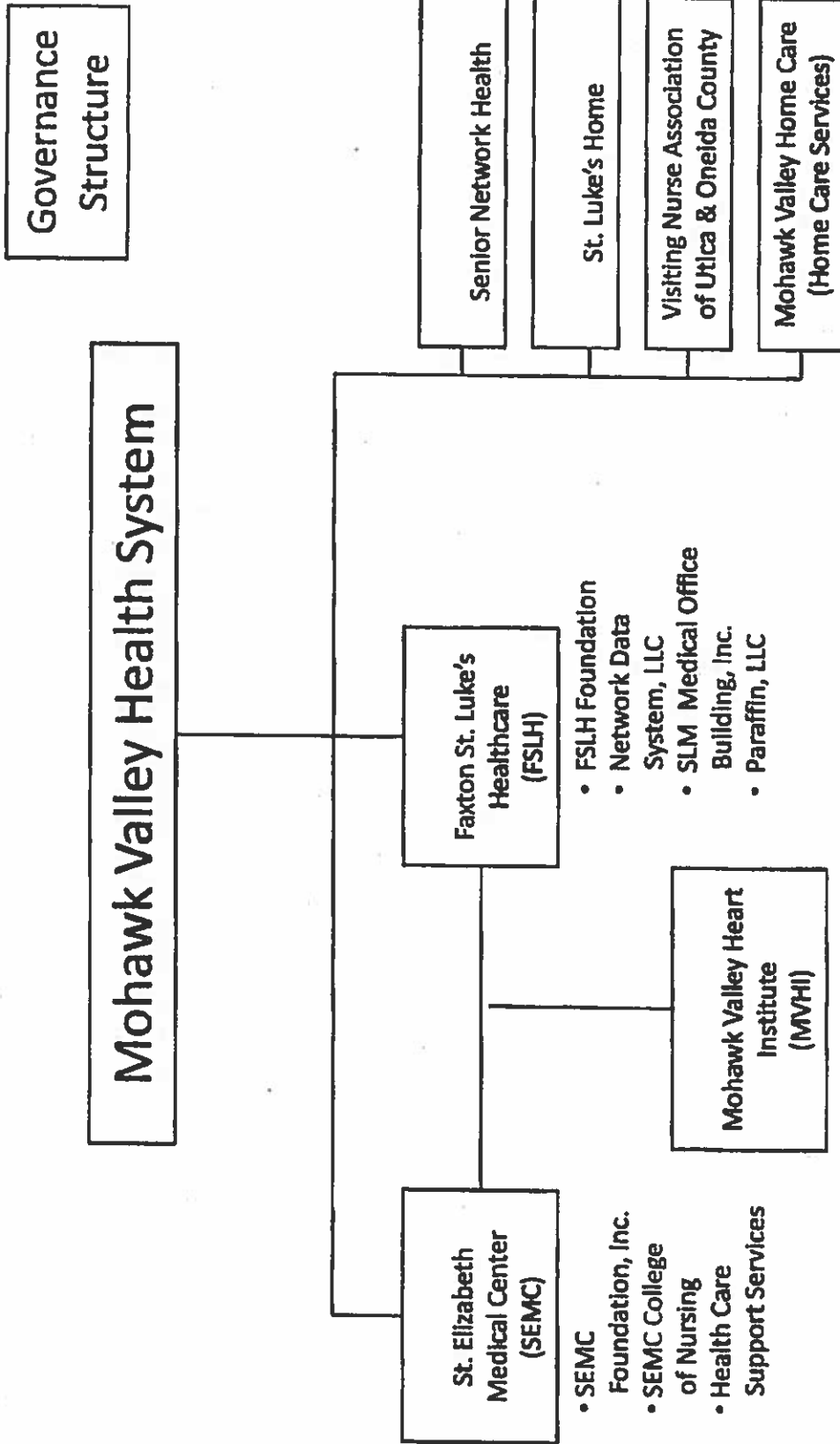
The applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendation

From a financial perspective, approval is recommended.

Attachments

- BFA Attachment A Organizational Chart of Mohawk Valley Health System (MVHS)
- BFA Attachment B Certified Financial Statements of Faxton-St. Luke's Healthcare for 2012-2013
- BFA Attachment C Internal Financial Statements of Faxton-St. Luke's Healthcare for the period 1/1/2014-12/31/14



Governance Structure

FAXTON-ST. LUKE'S HEALTHCARE

Balance Sheets

December 31, 2013 and 2012

<u>Assets</u>	<u>2013</u>	<u>2012</u>
Current assets:		
Cash and cash equivalents	\$ 89,301	2,910,193
Investments	74,249,882	59,774,878
Patient accounts receivable, net of reserve for charity care and doubtful accounts of approximately \$9,759,000 in 2013 and \$10,376,000 in 2012	39,306,052	43,268,140
Inventories	5,258,875	5,680,655
Prepaid expenses and other current assets	8,020,223	18,012,307
Due from affiliates, net	601,524	2,304,477
Net investment in direct financing lease	547,116	547,116
Estimated third-party payor settlements, net	<u>6,883,798</u>	<u>8,816,308</u>
Total current assets	134,956,771	141,314,074
Interest in Faxton-St. Luke's Healthcare Foundation	7,031,634	6,567,674
Investment in affiliates	605,084	137,248
Due from affiliates, net	254,000	423,965
Investments	4,528,164	4,528,164
Net investment in direct financing lease	2,718,152	3,013,803
Property and equipment, net	96,402,344	93,838,604
Unamortized debt issuance costs	447,138	472,689
Other assets	<u>21,620,693</u>	<u>26,416,499</u>
 Total assets	 \$ <u>268,563,980</u>	 <u>276,712,720</u>

<u>Liabilities and Net Assets</u>	<u>2013</u>	<u>2012</u>
Current liabilities:		
Revolving note payable	\$ 13,746,000	12,678,000
Current portion of long-term debt	4,789,789	3,597,989
Current portion of capital lease obligations	4,548,697	4,035,695
Accounts payable and accrued expenses	13,302,115	14,160,693
Accrued payroll, payroll taxes and benefits	11,042,342	12,675,359
Current portion of estimated self-insured liabilities	1,954,941	1,732,116
Other current liabilities	4,004,450	10,916,859
	<u>53,388,334</u>	<u>59,796,711</u>
Total current liabilities		
Long-term debt, net of current portion:		
Notes payable	9,949,544	8,824,057
Civic facility revenue bonds	16,300,000	16,845,000
Capital lease obligations	11,167,912	7,779,365
	<u>37,417,456</u>	<u>33,448,422</u>
Total long-term debt, net of current portion		
Other liabilities	29,978,292	35,792,783
Unrealized loss on interest rate swaps	3,851,738	6,144,832
Estimated self-insured liabilities, net of current portion	3,119,222	2,670,011
	<u>127,755,042</u>	<u>137,852,759</u>
Total liabilities		
Net assets:		
Unrestricted	132,570,660	131,290,203
Temporarily restricted	3,710,114	3,041,594
Permanently restricted	4,528,164	4,528,164
	<u>140,808,938</u>	<u>138,859,961</u>
Total net assets		
Commitments and contingencies		
Total liabilities and net assets	<u>\$ 268,563,980</u>	<u>276,712,720</u>

FAXTON-ST. LUKE'S HEALTHCARE

Statements of Operations and Changes in Net Assets

Years ended December 31, 2013 and 2012

	<u>2013</u>	<u>2012</u>
Unrestricted revenues, gains and other support:		
Patient service revenue (net of contractual allowances and discounts)	\$ 262,010,018	278,712,198
Provision for bad debts	<u>(8,319,156)</u>	<u>(8,931,406)</u>
Net patient service revenue less provision for bad debts	253,690,862	269,780,792
Other revenue	6,782,257	7,564,835
Investment income, net of fees	6,327,929	2,161,051
Contributions	<u>864,581</u>	<u>1,533,659</u>
Total unrestricted revenues, gains and other support	<u>267,665,629</u>	<u>281,040,337</u>
Expenses:		
Salaries and wages	124,158,346	124,489,479
Employee benefits	28,516,970	27,225,072
Supplies and other	99,944,346	107,135,317
Depreciation and amortization	17,351,199	16,596,968
Interest	2,410,519	2,695,394
New York State gross receipts taxes	<u>1,103,553</u>	<u>1,133,677</u>
Total expenses	<u>273,484,933</u>	<u>279,275,907</u>
Net income (loss) from continuing operations	(5,819,304)	1,764,430
Discontinued operations	<u>(101,715)</u>	<u>2,354,183</u>
Excess (deficiency) of revenues over expenses	<u>\$ (5,921,019)</u>	<u>4,118,613</u>

FAXTON-ST. LUKE'S HEALTHCARE

Statements of Operations and Changes in Net Assets, Continued

Years ended December 31, 2013 and 2012

	<u>2013</u>	<u>2012</u>
Unrestricted net assets:		
Excess (deficiency) of revenues over expenses	\$ (5,921,019)	4,118,613
Change in fair value of interest rate swaps	2,293,094	154,681
Change in interest in unrestricted net assets of Foundation	(204,560)	(170,679)
Contributions used for capital acquisitions	1,759,498	1,534,957
Change in net unrealized gains and losses on investments	3,353,444	5,108,072
Contributions from HEAL grant	-	6,685,500
	<u>1,280,457</u>	<u>17,431,144</u>
Increase in unrestricted net assets		
Temporarily restricted net assets:		
Income on investments	-	1,669
Change in interest in temporarily restricted net assets of Foundation	668,520	(491,356)
Net assets released from restrictions	-	(1,339)
	<u>668,520</u>	<u>(491,026)</u>
Increase (decrease) in temporarily restricted net assets		
Total increase in net assets	<u>1,948,977</u>	<u>16,940,118</u>
Net assets at beginning of year	<u>138,859,961</u>	<u>121,919,843</u>
Net assets at end of year	<u>\$ 140,808,938</u>	<u>138,859,961</u>

Faxton St. Luke's Healthcare
Balance Sheets
as of December 31, 2014

Project # 142261
BFA Attachment C

ASSETS	December 2014	November 2014	December 2013
CURRENT ASSETS:			
Cash and Cash equivalents	\$820,115	\$(1,473,299)	\$(1,761,492)
Investments	79,108,774	79,321,346	75,869,745
Patients Account Rec. Net	40,958,116	42,704,205	38,421,322
Other Receivables	9,498,438	9,105,714	8,704,623
Inventory	5,635,905	5,259,743	5,258,877
Prepaid & Other Asset	3,780,041	3,420,229	3,525,990
Net Inv. in Phys Office Bldg	547,116	547,116	547,116
Due from Third Party	4,745,347	6,477,111	7,663,785
Due from Affiliates	3,286,157	2,898,233	1,305,522
Total Current Assets	\$148,380,009	\$148,260,398	\$139,535,488
Investment in VHA	\$46,210	\$46,210	\$46,210
Investment in Foundation	7,193,550	7,032,699	7,031,634
Investment in MVEC	371,736	381,836	354,028
Investment in Paraffin	40,299	44,094	11,605
Investment in SLM Office Bldg	667,900	664,105	593,479
Net Inv in Phy Office Building	2,399,750	2,427,194	2,718,152
Investments	4,856,820	4,900,488	4,758,860
Property and Equipment, net	86,656,115	87,881,320	96,402,345
Unamortized Debt Issuance	421,588	423,717	447,139
Other Assets	16,473,567	16,456,359	16,560,705
Total Assets	\$267,507,544	\$268,518,420	\$268,459,645

Faxton St. Luke's Healthcare
Balance Sheets
as of December 31, 2014

Project # 142261
BFA Attachment C (cont.)

	December 2014	November 2014	December 2013
LIABILITIES AND NET ASSETS			
Current Liabilities:			
Short Term Borrowings	\$15,822,000	\$17,110,000	\$13,746,000
Current long-term debt	5,064,405	5,176,273	4,789,789
Capital lease obligations-curr	4,411,058	4,442,297	4,548,697
Self-insured Liabilities-curr	3,915,116	3,837,044	4,221,854
Accrued Interest Payable	71,029	71,280	75,147
Accounts Payable	14,242,323	12,760,569	13,121,641
Accrued Payroll, Taxes	9,097,658	9,923,900	8,849,125
Other Current Liabilities	4,010,617	4,016,639	3,910,747
Total Current Liabilities	\$56,634,206	\$57,338,002	\$53,263,000
Long Term Debt, Net of Current Portion			
Notes Payable	\$6,231,324	\$6,430,678	\$9,949,545
Civic Facility Revenue Bonds	15,740,000	15,740,000	16,300,000
Capital Lease Obligations	9,509,136	10,010,546	11,167,912
Other Long Term Liabilities	33,894,203	33,764,353	33,924,717
Estimated self-insured Liabilities, net	\$2,599,322	\$2,571,372	\$3,045,528
Total Liabilities	\$124,608,191	\$125,854,951	\$127,650,702
Net Assets			
Unrestricted	\$134,160,801	\$134,014,720	\$132,570,666
Temporarily Restricted	4,210,389	4,120,588	3,710,113
Permanently Restricted	4,528,164	4,528,164	4,528,164
Total Net Assets	\$142,899,354	\$142,663,472	\$140,808,943
Total Liability and Net Assets	\$267,507,545	\$268,518,423	\$268,459,645

Faxton St. Luke's Healthcare
STATEMENTS OF OPERATIONS
Period Ended December 31, 2014 and 2013

	December Actual		December Budget		December 2013
Unrestricted revenues, gain and other support:					
Patient Revenue	\$271,391,731	4.74 %	\$279,155,230	7.74 %	\$259,112,205
Bad Debts	(7,876,515)	(5.32)	(9,027,538)	8.52	(8,319,157)
Net Patient Revenue	\$263,515,216	5.07 %	\$270,127,692	7.71 %	\$250,793,048
Other Revenue	\$10,902,182	6.16 %	\$7,830,382	(23.75) %	\$10,269,713
Total unrestricted revenues gains and other support	\$274,417,398	5.12 %	\$277,958,074	6.47 %	\$261,062,761
Expenses:					
Salaries and Wages	\$110,462,443		\$108,749,034		\$110,661,797
Physicians Salaries	15,358,736		14,646,574		13,496,448
Purchase Service Employees	429,787		211,191		139,377
Employee Benefits	30,805,681		30,619,424		28,516,970
Medical Supplies	22,567,560		24,952,523		24,679,803
Non-Medical Supplies	3,596,591		3,822,283		3,649,148
Purchased Services	27,903,183		28,432,004		28,333,819
Utilities	3,726,338		3,744,553		3,622,953
Drugs	16,039,267		15,375,700		15,671,010
Other Expenses	24,122,376		24,867,672		23,741,038
Depreciation/Amortization	17,820,651		18,068,499		17,388,474
Taxes	1,165,741		1,252,912		1,214,909
Interest Expense	2,415,987		2,409,689		2,410,519
Total Expenses	\$276,414,341		\$277,152,058		\$273,526,265
Income from Operations	\$(1,996,943)		\$806,016		\$(12,463,504)
Non-Operating Revenue	\$676,097		\$0		\$2,113,442
Income (Loss) from Foundati	161,916		0		(204,558)
Investment Income	2,735,980		4,500,000		9,602,335
Gain/Loss on Sale/Disposal	4,750		0		(60,351)
Increase in Unrestricted Net Assets	\$1,581,800		\$5,306,016		\$(1,012,636)

NEW YORK STATE PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

Guidelines for Committee Observers and Participants

The Public Health and Health Planning Council welcomes interested observers and participants at its Standing Committees' meeting, which are public meetings. However, in order to make these meetings as productive as possible for all concerned, the Council has established certain ground rules so as not to disrupt the business of the meetings.

1. All Press inquiries concerning Council or Department activities should be directed to the Director of Public Affairs at (518) 474-7354, and in the Director's absence, to the Executive Secretary.
2. The Chairman may excuse observers from portions of a meeting as appropriate (e.g. consideration of Section 2801-b allegations, pursuant to Public Officers Law Section §105).
3. Any interruption of the meeting for the taking of photographs by the news media will require approval of the Chairman before the start of the meeting.
4. Observers and participants will be accommodated within the physical limitations of the meeting room. Observers and participants will be identified and introduced to the Chairman of the Committee who may read their identification into the record of the meeting.
5. Discussion during the meeting is limited to the public who have signed up on the Speaker's list, except or otherwise permitted by the Chair of the Committee. Observers and participants who require interpretive services, please notify the Executive Secretary at Colleen.Leonard@health.ny.gov in advance or speak directly to Council staff at the time of the meeting.
6. Staff to the Council members may be contacted by observers, generally before or after the meeting, for clarification of agenda items or discussion, interviews, general information on the Council, etc.
7. No written correspondence shall be distributed to the Council members the day of the meeting. All correspondence addressed to Council members shall be sent to the Council's Executive Secretary no later than 72 hours prior to the meeting in which the matter of the correspondence appears on the meeting agenda. Applicants shall have no later than 48 hours prior to the meeting to respond to correspondence pertaining to their application in which the matter of the correspondence appears on the meeting agenda.

Executive Secretary, Public Health and Health Planning Council
Empire State Plaza, Corning Tower, Room 1805
Albany, New York 12237

Or via e-mail at Colleen.Leonard@health.ny.gov and Lisa.Thomson@health.ny.gov

Copies of Member listings and the schedule of Council meetings for the year are available on request.

Adopted 6/11
Revised and adopted 2/13/14
Revised and adopted 10/6/16

NEW YORK STATE PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

Guidelines for Observers for Full Public Health and Health Planning Council

The Public Health and Health Planning Council welcomes interested observers at its meetings of the whole body, which are public meetings. However, in order to make these meetings as productive as possible for all concerned, the Council has established certain ground rules so as not to disrupt the business of the meetings.

1. All Press inquiries concerning Council or Department activities should be directed to the Director of Public Affairs at (518) 474-7354, and in the Director's absence, to the Executive Secretary.
2. The Chairman may excuse observers from portions of a meeting as appropriate (e.g. consideration of Section 2801-b allegations, pursuant to Public Officers Law § 105).
3. Any interruption of the meeting for the taking of photographs by the news media will require approval of the Chairman before the start of the meeting.
4. Observers will be accommodated within the physical limitations of the meeting room. Observers will be identified and introduced to the Chairman of the Council who may read their identification into the record of the meeting.
5. Discussion during the meeting is limited to only the Council members (who may request information or reports from staff to the Council) unless prior approval to participate in a discussion has been granted by the Chairman.
6. Staff to the Council members may be contacted by observers, generally before or after the meeting, for clarification of agenda items or discussion, interviews, general information on the Council, etc.
7. No written correspondence will be distributed to the Council members the day of the meeting. All correspondence addressed to Council members shall be sent to the Council's Executive Secretary no later than 72 hours prior to the meeting in which the matter of the correspondence appears on the meeting agenda. Applicants shall have no later than 48 hours prior to the meeting to respond to correspondence pertaining to their application in which the matter of the correspondence appears on the meeting agenda.

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